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Travaux publics et Services gouvernementaux Canada

Supply Manual

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Chapter 12 - Glossary

Chapter 1 - Overview

Public Works and Government Services Canada Procurement

1.001 (1998-02-16) This Manual describes the supply activities of Public Works and Government Services Canada (PWGSC). It contains relevant laws, regulations, government and departmental policies. It explains why and how the Department carries out its supply activities.

There is one governing postulate for all PWGSC: Integrity. Subordinate to this are five principles which provide the framework for PWGSC supply activities. Whenever a PWGSC contracting officer must act in a way not clearly set out in this Manual, integrity and its supporting principles provide necessary guidance.

Governing Postulate

Integrity
PWGSC supply activities will be open, fair and honest.

Guiding Principles

Client Service
PWGSC will make every reasonable effort to satisfy the operational requirements of its clients, while obtaining best value in each procurement process.

National Objectives
PWGSC supply activities will advance established government national socio-economic policies, within the limits imposed by international trade obligations.

Competition
PWGSC procurement will be competitive, with specific exceptions.

Equal Treatment
PWGSC will ensure that all potential suppliers of a particular requirement are subject to the same conditions.

Accountability
PWGSC is accountable for the integrity of the complete procurement process including all actions taken within the process: this also applies to actions originating from the client that are not in compliance with the Treasury Board or PWGSC policies, or applicable legislation. (see 7D.395)

The Legal Framework

1.002 (2003-12-12) PWGSC supply activities are carried out pursuant to four major statutes:

Financial Administration Act
Department of Public Works and Government Services Act
Defence Production Act
Comprehensive Land Claim Agreements (See 4.002)

No legal interpretation should be attempted on the basis of the following highlights. For detailed study of each act, the full text should be consulted.

Copies of the acts are in the departmental library. Copies of the thirteen ratified comprehensive

land claim agreements are readily available from the Department of Indian and Northern Affairs and may be viewed at Acquisition Policy and Process Directorate.

Financial Administration Act

1.003 (2003-12-12) The *Financial Administration Act* (FAA) provides the legal framework for the collection and expenditure of public funds, including the contracting practices of PWGSC and its clients. Sections 32, 33, 34, 37 and 40 are of direct interest to the contracting officers in PWGSC.

Section 32 states:

"(1) No contract or other arrangement providing for a payment shall be entered into with respect to any program for which there is an appropriation by Parliament or an item included in estimates then before the House of Commons to which the payment will be charged unless there is a sufficient unencumbered balance available out of the appropriation or item to discharge any debt that, under the contract or other arrangement, will be incurred during the fiscal year in which the contract or other arrangement is entered into."

Section 33 requires that "No charge shall be made against an appropriation except on the requisition of the appropriate Minister of the department for which the appropriation was made or of a person authorized in writing by that Minister."

Section 34 states that:

"(1) No payment shall be made in respect of any part of the public service of Canada unless, in addition to any other voucher or certificate that is required, the deputy of the appropriate Minister, or another person authorized by the Minister, certifies:

(a) in the case of a payment for the performance of work, the supply of goods or the rendering of services,

(i) that the work has been performed, the goods supplied or the service rendered, as the case may be, and that the price charged is according to contract, or if not specified by the contract, is reasonable,

(ii) where, pursuant to the contract, a payment is to be made before the completion of the work, delivery of the goods or rendering of the service, as the case may be, that the payment is according to the contract, or

(iii) where, in accordance with the policies and procedures prescribed under subsection (2), payment is to be made in advance of verification, that the claim for payment is reasonable; or

(b) in the case of any other payment, that the payee is eligible for or entitled to the payment."

"(2) The Treasury Board may prescribe policies and procedures to be followed to give effect to the certification and verification required under subsection (1)."

Sections 37 and 37.1 provide that any unexpended portion of an appropriation lapses at the end of the fiscal year, except that a debt incurred for work performed, goods received or services rendered prior to the end of the fiscal year shall be recorded as an expenditure against the appropriation, even though payment is to be made during the following fiscal year, or during such shorter period as the Treasury Board (TB) may direct.

Section 40 states that "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."

Section 41 provides for regulations with respect to the conditions under which contracts may be entered into.

Sections 61 and 62 restrict the transfer, lease or loan of public property and require each department to maintain adequate records of its public property. However, pursuant to the Public Property Loan Regulations, (SOR/92-745), section 61 permits ministers to loan public property, subject to certain conditions.

Sections 66 to 71 describe conditions under which Crown debts may be assigned, and the procedure to follow.

Sections 72 to 75 prescribe circumstances whereby persons who performed labour or services or supplied material in connection with a contract for which the government holds a "payment bond", and for which they have not been paid in full by the contractor, may become assignees of the right of the Crown for payment under the bond.

Sections 76 to 79 explain the liability of persons who have received public money and who fail to pay it over, account for it or apply it as intended.

Sections 155 to 160 cover, among other things, recovery of debts due to the Crown through deduction or set-offs, the avoidance of duplication of public accounts statements, and the provision that no bank can charge the government for the cashing of its cheques. Section 160 empowers the Governor in Council to make the necessary regulations to carry the purpose and provisions of this Act into effect.

Government Contracts Regulations

1.004 (1994-06-23) The *Government Contracts Regulations* (GCR) are issued pursuant to subsection 41(1) of the FAA.

Part I of the GCR deals with conditions of contract entry. Under section 4, contracts for legal services require the authority of the Minister of Justice. Section 5 sets out the requirement for soliciting bids (defined in section 7). Section 6 specifies conditions under which bids need not be solicited. Sections 8 and 9 authorize advance and progress payments.

Part II of the GCR deals with bid and contract security. Section 11 sets conditions for the use of government guaranteed bonds as security; section 17 deals with handling the coupons attached to such bonds where the value exceeds the value of security required. Sections 12 through 16 deal with holding and retiring bid and contract security.

The procedures in this Manual apply the GCR to PWGSC supply activities.

Treasury Board

1.005 (1994-06-23) The FAA also deals with the organization, responsibilities, authorities, duties, powers and functions of the TB. In particular, paragraph 7(1)(c) provides that TB may act for the Queen's Privy Council for Canada on all matters relating to financial management, including estimates, expenditures, financial commitments, accounts, fees or charges for the provision of services or the use of facilities, rentals, licences, leases, revenues from the disposition of property, and procedures by which departments manage, record and account for revenues received or receivable from any

source whatever.

Section 10 outlines the areas for which TB may make regulations, such as for the purpose of ensuring effective co-ordination of administrative functions and services among and within departments, or establishing performance standards in the public service. It also provides that TB may exercise the powers of the Governor in Council under paragraph 41(1)(a) of the *Act* which refers to regulations respecting conditions relating to contract award as delegated to TB by the TB Delegation of Powers Order (SOR/86-1123).

Treasury Board Contracts Directive

1.006 (1994-06-23) The TB Contracts Directive, issued pursuant to section 10 and paragraph 41(1) (a) of the FAA, sets basic contracting limits for contracting authorities, and provides special contracting limits for specific ministers. The application of the Directive to PWGSC is set out in Chapter 6 of this Manual.

Treasury Board Contracting Policy

1.007 (2002-12-13) The TB Contracting Policy sets out the broad parameters of government contracting. The TB Guidelines on Contracting provide additional information to assist contracting authorities in carrying out their responsibilities.

The foundation for government contracting appears in the TB Policy, which states:

"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."

This Manual applies the TB policy and guidelines to PWGSC supply activities.

Mandate of Department of Public Works and Government Services

1.010 (1996-12-02) The Department was formed in July 1993 by the amalgamation of two main supply organizations - the Department of Supply and Services and the Department of Public Works. Within the general structure of government financial management and contracting established by the FAA, the specific legal authorities of DPWGS are set out in the *Department of Public Works*

and Government Services Act and the *Defence Production Act*.

The legal name of the Department is "Department of Public Works and Government Services". While "Public Works and Government Services Canada" or "PWGSC" is the common usage name, the legal names of the department and the Minister, as set out in the *Department of Public Works and Government Services Act*, must be used for such legal purposes as the preparation and execution of legal documents.

The Act came into force on July 12, 1996.

Department of Public Works and Government Services Act

1.013 (1996-12-02) Section 3 deals with the legal name of the Department and its Minister, as follows:

"(1) There is hereby established a department of the Government of Canada called the Department of Public Works and Government Services over which the Minister of Public Works and Government Services appointed by commission under the Great Seal shall preside."

(2) The Minister holds office during pleasure and has the management and direction of the Department.

(3) The Minister is the Receiver General for Canada."

1.014 (1996-12-02) The broad mandate of providing materiel and other management services to all departments is summarized in section 5 which stipulates that: "The Department shall operate as a common service agency for the Government of Canada, and its activities as a common service agency shall be directed mainly toward providing the departments, boards and agencies of the Government of Canada with services in support of their programs."

1.015 (2002-12-13) Section 6 outlines the powers, duties and functions of the Minister which extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to:

"(a) the acquisition and provision of articles, supplies, machinery, equipment and other materiel for departments;

(b) the acquisition and provision of services for departments;

(c) the planning and organizing of the provision of materiel and services required by departments;

(d) the acquisition and provision of printing and publishing services for departments;

(e) the construction, maintenance and repair of public works, federal real property and federal immovables;

(f) the provision of accommodation and other facilities for departments;

(g) the planning and coordination of telecommunications services for departments, boards and agencies of the Government of Canada;

(h) the provision to departments of advice on or services related to architectural or engineering matters affecting any public work, federal real property or federal immovable; and

(i) the provision to departments, boards and agencies of the Government of Canada of translation and related services."

1.016 (1996-12-02) Subsection 7(1) further provides that the Minister shall:

"(a) investigate and develop services for increasing the efficiency and economy of the public service of Canada and for enhancing integrity and efficiency in the contracting process;

(b) acquire materiel and services in accordance with any applicable regulations relating to government contracts;

(c) plan and organize the provision of materiel and related services to departments including the preparation of specifications and standards, the cataloguing of materiel, the determination of aggregate requirements for materiel, the assuring of quality of materiel, and the maintenance, distribution, storage and disposal of materiel and other activities associated with the management of materiel; and

(d) provide such other services as the Governor in Council may direct."

1.017 (1996-12-02) Subsection 7(2) contains the limitation that: "Notwithstanding paragraph (1)(c), the Minister's power to manage materiel, as distinct from its acquisition, does not extend to the management, in an exclusively military supply system, of materiel essential for the conduct of military missions."

1.018 (1996-12-02) Section 8 allows the Minister to "delegate any of the Minister's powers, duties or functions under this Act to an appropriate minister, within the meaning of the *Financial Administration Act*, for any period and under any terms and conditions that the Minister considers suitable."

1.019 (1996-12-02) Section 9 states: "The Minister shall exercise the powers in relation to the acquisition and provision of materiel for the use of any department that are conferred on any minister or other authority under any Act of Parliament, except to the extent that those powers have been delegated by the Minister."

1.020 (2004-12-10) Section 10 states:

"(1) The Minister has the administration of all federal real property and federal immovables situated in Yukon, the Northwest Territories or Nunavut except those under the administration of any other minister, board or agency of the Government of Canada or any corporation.

(2) The Minister may incur expenditures or perform, or have performed, services or work in relation to:

(a) any federal real property or federal immovable;

(b) any work or other property belonging to Her Majesty in right of Canada; and

(c) any real or immovable property, any work or any other property not belonging to Her Majesty in right of Canada, with the consent of its owner.

(3) Nothing in paragraph (2)(c) affects the operation of the *Seized Property Management Act*."

1.021 (1996-12-02) Section 14 states:

"(1) Subject to subsection (2), the Minister may provide departments, boards and agencies of the Government of Canada with production, processing and distribution services for film, within the meaning of the *National Film Act*, videos and any other cinematographic works that the Governor in Council may designate.

(2) Except with the approval of the Governor in Council, no department shall initiate the production or processing of a motion picture film without the authority of the Minister, and the production and processing, by or for departments, of all motion picture films shall be undertaken by the Minister unless the Minister is of the opinion that it is in the public interest that it be otherwise undertaken and authorizes it to be so undertaken."

1.022 (1996-12-02) Section 15 states: "The Minister may, on request of a department, board or agency of the Government of Canada, provide it with:

(a) management consulting services;

(b) information management and information technology systems and services;

(c) accounting services;

(d) auditing services;

(e) financial services;

(f) services and advice in relation to the acquisition, management or disposition of real or immovable property;

(g) architectural and engineering services, including services in respect of the adoption and application of related codes, standards, procedures, guidelines and technologies; and

(h) services of any other kind that are within the ambit of the Minister's powers, duties and functions."

1.023 (1996-12-02) Section 16 empowers "the Minister to do anything for or on behalf of:

(a) any department, board or agency of the Government of Canada or Crown corporation, or

(b) with the approval of the Governor in Council, any government, body or person in Canada or elsewhere that requests the Minister to do that thing,

where the Minister is authorized to do that thing under this or any other Act of Parliament for or on behalf of any department, board or agency of the Government of Canada."

1.024 (1996-12-02) Section 18 states:

"(1) The Minister may use any electronic or other means to create, collect, store, transfer, receive or otherwise handle documents or information.

(2) The Minister may fix the terms and conditions, formats and other requirements for the use of any electronic or other means that must be met by persons who use that means in their dealings with the Minister.

(3) The Minister may, by regulation, prescribe the electronic or other means by which a requirement referred to in subsection (2) shall be published."

1.025 (1996-12-02) Sections 20 and 21 provide the necessary contracting powers of the Minister, including the power to fix terms and conditions of contracts, and instructions, terms and conditions with respect to other documents relating to contracts and their formation.

1.026 (1996-12-02) Section 22 further provides "that instructions or terms and conditions identified by number or other designation are applicable to or form part of the contract or other document shall be read and construed as if the instructions or terms and conditions to which the reference is made were expressly set out in the contract or other document."

Defence Production Act

1.032 (2001-12-10) The *Defence Production Act* has been amended by adding two new parts. The Act now consists of the following three parts: (1) Procurement of Defence Supplies; (2) Regulations of Access to Controlled Goods; and (3) Offence and Punishment.

1.033 (2001-12-10) After section 2: Part 1 - PROCUREMENT OF DEFENCE SUPPLIES. All PWGSC contracts for defence supplies or projects are governed by the provisions of the *Defence Production Act*. The Minister of Public Works and Government Services is responsible for administration and application of the Act.

Section 6 empowers the Minister to establish, if authorized by the Governor in Council, corporations to facilitate the carrying out of the purposes and provisions of the Act, and to appoint or dismiss members, directors or officers, at any time. Section 9 allows the Minister to contract with these corporations.

1.034 (1994-06-23) Subsection 10(2) provides to the Minister "exclusive authority to buy or otherwise acquire defence supplies and construct defence projects required by the Department of National Defence, except:

(a) defence projects to be constructed by persons in the employ of Her Majesty; and

(b) such defence supplies or defence projects as the Minister of National Defence or any other Minister designated by the Governor in Council may procure or construct at the request of the Minister."

1.035 (1994-06-23) Section 11 permits the Minister, if authorized by the Governor in Council, to exercise his/her powers under the Act in favour of an "associated" government. Associated governments are the governments of the British Commonwealth and of NATO, or the government of any other country designated by the Governor in Council as being a country the defence of which is vital to Canada.

1.036 (1994-06-23) Sections 12 to 15 deal with the Minister's mandate to organize and control the Canadian defence industry, "to mobilize, conserve and coordinate all economic and industrial facilities in respect of defence supplies and defence projects and the supply or construction thereof." Under sections 13 and 14, the Minister may require returns of other information from persons in the defence industry, or assistance from other government departments in obtaining relevant data. In accordance with section 15 and if authorized by the Governor in Council, the Minister may also stockpile materials or substances considered essential to the needs of the community.

1.037 (1994-06-23) Section 16 provides wide powers to the Minister with respect to the procurement, production or disposal of defence supplies or defence projects. The Minister may make loans or advances to persons engaged in the manufacture of defence supplies, or in the construction of defence projects.

Section 17 authorizes expenditures from the Consolidated Revenue Fund to be used to maintain

stockpiles and to pay for the acquisition of defence supplies.

1.038 (1994-06-23) Under section 18, loans or advances authorized for any purpose other than to assist in the construction, acquisition, extension or improvement of capital equipment or works by any person are to be paid from the Consolidated Revenue Fund and charged to the Defence Production Loan Account.

1.039 (1994-06-23) When a defence contract involves provision, manufacture or construction of government issue or building for which Her Majesty provides money or the use of such government issue or building, section 20 is an important consideration. In such cases, Legal Services should be consulted to ensure that the contractual clauses inserted in the contract are drafted so as to include the protections and rights available to the Crown with respect to title to such government issue or building.

1.040 (1994-06-23) Contractors, according to section 21, are not entitled to claim damages, compensation or other allowances for loss of profits, if the contract is rescinded or terminated before it is fully performed.

1.041 (1994-06-23) Section 22 provides that the Minister may protect a contractor from paying royalties under a defence contract, but that the holder of a patent is entitled to reasonable compensation from the Crown.

1.042 (1994-06-23) Section 23 requires a defence contractor to keep proper accounts and cost records until the expiration of six years from the end of the calendar year in which the contract is terminated or completed, and, on demand, to make them available to the Minister or a delegate. Section 24 empowers the Minister to reassess contract costs and profits when considered unreasonably high, and to reduce them. If the contractor's records seem unsatisfactory, the Minister is not bound by them.

1.043 (2001-12-10) The contractor whose claimed costs and profit have been reduced under section 24 by the Minister, may appeal within 30 days of the receipt of the order or direction to the Federal Court of Canada (section 25).

The heading before section 26 and sections 26 to 29 of the Act are repealed.

Section 30 states that business information obtained under the Act shall not be disclosed without the consent of the person carrying on that business.

1.044 (1994-06-23) Section 31 empowers the Canadian Commercial Corporation or a company to which the *Government Corporations Operation Act* applies, to make arrangements to act on behalf of the Minister under this Act.

1.045 (2001-12-10) Section 32 states that the powers conferred by this Act may be exercised notwithstanding anything contained in the *Public Works Act*.

1.046 (2001-12-10) Section 33 states that the Governor in Council may make orders and regulations to carry out the purposes and provisions of this Part.

1.047 (2001-12-10) Section 34 outlines the regulations to be published and the Motions to revoke or amend them. Every regulation, as defined in the *Statutory Instruments Act*, made under the authority of this Part shall be published in the *Canada Gazette* within thirty (30) days after it is made.

1.048 (2001-12-10) After section 34, PART 2 - REGULATION OF ACCESS TO CONTROLLED GOODS, section 35 states that in this Part, "controlled goods" means the goods referred to in the schedule.

(See 6B.192.)

1.049 (2001-12-10) Section 36 deals with excluded persons and states that this Part does not apply to a person who (a) occupies a position in the federal public service or a federal Crown corporation or is employed by Her Majesty in right of a province, who acts in good faith in the course of their duties and employment; or (b) is a member of a class of persons prescribed by regulation.

1.050 (2001-12-10) Section 37 deals with offences and prohibitions and states that: (1) No person shall, unless the person is registered under section 38 or exempt from registration under section 39 or 39.1, knowingly examine or possess a controlled good or transfer a controlled good to another person. (2) No person registered or exempt from registration shall knowingly transfer a controlled good to or permit the examination of a controlled good by a person who is not registered or exempt from registration. (3) In this section, "transfer" means, in respect of a controlled good, to dispose of it or disclose its content in any manner. (4) The registration of a person extends to the officers, directors and employees authorized by the registered person in accordance with the regulations.

1.051 (2001-12-10) Section 38 deals with registration by the Minister and states that: (1) The Minister may, in accordance with the regulations, register any person who makes an application for registration and may, for that purpose, request any information that in the opinion of the Minister is necessary. (2) A registration or its renewal is subject to conditions prescribed by regulation and any conditions that in the opinion of the Minister are appropriate. (3) The Minister may deny an application for registration or suspend, amend or revoke a registration on the basis of a security assessment prescribed by regulation. (4) The Minister shall furnish a registered person with a certificate of that registration in a form that the Minister may specify.

1.052 (2002-05-24) Sections 39 and 39.1 provide for exemptions from registration for individuals (visitors or temporary workers), or a class of individuals.

1.053 (2004-12-10) Section 40 deals with reporting and states that every registered person shall provide the Minister with any information prescribed by regulation, in the manner and time prescribed by regulation, including reporting breaches of security.

1.054 (2002-05-24) Section 41 deals with inspection and provides for the designation of inspectors by the Minister to ensure compliance with the Program.

1.055 (2004-12-10) Section 42 deals with the inspection of facilities and outlines the powers of inspectors to ensure the compliance of the Program. It also states that inspectors may be accompanied by another person chosen by the inspector. These powers include the power to require attendance and to question any individual, the power to obtain and copy documents, the power to detain or remove controlled goods, and the power to demand implementation of remedial measures.

1.056 (2001-12-10) Section 43 provides the Governor in Council with authority to make regulations for carrying out the purposes and provisions of PART 2.

1.057 (2002-05-24) Section 44 enumerates prohibited acts. These are absolute liability offences.

1.058 (2002-05-24) Section 45 outlines PART 3 of the Act - Offence and Punishment. This Part defines offences, continuing offence and factors to consider when sentencing.

1.059 (2002-12-13) Section 46 states that an “officer, director or agent of a corporation that commits an offence under this Act is liable to be convicted of the offence if he or she directed, authorized, assented to, acquiesced in or participated in the commission of the offence, whether or not the corporation has been prosecuted or convicted.”

Comprehensive Land Claims Agreements

1.070 (2001-12-10) Comprehensive Land Claims Agreements (CLCAs) are modern treaties that are based on the concept of continued Aboriginal rights and title to lands that have been traditionally used and occupied, by an Aboriginal group, which have not been dealt with by treaty or other legal means. The comprehensive land claims settlement process is intended to result in agreement on the special rights Aboriginal peoples will have in the future with respect to lands and resources.

1.071 (2001-12-10) CLCAs have been granted quasi-constitutional status by virtue of section 35 of the *Constitution Act (1982*).

Ratified Comprehensive Land Claims Agreements

1.072 (2004-12-10) At present, there are thirteen CLCAs (including 9 which fall under the Umbrella Final Agreement - Council for Yukon Indians), that have been ratified by Parliament and are in effect. These are listed below along with the approximate areas of Canada covered by the CLCAs. Canada's contracting obligations under each agreement are identified in TBS Contracting Policy Notice 1997-8, Amendments and Additions, and the Addendum .

Section 1: James Bay and Northern Quebec Agreement: from the shores of James Bay and Hudson Bay to Labrador, covering approximately 50 percent of Quebec's land mass, mainly the northern portion of the province.

Section 2: The Inuvialuit Final Agreement: the islands and part of mainland along the Beaufort Sea (northwest portion of the Northwest Territories, including western portion of Victoria Island, all of Banks Island, Prince Patrick Island in the northern portion, and the western portion of Melville Island).

Section 3: Gwich'in Comprehensive Land Claim Agreement: parts of northeastern Yukon and northwest portion of the Northwest Territories.A Yukon Transboundary Agreement, for the Tetlit Gwich'in claimant group, exists as Appendix "C" under this final agreement. This transboundary agreement is considered to be a separate land claims agreement according to Department of Indian and Northern Affairs officials. However, notification of procurement opportunities within this area is to be sent to the Gwich'in Tribal Council.

Section 4: Inuit of Nunavut Land Claim Agreement: Northern Canada - includes districts of Franklin (central Nunavut), Keewatin (south-central Nunavut, northwest coast of Hudson's Bay area), Baffin Island (southeast portion of Nunavut) and Ellesmere Island (northern portion of Nunavut).

Section 5: Umbrella Final Agreement - Council for Yukon Indians: The western portion of the Yukon Territory. The territory extends from the northern border of British Columbia to the southern border of the Inuvialuit land claims area, and includes fourteen separate Comprehensive Land Claims Settlement Areas (CLCSAs).

5.1 First Nation of Nacho Nyak Dun Final Agreement: Part of Yukon Territory

5.2 Champagne and Aishihik First Nations Final Agreement: Part of Yukon Territory

5.3 Teslin Tlingit Council Final Agreement: Part of Yukon Territory

5.4 Vuntut Gwich'in First Nation Final Agreement: Part of Yukon Territory

5.5 Selkirk First Nation Final Agreement: Part of Yukon Territory

5.6 Little Salmon/Carmacks First Nation Final Agreement: Part of Yukon Territory

5.7 Tr'ondëk Hwëch'in Final Agreement: Part of Yukon Territory (formerly Dawson City)

5.8 Ta'an Kwach'an Council Final Agreement: Part of Yukon Territory (includes Whitehorse)

5.9 Kluane First Nation Final Agreement: Part of Yukon Territory covering Burwash Landing.

Section 6: Sahtu Dene and Metis Comprehensive Land Claim Agreement: Northwestern part of the District of Mackenzie, including the communities of Echo Bay, Richardson, Fort Franklin, Fort Norman, Norman Wells, and Fort Good Hope.

Copies of the ratified comprehensive land claim agreements may be viewed at Acquisition Policy and Process Directorate (APPD). To determine if a specific community is located within a CLCSA, contracting officers should consult the map "Comprehensive Land Claims in Canada" and contact APPD, at telephone number (819) 956-4744 for guidance.

National Park Agreements and DND Co-operation Agreements

1.073 (2003-05-30) Contracting authorities should also be aware that a number of National Park Agreements and DND Co-operation Agreements have been signed between individual departments and certain aboriginal groups. These agreements which are listed below can be found in Sections 7 to 10 of TBS Contracting Policy Notice 1997-8 :

Section 7: Agreement for the Establishment of a National Park on Banks Island

Section 8: Tuktut Nogait National Park Agreement

Section 9: Co-operation Agreement between the Inuvialuit Regional Corporation and the Department of National Defence concerning the Operation and Maintenance of the North Warning System .

Section 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.

When advised by the client department, PWGSC will consider these co-operation agreements in the procurement process.

For more information

1.080 (2005-06-10) For more information on CLCAs and government procurement, contracting officers may want to consult with their managers, seek legal advice or contact the appropriate subject matter expert. Policy advice is available by calling the Acquisition Policy and Process Directorate, at:

Telephone: (819) 956-4744
Facsimile: (819) 956-0355.

Other Laws, Regulations and Government Policies

1.085 (2001-12-10) In addition to the above statutes, PWGSC supply activities are carried out in compliance with numerous other laws, regulations and broad government policies. These are referenced within the appropriate chapters of the Manual.

User Guide

Organization of the Manual

1.090 (2005-06-10) This Manual follows the sequence of a procurement action:

(a) the procurement starts with Public Works and Government Services Canada (PWGSC) as a client service organization, receiving a request from a client for service (Chapter 3, Requisition Receipt);

(b) the contracting officer makes key decisions regarding the conduct of the procurement (Chapter 4, National and International Trade Agreements; Chapter 5, Sourcing Strategy);

(c) the many factors that will or may impact on the procurement are reviewed, and appropriate decisions made, in order to develop and obtain approval for the procurement action (Chapter 6, Developing the Procurement Strategy);

(d) the procurement is carried out (Chapter 7, Competitive Procurement; Chapter 8, ACAN/Negotiated Procurement);

(e) Chapter 10, Cost and Profit, provides the detailed procedures for establishing the price of a negotiated contract; and

(f) the contract is administered until all terms and conditions of the contract have been fulfilled (Chapter 11, Contract Management).

1.091 (2001-12-10) Two general chapters complement this structure. Chapter 2, Best Practices, provides generic advice to procurement staff, based on years of experience, that is applicable to the procurement process. Chapter 9, Special Procurements, details procurements where normal PWGSC procedures do not apply.

1.092 (2001-12-10) Chapter 12 is the Glossary. It is an integral part of the Manual because words, concepts, titles, etc., are not defined in each chapter. First-time or occasional readers of this Manual, therefore, will probably need to make extensive use of the Glossary to round out the ideas in the operating procedures.

Presentation Format

1.095 (2001-12-10) The Manual contents are numbered by individual paragraph or by paragraph groups dealing with a topic. The first element of this reference number is the chapter reference; the second is the specific identifier within the chapter. Gaps in the numbering sequence provide room for later additions of information. Immediately after the reference number is the effective date of the material.

The Manual uses words such as "must", "shall", and "are to be" to identify the procedures to be followed in most PWGSC supply activities. Where there are specific exceptions, these are noted.

There are numerous areas where there are some clear options or a preferred way to proceed. These procedures are presented using terms such as “normally” and “should”.

Finally, the Manual includes material which may be of use to contracting officers as suggested approaches or background information. This material is italicized: officers are free to use it as they wish.

Annexes are used to provide information that is essential if a particular course of action is to be followed. Since most procurements do not require this information to be readily available, it has been removed from the main text.

Discretion to Act

1.100 (2001-12-10) The individual requirements of a particular procurement may suggest that a course of action other than one set out in this Manual should be followed. There is also no reasonable way that a manual can set out, for every possible circumstance, what authority is required to deviate from an established policy or procedure. Wherever there is no instruction on a particular subject, contracting officers must use their judgement and knowledge - with the provision that the governing postulate and the five guiding principles of PWGSC contracting are to be followed.

The process to deviate from an established policy or procedure can only be presented in general terms:

(a) any deviation must be carefully assessed and justified;

(b) any deviation must be identified in advance, for decision, to the person who will approve the Contract Planning and Advanced Approval (CPAA) form, the Procurement Plan, or the contract;

(c) any deviation which would appear to go against the governing postulate or one of the five guiding principles must be identified in advance, for decision, to the person to whom the person, who will approve the CPAA, the Procurement Plan, or the contract, reports.

The person making the decision must determine whether more senior officials must become involved in the decision to deviate.

The Department may be required to defend publicly a contracting officer's actions - and the contracting officer will be required to substantiate those actions. Hence, while there is a clear need and obligation to use judgement and knowledge, contracting officers must be prepared to be held accountable for that use.

Chapter 2 - Best Practices

2.000 (1997-03-31) Many practices are common and essential to maintaining a high standard of service to clients, suppliers and other government agencies with which Public Works and Government Services Canada (PWGSC) deals. This Chapter brings these practices together in one place.

There can never be a substitute for sound judgement and common sense.

Ensure Integrity

2.001 (1997-03-31) Ensure the integrity of the procurement process. If there is any doubt that what is being done or asked by the client to be done might bring the integrity of the process into question, the procurement process should be suspended until the issue is resolved. Issues that cannot be resolved satisfactorily at the contracting officer level should be referred to a higher authority.

Maintain Records

2.002 (1994-06-23) Keep files up to date. A current file serves as a historical record and an accurate audit trail in the event of a financial review, subsequent legal action or an official complaint. Current files are also important for anyone who may have to consult the file or assume responsibility for it at a later date.

Obtain Confirmation

2.003 (1994-06-23) Obtain written confirmation of significant information, agreements and discussions, such as confirmation of an unusually low price, or extension of a bid validity period by the bidder. This ensures that the best interests of the Crown and other parties are protected.

Consult

2.004 (1994-06-23) Consult with colleagues, particularly when working with an unfamiliar situation, such as a new commodity. Their own experience and advice may help to arrive at a sound decision. Referring to previous files can also be instructive.

Liaise with Client

2.005 (1994-06-23) Keep clients informed and involved. In order to develop responsive, creative and flexible procurement strategies for our clients, we must understand their needs, and work with them towards their operational objectives.

Use Specialists

2.006 (1994-06-23) Take advantage of the knowledge of specialists, such as Legal Services, Access to Information and Privacy officers, cost analysts and risk management advisors. They are available to provide guidance in their areas of expertise, whenever it would be helpful and/or appropriate in making a recommendation or confirming a decision.

Maintain Confidentiality

2.007 (1994-06-23) Treat all information, such as bid information, in a secure and confidential manner. This ensures the integrity of the contracting process, protects the interests of suppliers and clients and protects the Crown from legal action.

Know your Supplier

2.008 (1994-06-23) Knowing a supplier means being informed about such things as the potential contractor's performance history, financial situation and practices before recommending a contract award. It also includes keeping up to date with a contractor during the performance of a contract.

Analyze

2.009 (1994-06-23) Fully analyze contracting issues. Compare the advantages and disadvantages of all possible options, taking into account the long-term implications of any recommendation or decision.

Communicate Effectively

2.010 (1994-06-23) Be very clear in communications. Written instructions accompanying each bid solicitation, for example, must not be ambiguous or open to misinterpretation.

Get Involved Early

2.011 (1994-06-23) Advance work with clients, such as helping with needs identification and requirement definition, procurement strategy development, and drafting of solicitation documents, before a requisition is actually received, can facilitate a procurement. This can be accomplished through ongoing liaison or a review of procurement patterns; it can be initiated by client requests for assistance, or more formal processes.

Chapter 3 - Requisition Receipt

Allocation

3.001 (2003-05-30) Clients normally allocate requisitions and Price and Availability enquiries directly to the Public Works and Government Services Canada (PWGSC) office of their choice (Canada only). When the PWGSC office of choice is entered by the client on the requisition, it will normally be allocated to the PWGSC office specified by the client. The major exceptions are:

(a) Restricted Commodities

(i) Restricted commodities are: advertising, bulk buys for fuel and vehicles, and United States Foreign Military Sales (U.S. FMS).

(ii) When a requisition is for a restricted commodity, the requisition will be allocated to the headquarters (HQ) division/section responsible for that NATO Stock Number/Goods and Services Identification Number (NSN/GSIN) Code.

(iii) When there is more than one line item of a restricted commodity, the requisition will be allocated to the HQ division/section responsible for the highest value restricted commodity line item.

(iv) When the value of the line items cannot be determined, the requisition will be allocated to the HQ division/section responsible for the GSIN Code of the first line item which represents a restricted commodity.

(v) When a requirement will be sole-sourced to the U.S. FMS Program, see Section 9B.

(b) Major Crown Projects

If the requisition is part of a major Crown project, it will be allocated to the office responsible for that project.

3.002 (1994-06-23) When a client does not specify a preference, the following rules apply:

(a) A requisition with one consignee point in a regional sector will be allocated to the PWGSC office geographically closest to that consignee point.

When there is only one consignee point, the requisition will be allocated to the PWGSC office closest to the consignee within the same regional sector. If the closest PWGSC office is HQ, it will be allocated using 3.002(d).

(b) A requisition originating in a region with more than one consignee in the same regional sector, will be allocated to an office designated by the regional director general.

When there are multiple consignee points within the same regional sector, and the consignee points are not closest to one PWGSC office, the requisition will be allocated to an office designated by the regional director general. When the multiple consignee points are all closest to the same PWGSC office, the requisition will be allocated to that office.

(c) When consignees in two or more regional sectors appear on a single requisition, it will be allocated to the PWGSC office closest to the originator of the requisition.

When there are multiple consignees where the closest PWGSC offices are in two or more regional sectors, the requisition will be allocated to the PWGSC office closest to the originator of the requisition, based on the requisition order office code. If the closest PWGSC office is HQ, then it will be allocated using 3.002(d).

(d) Requisitions sent to HQ will be allocated to the section responsible for the greatest value of line items based on the line item NSN/GSIN codes.

If the value of the line items are equal, or otherwise cannot be determined, the requisition will be allocated to the office or division/section responsible for the GSIN Code for the first line item on the requisition.

Clients should be encouraged to enter NSN/GSIN codes by line item on their requisitions.

(e) Enquiries should be directed to the PWGSC office closest to the client's location.

3.003 (2004-05-14) All requisitions and requisition amendments must be sent to an allocation unit, where they are given a file number, entered into the Automated Buyer Environment (ABE) and routed to the appropriate office.

The allocation unit at headquarters is the Central Allocations and Defence Priorities Section, Business Management Directorate.

Extract Files

3.005 (2000-05-12) When procurement action involves more than one contracting officer or one purchasing cell, an extract file is created.

3.006 (2000-05-12) The main file holder is responsible for:

(a) procuring items not extracted;

(b) controlling funds;

(c) acting as the focal point for client enquiries;

(d) ensuring all procurement action under extract files is completed;

(e) recording commitments on extracted items; and,

(f) requesting additional funds, if required, from the client.

3.007 (2000-05-12) The extract file holder is responsible for:

(a) procurement of assigned items;

(b) requesting funds from the main file holder after the total funding requirement has been identified;
*(**NOTE**: May be required for requirements done outside of ABE)*;

(c) ensuring funds have been allotted prior to contract award;

(d) obtaining the contract number from the main file holder prior to contract award, if the procurement is done outside of ABE; and,

(e) forwarding to the main file holder copies of all contracts and amendments issued against

an extract file, if the procurement is done outside of ABE.

Part Files

3.008 (2000-05-12) When more than one solicitation under either a main file or an extract file is issued, part files may be created. When part files are created under an extract file, the extract file will be treated, for the purposes of records, as though it were a main file.

Review

Industrial Security Requirements

3.009 (2005-06-10) All requisitions and contractual amendments containing a requirement for physical security, information technology security or personnel security screening must include a Security Requirements Check List (SRCL). The client may complete the SRCL either electronically via the online SRCL service, or in hard copy using the SRCL form TBS/SCT 350-103.

The Canadian and International Industrial Security Directorate (CIISD) of Public Works and Government Services Canada (PWGSC) is responsible for administering industrial security in Canada through the Industrial Security Program and the Joint Certification Program.

CIISD's online SRCL service allows clients to complete the SRCL form via the internet in a secure environment. With the online SRCL service, CIISD can provide the security clauses for insertion into the bid solicitation document prior to the receipt of a signed hard copy version of the SRCL, thereby expediting the process.

(a) The following procedures apply when the client department has chosen to use the **online SRCL service**:

(i) The client department completes the SRCL using the online SRCL service and submits the form to their Departmental Security Officer (DSO), or delegated Security Authority, for electronic approval.

(ii) The DSO verifies the content of the form, and if acceptable, approves it and forwards it to CIISD via e-mail for preparation of the security requirements clauses. The DSO may also send carbon copies of this e-mail to the client department and the PWGSC contracting officer, if known.

(iii) CIISD replies to the DSO's e-mail, with carbon copies to all those on the addressee list, by providing the appropriate security requirement clauses, to be included in the resulting bid solicitation and resulting contract.

(iv) The client department shall send PWGSC the requisition in the normal manner, with a hard copy of the SRCL, complete with signatures of the "Organization Project Authority" (Block 13) and the "Organization Security Authority" (Block 14). The SRCL must be either the original or a high quality facsimile.

(v) Upon receiving the requisition, the PWGSC contracting officer should notify the client who will then forward the e-mail from CIISD, including the electronic SRCL and CIISD's clauses, to the contracting officer. The contracting officer may then include the SRCL and clauses into the bid solicitation document and proceed with issuing the bid solicitation document in accordance with all applicable policies and procedures.

(vi) In order to obtain the signature of CIISD on a hard copy of the SRCL for appending to the resulting contract document, the PWGSC contracting officer shall forward the following documentation to CIISD via mail or fax:

- the SRCL;
- requisition/amendment cover page;
- a copy of those portions of the requisition/amendment documentation which contain statements about security, and
- if applicable, a short list of any identified potential suppliers.

(vii) The CIISD Contract Section will review the documentation, sign the SRCL as the Contracting Security Authority (Block 17) and return the signed SRCL to the PWGSC contracting officer for attachment to the resulting contract document, along with information on the organization's security status of any identified potential suppliers.

(viii) Before contract award, the contracting officer will verify with CIISD that the proposed contractor meets the security requirements of the bid solicitation document. If so, the contracting officer shall sign the SRCL at block 16 and include the fully-signed SRCL as an annex in the resulting contract document.

(b) The following procedures apply when the client department has chosen to complete the SRCL form in **hard copy**, without the use of CIISD's online SRCL service:

(i) The client department completes the SRCL using form TBS/SCT 350-103 and obtains the signature of their Departmental Security Officer or delegated Security Authority at Block 14. The client department sends the requisition to PWGSC, with the signed SRCL attached. The SRCL must be either the original or a high quality facsimile.

(ii) The PWGSC contracting officer shall then forward the following documentation to CIISD via mail or fax:

- the SRCL;
- requisition/amendment cover page;
- a copy of those portions of the requisition/amendment documentation which contain statements about security, and
- if applicable, a short list of any identified potential suppliers.

(iii) The CIISD Contract Section will review the documentation, sign the SRCL as the Contracting Security Authority (Block 17), and return the signed SRCL, along with the appropriate security requirement clauses and information on the organization's security status of any identified potential suppliers. The contracting officer may then proceed to include the SRCL and clauses into the bid solicitation document. (The SRCL page with signatures may be omitted from the bid solicitation document, but the SRCL signature page must be included in the resulting contract document.)

(iv) Before contract award, the contracting officer will verify with CIISD that the proposed contractor meets the security requirements of the bid solicitation document. If so, the contracting officer shall sign the SRCL at block 16 and include the fully-signed SRCL as an annex in the resulting contract document.

Agreements Signed by PWGSC

3.010 (1994-06-23) A procurement action may be influenced by agreements with clients, setting out roles and responsibilities. PWGSC has agreements with the following clients:

Department of National Defence (annexes 3.1 & 3.2);
Transport Canada (Annex 3.3);
The Canadian International Development Agency (Annex 3.4);
Canada Post Corporation (Annex 3.5).

Contracting officers providing services to these clients must be aware of the contents of the agreements, which can also be used as models for working with other clients. However, the agreements do not remove from contracting officers their overall contracting responsibilities.

The Corporate Secretary retains all such formal documents.

Special Procurements

3.011 (2002-12-13) A number of procurement programs require special handling. On receipt of a requisition relating to any of these programs, the contracting officer should review **Chapter 9** before proceeding further.

(a) Purchases from CORCAN - Section 9A;
(b) United States Foreign Military Sales (FMS) - Section 9B;
(c) Co-operative Logistics (COLOG) and Blanket Order Cases - Section 9C;
(d) Defence Production Revolving Fund and Loan Account - Section 9E;
(e) Electronic Data Processing Buy for Lease - Section 9G;
(f) Contracting for Temporary Help Services - Section 9H;
(g) Supply Arrangements - Section 9J;
(h) Ontario Labour Legislation - Section 9K;
(i) Set-aside Program for Aboriginal Business - Section 9L;
(j) Land Claims Set-aside - Section 9M.

Price and Availability Enquiries

3.012 (2000-05-12) Clients may ask PWGSC to provide information about the price and availability of items for planning, budgeting or similar purposes. Price and Availability (P&A) enquiries are requests to the trade for this information.

Whenever possible, an estimate of the quantities required over a definite time span should be part of the request.

Form PWGSC-TPSGC 9200, Requisition for Goods and Services, and Construction, and standard requisition numbers should be used for all P&A enquiries.

3.013 (1994-06-23) The contracting officer may use any appropriate method to obtain the required information. The P&A enquiry must indicate that it is not a bid solicitation, and that a contract will not result.

3.014 (1994-06-23) If there is a reasonable possibility that a firm requirement could arise, soliciting bids may be more appropriate than issuing a P&A enquiry. In such instances, a normal bid solicitation is to be issued. If a firm requirement does not result, the contracting officer must inform bidders that a contract will not be issued.

3.015 (1994-06-23) Whether PWGSC obtains the required information by a P&A enquiry or by a formal bid solicitation, all requests for P&A estimates from a client should be answered by using the standard format (see Annex 3.6).

The P&A information to be provided to the client should contain, as a minimum, the following:

(a) a full description of the commodity concerned, including specifications if applicable;

(b) unit price(s) and a statement as to whether all appropriate duties and taxes have been included;

(c) the FOB point;

(d) the quantity of each item quoted on;

(e) the total price for the lot; and,

(f) the delivery lead time and the delivery rate per month.

3.016 (1994-06-23) After receiving the required information, the client may issue a requisition to PWGSC with appropriate reference to the P&A enquiry.

Requisition Checklist

3.020 (2001-12-10) All requisitions must be reviewed for acceptability, ensuring that they are properly coded and completed, so that procurement action can continue. The review should address the following:

- Has the requisition been properly allocated?
- Is the requisition authorized? Requisitions received via the REQNET or UABEI electronic interfaces are deemed to have been properly authorized with all signatures pursuant to the *Financial Administration Act*.
- Does the estimated funding seem adequate?
- Are the destination/consignee codes specified?
- Is this requirement subject to the provisions of a CLCA? (See 4.001)
- Are invoicing instructions provided?
- Are the financial codes identified?
- Is the SRCL attached to a requisition/amendment documentation containing a security requirement?
- Is there support for a sole source or no-substitute request?
- Are delivery lead times and schedules realistic, or will special action be required to meet delivery objectives?
- What could be the consequences resulting from late delivery, and is there a need for liquidated damages provisions or other performance incentives?
- Is the good or service adequately defined in the requisition or attached technical documentation?
- Have appropriate standards, specifications or purchase descriptions been included? If not,
- can an existing one be used; or
- is there a need for the development of a new standard, specification or purchase description?
- Is the NSN/GSIN number of the products shown?
- Is a design change/deviation procedure specified?
- Is the extent of required product quality management and assurance specified?

- Is the inspection or quality assurance authority specified?
- Does the requisition contain any clauses or conditions which conflict with any PWGSC or government contracting policies and procedures?
- Does the nature of the work include work to Crown specifications or indicate any particular types of pricing basis?
- Are evaluation criteria specified and are the mandatory requirements clear?
- Is special production tooling or special test equipment likely to be required?
- Is government-furnished equipment or government-supplied material specified?
- Are there unrestricted rights to the use of technical data or are royalty payments involved?
- Is a trade-in specified?
- If radio transmitting equipment is to be acquired, has the client obtained radio frequency equipment clearance from Industry Canada? Are there other special considerations of a similar nature?
- If there are multiple items on the requisition, should any of these items be grouped together or put in a part or extract file?
- Could repetitive items be bought on an annual basis through the standing offer method of supply, phased delivery contracting, contracts with a call-up feature, added to another contract, or included as contract options for additional quantities?
- Has the client included instructions concerning the treatment of any intellectual property that may result from the procurement?
- Has the client claimed and substantiated exemption from taxes or duties, by referring to a certificate of exemption, or remission or drawback Order in Council?
- Are “controlled goods” identified?

3.021 (1994-06-23) Issues must be resolved through consultation with the client, and the contracting officer should request amendments where applicable.

For example:

- *if a requirement cannot be clearly defined, the client should be encouraged and helped to define the objectives and the performance criteria to be met;*
- *in reviewing the technical specifications, the client should be encouraged to use generic or performance specifications whenever practical;*
- *any unreasonable delivery requirements or imprecise delivery dates should be discussed. Should it be necessary to seek the best possible delivery time, use a Request for Proposal;*
- *if the sole source justification provided by the client is inadequate, seek further justification. If the request cannot be substantiated to the contracting officer's satisfaction, the contracting officer shall recommend alternative products/sources to the client, whenever possible.*

Annex 3.1: Division of Responsibilities Between PWGSC and DND for the Acquisition of Goods and Services

(**2005-06-10**)

1. This matrix is an assigned division of responsibility, agreed by the Ministers of the Department of National Defence (DND) and Public Works and Government Services Canada (PWGSC).* It forms the foundation for an efficient and effective partnering relationship for those who are responsible for activities within the procurement process.

   *

   (a) The matrix does not represent delegation of procurement authority by the Minister of PWGSC, and does not affect the responsibility of the contracting officer as defined in Treasury Board Contracting Policy.

   (b) Legislation, regulations and policy will take precedence over this matrix in the case of any ambiguity.

2. This matrix is to be used for all DND goods and services procured by PWGSC. An “X” represents the assignment of each activity to a "Lead" and "Participatory" department. An “M” represents the norm for Major Crown Projects (MCPs) and MCP-like projects.

3. The assignment of each activity to a “Lead” and “Participatory department” as indicated in this table is to be considered the normal way of doing business. However, as every procurement and associated contract differs with respect to complexity, risk, value and availability of skilled resources, deviations can be agreed jointly in advance as long as justifications are formally filed in an agreement between the two Departments, which consider reasons why the norm cannot be applicable in specific areas.

4. In all activities, it is incumbent upon each "Lead" to always consider as prudent, continuous communication with the procurement representatives of the other department, even if this "Lead" is identified as the sole "X". Finally, it is important to note that this matrix of assigned responsibilities is not necessarily sequential.

5. Effective communications between DND and PWGSC must be worked out on a project-by-project basis. The matrix below sets out anticipated DND internal responsibilities. For any individual project, DND requests that communications be through the procurement functional contact, the applicable DND Procurement Manager/Officer, unless otherwise discussed and agreed to with that procurement functional contact.

DND/PWGSC Responsibility Matrix

CODE	DETAIL	RESPONSIBILITY			
	PO (Procurement Officer) **PM** (Project Manager) **TA** (Technical Authority- includes LCMM) **PD** (Project Director) **M** (denotes for MCP or MCP-like projects where role is defined in the PMP) **PM/TA** - usually the PM for Capital/NP project procurement and the TA for in-service procurement	**PWGSC**	**DND**	**PWGSC Normally Participates**	**DND Normally Participates**
1	**DEFINE DND OPERATIONAL REQUIREMENTS**				
1.1	Define essential characteristics - Statement of Capability Deficiency or Statement of Requirement		PD		
1.2	Seek procurement input/ advice from DND procurement authority		PO		
1.3	Delineate all feasible solutions, within government policy, to meet operational needs (ROM costs)		PD	M	
1.4	Identify Total ROM project cost and schedule estimates for SSID		PO		
1.5	Obtain operational approval to continue with project (SSID)		PD		
1.6	Preparation of cost benefit analysis including life cycle costing analysis of alternatives and uncertainties		PD		
1.7	Determine requirement for cooperation & involvement of other Departments/Countries (excluding 3.5.9)		PD		
1.8	Determine national and international obligations applicable to operational need		PD		
1.9	Determine requirement for phased cycles for project implementation		PM	X	
1.10	Determine maintenance and support requirements		PM/TA	X	
1.11	Determine total resource requirement for the project		PM	X	
1.12	Identify Total Project cost (substantive) and schedule estimates				
1.12.1	Obtain and collate cost and schedule information		PD/PO	X	
1.12.2	Develop Total Project cost and schedule estimates		PO		
1.13	Initiate a PMP (formerly PIP) for project (Responsibility Assignment Matrix)		PM	X	
1.14	Develop DND's Procurement Master Plan		PO		
1.15	Obtain approval (SRB and PRC/SPAC)		PM	X	
1.16	Prepare project submission and obtain approval (PMB, SS PPA and SS EPA, and Project Briefs)		PD/PM & PO		

1.17	Prepare Memorandum to Cabinet (for MCP's only)		M	M	
1.18	Execute DND's Procurement Master Plan		PO		
2	**DEFINE TECHNICAL REQUIREMENTS AND RAISE PROCUREMENT INSTRUMENT**				
2.1	Establish team (formal or informal as appropriate) for an individual procurement instrument, including required stakeholder		PO	X	
2.2	Identify appropriate DND authorities in the PI (e.g. requisition, technical, QA)		PO		
2.3	Statement of Work (SOW)				
2.3.1	Define SOW and/or Performance Specifications in support of the operational need		PM/TA		
2.3.2	Identify Earned Value requirements (for MCP's or MCP-like projects)		M		
2.3.3	Review and Refine SOW		PO	X	
2.4	Define Government Furnished Resources (e.g. tools, test equipment)		PM/TA		
2.5	Define Quality Assurance and Acceptance requirements		PM/TA		
2.6	Define other technical requirements (e.g. warranty, training, documentation, Initial Provisioning, etc.)		PM/TA		
2.7	Define Technical Evaluation Criteria		PM/TA		
2.8	Prepare Procurement Instrument and Associated Documents				
2.8.1	Validate cost estimate and secure funding for this PI		PO		
2.8.2	Develop Technical Bid Evaluation Plan		PM/TA	X	
2.8.3	Establish Technical Bid Evaluation Team		PM/TA	X	
2.8.4	Develop proposed procurement schedule (activities and timeline) for this PI		PM/TA		
2.8.5	Identify and mitigate DND risks associated with this PI		PO		
2.8.6	Develop Content of Procurement Instrument		PO		
2.8.7	Review Draft Procurement Instrument		PO	X	
2.9	Approve Procurement Instrument (Requisition)		PO		
3	**DEVELOP PWGSC PROCUREMENT PLAN (*based on DND Procurement Instrument)**				
3.1	Assess the industrial capability *	X			
3.2	Identify applicable major contracting policy which must be considered to accomplish procurement *	X			

3.3	Review applicable CITT cases and Federal Court Rulings of Procurement	X			PO
3.4	Examine potential problems in relation to patents, licensing, royalties, and technology transfer	X	PM/TA		
3.5	Develop Procurement Plan including:				
3.5.1	Delivery schedule and acceptance requirement		PO	X	
3.5.2	Contracting approach *	X			
3.5.3	Target cost and cash flow plan		PO		
3.5.4	Stating of appropriate quality control and inspection system standards and qualification approvals		PM/TA		
3.5.5	Communications Strategy (e.g. press release, etc.)	X	PM/TA		
3.5.6	Risk Management *	X			
3.5.7	Evaluation Methodology *	X			
3.5.8	Industrial and Regional Benefits	X			PM/TA
3.5.9	Interdepartmental and international agreements related to Procurement Plan (excluding DND/PWGSC)		PM/TA	X	
3.6	Obtain approval of procurement plan	X			
4	**CONTRACTING PROCESS**				
4.1	Review requisition or procurement instrument	X			PO
4.2	Review SOW and Technical Evaluation Criteria for its contractibility	X			PO
4.3	Prepare Solicitation Bid Package				
4.3.1	Identify Applicable Terms and Conditions (including Basis of Payment)	X			PO
4.3.2	Develop Contractual Evaluation Criteria (time, finance incl. transition, contractual & consolidated evaluation plan)	X			PO
4.3.3	State appropriate authorities (e.g. requisition, technical, contract, quality, etc., as applicable)	X			
4.4	Dispatch "Solicitation - Bid" (RFP/ITT) documentation to Industry and DND	X			
4.5	Distribute technical data packages to suppliers as required and as applicable		PM/TA	X	
4.6	If competitive (RFP, ITT or equivalent process), Evaluate Bids and Recommend Supplier				
4.6.1	Carry out Technical evaluation (SOW and associated t's & c's) in accordance with the Evaluation Plan		PM/TA	X	
4.6.2	Carry out Contractual evaluation (including contract t's & c's) in accordance with the Evaluation Plan	X			M
4.6.3	Consolidate evaluation and recommend supplier	X			PO

4.7	If sole-source, Negotiate contract	X			PO&PM /TA
4.8	Review draft contract documentation		PO		
4.9	Obtain TB or Departmental contract approval, as required	X			M
5	**CONTRACT ADMINISTRATION**				
5.1	Initiate Contract Administration				
5.1.1	Implement Tools and Processes for Administration	X	PO		
5.1.2	Kick-Off Meetings with Parties, Stakeholders	X			PO&PM /TA
5.2	Provide Government Furnished Resources(GFR) in Support of Contract Work		PO	X	
5.3	Ascertain Contract Performance				
5.3.1	Technical and Quality of the Deliverables		PM/TA		
5.3.2	Contractor's Engineering, Production and Quality Systems		PM/TA		
5.3.3	Contractor's Financial and Management Systems	X			
5.3.4	Contract Cash Phasing/ Cash Flow				
5.3.4.1	Cash Flow Actual versus Contracted Cash Flow	X			M
5.3.4.2	Cash Flow Actual versus DND Planned Cash Flow for Financial Forecast		PO		
5.3.4.3	Earned Value (monitor progress of work versus planned work and associated cost) for MCP's	X	M		
5.3.5	Delivery				
5.3.5.1	Monitor materiel and services delivery date		PO		
5.3.5.2	Acceptance Trials and Tests		PM/TA		
5.3.5.3	Schedule compliance	X	M		
5.3.6	Progress Review Meetings				
5.3.6.1	Requirements/Technical Work Group Meetings		PM/TA	X	
5.3.6.2	Contract Progress Review Meetings with Contractor	X			PO&PM /TA
5.4	Apply Contract Provisions and Processes				
5.4.1	Interpretation and Notifications	X			
5.4.2	Change Control				
5.4.2.1	Technical (Engineering Change Notices/Proposals)		PM/TA		
5.4.2.2	Contract Amendments	X			PO
5.4.3	Warranty Provisions				

5.4.3.1	Invoke Warranty		PM/TA		
5.4.3.2	Enforce Warranty	X			
5.4.4	Contractual Issues				
5.4.4.1	Identify contractual issues	X	PO		
5.4.4.2	Enforce contractual issues	X			
5.4.5	Accept Contract Deliverables		PM/TA		
5.4.6	Certify and Process Payments	X	PO		
5.5	Close Out Contract				
5.5.1	Crown Asset Disposition		PO	X	
5.5.2	Final Contract Audit	X			
5.5.3	Final Payment and Amendment	X	PO		

List of Acronyms:

CITT	Canadian International Trade Tribunal
DND	Department of National Defence
GFR	Government Furnished Resources
ITT	Invitation to Tender
LCMM	Life Cycle Material Manager
MCP	Major Crown Project
NP	National Procurement
PI	Procurement Instrument
PIP	Project Implementation Plan
PMB	Program Management Board
PMP	Project Management Plan
PRC	Procurement Review Committee
PWGSC	Public Works and Government Services Canada
RFP	Request for Proposal
ROM	Rough Order of Magnitude
SOW	Statement of Work
SPAC	Senior Project Advisory Committee
SRB	Senior Review Board
SS(ID)	Synopsis Sheet (Identification)
SS(EPA)	Synopsis Sheet (Effective Project Approval)
SS(PPA)	Synopsis Sheet (Preliminary Project Assessment)
TB	Treasury Board

Annex 3.2: Division of Responsibilities Between PWGSC and DND for the Quality Assurance of Materiel and Services

1. Public Works and Government Services Canada (PWGSC) and the Department of National Defence (DND) agreed in principle to a division of responsibilities between the two departments for the quality assurance of materiel and services acquired on behalf of DND. This agreement will be amended, if and when required, only with the consent of both departments.

2. This agreement identifies the division of responsibilities as agreed by each department for the quality assurance of materiel and services, as it applies to military specifications, acquired on behalf of DND.

   It does not deal with materiel and services to non-military specifications (see Annex 3.1) or with the division of responsibilities for materiel and services managed by an interdepartmental project management office which are the subject of a separate agreement.

   Materiel and services to military specifications: *Includes all materiel and services, including repair and overhaul, as well as research and development for which a military or other DND specification or requirement is included in procurement documentation. Also included in this category are materiel and services which are not covered by DND or military specifications but which are of sufficiently significant concern to DND as to require the allocation of responsibilities annotated under this heading.*

3. PWGSC shall also participate with DND in identifying the application and use of quality assurance techniques at the earliest possible stage in the product life cycle and the development and implementation of cost-effective quality assurance support programs.

4. DND shall be solely responsible for the designation of materiel and services as "Military" or "Non-Military" in technical and procurement documentation.

5. The responsibilities identified for a Sub-activity does not mean exclusive involvement by one department. Close participation and coordination by both departments is essential throughout the various phases of the procurement program.

   Where participation by the other department is indicated, the responsible department is expected to initiate the consultation. However, it does not preclude either department from requesting participation in, or consultation on, any given sub-activity relative to an established program.

Annex 3.2.1: Division of Responsibilities Between PWGSC and DND for the Quality Assurance of Materiel and Services

Materiel and Services for Military Specifications

Sub-activity Description

A: Definition of Requirements - DND assigned overall responsibility

Quality assurance services which support achievement of the quality of design, its practicality for manufacture and the means by which conformance will be demonstrated. The tasks involve participation in:

A.1 Evaluation with DND of technical data for completeness, clarity, freedom from irrational or excessive tolerances, contradictions, overstipulation of quality requirements, ability to meet interface requirement, etc.

A.2 Review of design to determine completeness of definition, the methods for demonstrating conformance and analysis of system effectiveness of such major elements as:

a. Safety
b. Maintainability
c. Reliability
d. Performance
e. Human Engineering
f. Interchangeability
g. Configuration Control

A.3 Establishment and definition of test methods with respect to practicality, suitability and cost as related to:

a. Qualification Approval
b. Design Approval Model (Prototype)
c. Production Unit Conformance
d. Acceptance Trials

Responsibility for Sub-activity - DND
Normally Participates in Sub-activity - PWGSC

A.4 Applicability of technical data to current programs of maintenance, repair and overhaul and reprovisioning.

Responsibility for Sub-activity - DND

A.5 Selection of parts, components or process, with avoidance of those which are difficult to control, subject to excessive variation or high failure rate, etc.

Responsibility for Sub-activity - DND
Normally Participates in Sub-activity - PWGSC

A.6 Classification of quality characteristics with respect to their importance to design objectives.

A.7 Designation of quality control and inspection system standards.

A.8 Definition of preferred warranty requirements.

A.9 Establishment of requirements for technical reports from suppliers.

Responsibility for Sub-activity - DND

B: Quality Assurance Support Programs - DND assigned overall responsibility

Develop, support and maintain programs conducive to efficient procurement and quality assurance which includes such tasks as:

B.1 Development as appropriate of contractor quality system standards/specifications for contract use.

B.2 Maintenance of qualified/approved product programs.

B.3 Evaluation of the acceptability of suppliers' quality control/inspection systems, commercial test, laboratory and calibration facilities.

Responsibility for Sub-activity - DND
Normally Participates in Sub-activity - PWGSC

B.4 Selection of suppliers with acceptable quality control/inspection systems, commercial test, laboratory and calibration facilities.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - DND

C: Requisitioning - DND assigned overall responsibility

Quality assurance tasks associated with requisitioning (contract demands, local purchase orders).

C.1 Review of the requisition with DND for applicability of the technical data.

Responsibility for Sub-activity - DND
Normally Participates in Sub-activity - PWGSC

C.2 Development of Quality Assurance Plan.

C.3 Assurance that workmanship standards are established.

C.4 Determine which contractor quality control/inspection requirements are applicable.

C.5 a. Designation of the Quality Assurance Authority, and

b. Designation of government quality assurance at source or inspection at destination.

Responsibility for Sub-activity - DND

C.6 Develop and include special clauses of significance to the assurance of quality.

Responsibility for Sub-activity - DND
Normally Participates in Sub-activity - PWGSC

D: **Preparation of Bid Solicitation** - PWGSC assigned overall responsibility

Quality assurance tasks associated with the preparation of bid solicitations.

D.1 Review of quality requirements on the requisition for completeness and clarity.

Responsibility for Sub-activity - DND

D.2 Establishment of criteria for the evaluation of bids/proposals for compliance with quality requirements.

D.3 Review of past performance of potential bidders in respect of their quality history, to determine potential suppliers.

D.4 Explanation of quality requirements at the prebidders' conference.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - DND

E: **Bid Evaluation and Supplier Selection -** PWGSC assigned overall responsibility

Quality assurance tasks associated with evaluation and supplier selection in relation to:

E.1 Evaluation of bidders' quality capabilities based upon their quality history and pre-award survey of their quality control/inspection systems.

E.2 Evaluation with DND of the quality/quality assurance implications of selecting alternative products.

E.3 Trade-off analysis of performance cost and schedule.

Responsibility for Sub-activity - DND
Normally Participates in Sub-activity - PWGSC

F: **Contract Preparation and Final Award** - PWGSC assigned overall responsibility

Quality assurance tasks associated with contract preparation and final award in relation to:

F.1 Resolution of negotiations with contractor on quality-cost matter not finalized at the bid evaluation stages and review of contract quality requirements to ensure mutual understanding.

F.2 Verification with DND that the contract includes the required quality system requirements.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - DND

G. **Contract Administration** - PWGSC assigned overall responsibility

Performance of the following activities in support of PWGSC contract administration throughout the duration of the contract, as applicable:

G.1 Quality Assurance Verification of the continuing effectiveness of the contractor's

methods for controlling his product quality. These elements are:

a. Management control system review
b. Planning
c. Quality Assurance documentation
d. Corrective action
e. Design, development, control and engineering features
f. Documentation control and change
g. Control of inspection, measuring and test equipment
h. Control of contractor purchased materiel
i. Manufacturing and process control
j. Purchased and/or supplied materiel standards and specifications
k. In-process and final inspection and test
l. Sampling procedures
m. Control of non-conforming materiel
n. Inspection status
o. Handling, storage and packing

G.2 a. Verification of the conformance of preproduction or first-off unit.

b. Periodic sampling as appropriate during production to ascertain conformance to specifications.

c. Timely reporting to PWGSC in the event of deviations from specifications.

d. Verify acceptability of product and authorize release to consignee.

G.3 Quality assurance action in technical change procedures such as initiation, and recommendation.

G.4 Review of contract quality requirement with contractor to ensure mutual understanding.

Responsibility for Sub-activity - DND
Normally Participates in Sub-activity - PWGSC

H. Contract Close-out and Clean-up - PWGSC assigned overall responsibility

Quality assurance tasks performed during contract close-out and clean-up:

H.1 Verification from DND of the condition and disposition of Crown-owned production tooling, inspection and test equipment.

H.2 Verification from DND of the completeness, suitability and proper disposition of technical data and documentation.

Responsibility for Sub-activity - DND
Normally Participates in Sub-activity - PWGSC

I. Post-delivery Appraisals - DND assigned overall responsibility

Quality assurance tasks arising during the life of the product in relation to:

I.1 Quality History

a. Accumulation and assessment of quality assurance histories for the purpose of recommending need for modification of product technical data, quality

assurance standards, or quality assurance plans for the product, based on quality data acquired from the following:

i. Product Qualification
ii. Supplier Evaluation
iii. Bid Evaluation
iv. Product Quality Assurance
v. Post-delivery Appraisal

I.2 Unsatisfactory Condition Report/Complaints

a. Review of failure reports where the complaint has been associated with quality defects.

b. Analysis and identification of cause.

c. Seeking of corrective action with contractor or through PWGSC. In all instances, DND should notify PWGSC immediately in writing.

Responsibility for Sub-activity - DND
Normally Participates in Sub-activity - PWGSC

J: Disposal - DND assigned overall responsibility

Quality assurance tasks related to the disposal of equipment and data.

K: Warehousing and Distribution - DND assigned overall responsibility

Quality assurance tasks associated with the development of a quality program which will assure product quality on receipt, during storage and on issue, including such elements as:

K.1 Preparation of Inspection Plans, including inspection on receipt, during storage, on issue and after repair.
K.2 Control of technical data.
K.3 Control of adequacy of inspection equipment.
K.4 Incoming inspection.
K.5 Identification of defective material.
K.6 Procedures for material handling.
K.7 Packaging and shipping.
K.8 Inspection records.
K.8 Quality audit.
K.9 Corrective action.

Responsibility for Sub-activity - DND

Annex 3.3: Division of Responsibilities Between PWGSC and TC for the Acquisition of Materiel and Services

1. Public Works and Government Services Canada (PWGSC) and Transport Canada (TC) agreed to a division of responsibilities between the two departments for the acquisition of materiel and services. This agreement will be amended, if and when required, only with the consent of both departments.

   This agreement does not deal with the division of responsibilities for materiel and services managed by an interdepartmental project office which are normally the subject of a separate agreement.

2. For the purpose of this agreement:

   General Specifications.: Includes standard commercial off-the-shelf items and items covered by the Canadian General Standards Board (CGSB) or other standards which have been identified by the federal government as the standard use.

   Technical Specifications: Includes all products or equipment covered by TC specifications, MIL specifications, specially configured commercial items or other specifications specifically noted or called up in a TC requisition.

   Although the Definition of Requirements is a TC responsibility, it should be noted that it is PWGSC policy to encourage, whenever possible, the use of existing standards, specifications or purchase descriptions. It is also policy to procure products or services for which a Qualified Products List, Certified Products List or Registered Quality Systems List exists. In this regard, appropriate qualification, evaluation and verification will normally take place, where possible, based on existing common use industry standards, such as Standards Council of Canada approved National International standards i.e. ISO 9000 and CAN/CSA - Q9000-91 series and commonly used purchase descriptions).

3. PWGSC shall be responsible for purchase planning and contract administration and TC shall be responsible for overall project planning and overall project management.

   The responsibilities identified for a sub-activity does not mean exclusive involvement by one department. Close participation and coordination by both departments is essential throughout the various phases of the procurement program.

   When participation by the other department is indicated, the responsible department is expected to initiate consultation. However, it does not preclude either department from requesting participation in, or consultation on, any given sub-activity relative to an established program.

   For those items requiring TC participation in bid evaluation, PWGSC will provide a copy of all bids received.

Annex 3.3.1: Division of Responsibilities Between PWGSC and TC for the Acquisition of Materiel and Services

Sub-activity Description

A: Definition of Operational Needs - TC assigned overall responsibility

A.1 Definition of essential characteristics.
A.2 Delineation of all feasible solutions to meet operational needs.

Responsibility for Sub-activity - TC

A.3 Preliminary project cost and schedule estimates:
a. procurement cost and schedule, and;
b. total project cost and schedule.

A.4 Trade-off analysis of performance, cost and schedule of the various alternatives.

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC
([A.3a] or as mutually agreed)

A.5 Determination of tentative priority rating for allocation of departmental resources between competing operational needs.

A.6 Obtain approval-in-principle to continue with project.

Responsibility for Sub-activity - TC

B: Development of Total Project Plan - TC assigned overall responsibility

B.1 Determination of need for special project management.
B.2 Phasing of project.

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC

B.3 Analysis of interprogram considerations on procurement.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC

B.4 Major personnel implications and
B.5 Training of personnel.

Responsibility for Sub-activity - TC

B.6 Method of meeting maintenance and support requirements.
B.7 Assessment of the development and research tasks which are required.
B.8 Analysis of need for consultants.

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC

C: **Definition of Requirements** - TC assigned overall responsibility

C.1 Definition of materiel and/or services required to meet the operational need (including definition of applicable specifications and standards).

C.2 Definition of support materiel and services requirements.

C.3 Definition of:

a. quality and inspection systems standards and qualification approvals;

b. purchase descriptions which may be utilized by PWGSC to clarify requirements may also be defined by TC.

c. acceptance trials and tests (including pre-production samples);

d. preferred warranty requirements;

e. technical reports from suppliers;

f. special packaging and transportation requirements.

C.4 Preparation of TC requisition for materiel and/or services.

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC
(Note: [C.3b] Close cooperation between TC and PWGSC is necessary in deciding any method to state requirement. Purchase description, specifications and standards are outlined in Chapter 6B. [C.3c] Or as specified in the contract or as previously agreed, i.e. Civilian Marine Services.)

C.5 Forwarding of TC requisition to PWGSC.

Responsibility for Sub-activity - TC

D: **Development of Procurement Plan** - PWGSC assigned overall responsibility.

D.1 Assessment of potential sources of supply (Canadian vs offshore, etc.).

D.2 Exploration of major contracting policy and procedural questions which must be resolved to accomplish procurement.

D.3 Preparation of sourcing plan for government provision of materiel to contractor.

D.4 Examination of potential problems in relation to patents, licensing, royalties, technology transfer.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC

D.5 Development of procurement plan including:
a. delivery schedule and acceptance requirement;

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC

b. contractual approach;

c. target cost and cash flow plan;

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC
([D.5c] Based on information obtained from TC.)

d. stating of appropriate quality and inspection system standards and qualification approvals;

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC

e. shipping arrangements: transportation and packaging;

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC

f. designation of appropriate authorities. These will normally be as follows:
(i) design authority;
(iii) quality assurance/acceptance authority.

Responsibility for Sub-activity - TC
(Or as specified in the contract, or as previously agreed, i.e. Civilian Marine Services.)

(ii) contract authority;

Responsibility for Sub-activity - PWGSC

D.6 Co-ordination of interdepartmental agreements related to procurement plan.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC and other departments

E: **Contracting Process** - PWGSC assigned overall responsibility.

E.1 Acceptance of requisitions.

Responsibility for Sub-activity - PWGSC

E.2 Selection of vendors to be invited to bid when applicable.
E.3 Development of criteria and method of bid evaluation.
E.4 Approval of final bid solicitation draft.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC
([E.3] Bid criteria developed in close consultation with TC.)

E.5 Preparation and dispatch of bid solicitation document.

Responsibility for Sub-activity - PWGSC

E.6 Bid evaluation and supplier selection:
(All bids will be made available to TC at time of evaluation for (i) technical

specifications; and (ii) general specifications.)

a. technical evaluation as required;

Responsibility for Sub-activity - TC

b. time, cost and other contractual evaluation including consideration of trade-off analysis (see Section A4);

c. consolidated evaluation and selection of supplier.

E.7 Contract negotiation.

E.8 Prepare and issue contract.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC

E.9 Approval of preproduction samples (if required prior to production).

E.10 Design change to work under contract:

a. approved technical aspects of proposed change;

b. point of effectivity decision;

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC

c. negotiate change and authorize contractor to proceed;

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC

d. funding approval.

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC

E.11 Production surveillance including:

a. production schedule compliance;

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC
(or as otherwise agreed)

b. authorized configuration change.

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC
(as specified in the contract)

E.12 Compliance with procurement cash commitment and cash flow plan.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC

(or as mutually agreed)

E.13 Certification of progress claims that the required work has been accomplished.

Responsibility for Sub-activity - PWGSC/TC
(as specified in the contract)

E.14 Requisition of cheques to pay supplier.

Responsibility for Sub-activity - TC

E.15 Acceptance trial and tests:
a. supervise tests/trials;
b. evaluate tests/trials;

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC
(or as specified in the contact, or as previously agreed, i.e. Civilian Marine Services)

c. ensure contractor completes tests/trials in accordance with contract.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC

E.16 Ensure, in concert with PWGSC, the delivery of materiel and/or services is rendered in accordance with the contract.
Warranty provisions:

a. invoke warranty provisions;

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC

b. enforce warranty provisions.

E.17 Resolution of contract disputes.

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC

F: **Acceptance and Final Payment** - TC assigned overall responsibility

Responsibility for Sub-activity - TC

G: **Contract Close-out and Clean-up** - PWGSC assigned overall responsibility

a. Claim settlement;

b. Contract closing amendment or letter (if required);

Responsibility for Sub-activity - PWGSC
Normally Participates in Sub-activity - TC

c. Production assets:

(i) disposition decision;

Responsibility for Sub-activity - TC
Normally Participates in Sub-activity - PWGSC

(ii) assets management.

Responsibility for Sub-activity - PWGSC/TC

Annex 3.4: Division of Responsibilities Between PWGSC in Support of CIDA's Grant-Aid Program

1. Public Works and Government Services Canada (PWGSC) and Canadian International Development Agency (CIDA) have formerly agreed to a division of responsibilities between the two departments for the acquisition of materiel by PWGSC in support of CIDA's Aid Programs.

2. Those responsibilities apply when procurement is undertaken by PWGSC for goods and services for CIDA's programs:

   a) material and related services;
   b) food;
   c) overseas transportation.

3. To facilitate the agreed division of responsibilities, each phase of the procurement process has been broken down into sub-activities and the responsibility for each Sub-activity has been identified.

4. PWGSC shall adhere to the responsibilities as agreed and shall provide CIDA with the procurement planning, tendering, contracting, contract administration and other services necessary for the procurement of goods including food and related services requisitioned by CIDA.

   PWGSC will also provide a procurement unit, located within CIDA's Procurement Division, to assist both PWGSC and CIDA to achieve improved efficiency and effectiveness of the PWGSC mode of non-food aid procurement. The services to be provided by this group, and the method of reimbursement to PWGSC for those services, are the subject of a separate agreement to be ratified each year by the Director General, Industrial and Commercial Products and Standardization Services Sector, PWGSC, and the Director General, Operations Services Branch, CIDA.

5. CIDA shall adhere to the responsibilities as agreed and shall be accountable and responsible for the planning, programming, implementation, co-ordination, control, execution and evaluation of the programs and projects undertaken by the Agency.

6 Resolution of any issues is the responsibility of the CIDA's Procurement Division and the Business Development and Operations Directorate, PWGSC. Should they be unable to resolve an issue, the matter will be referred to their respective higher authorities.

7. PWGSC shall permit and facilitate CIDA's participation in any or all phases of procurement including tender evaluation when CIDA requests such participation either on the PWGSC requisition or under separate cover.

   When occasions arise that the CIDA project team believes that it requires access to tender submissions, proposals and/or quotations or other contractual documents which PWGSC has designated as protected, a CIDA Procurement Division officer identified by the Procurement Division will, on behalf of the CIDA project team, confer with the appropriate PWGSC procurement sector, review the necessary documents at the convenience of both parties and advise the CIDA project team of the review of the files. The information provided by PWGSC will be treated as sensitive by CIDA.

Annex 3.4.1: Division of Responsibilities Between PWGSC and CIDA for the Entire Procurement Cycle, Goods and Services

Sub-activity Description

A: Procurement of Goods

A.1 Finalization of list required.
A.2 Preparation of specifications.

Responsibility for Sub-activity - CIDA
Information - PWGSC

A.3 Preparation of requisitions.

Responsibility for Sub-activity - CIDA
Participates in Sub-activity - PWGSC

A.4 Approval of Requisitions and Commitment of Funds and completion of supplementary information sheet on documentation, packaging, and labelling.

Responsibility for Sub-activity - CIDA

A.5 Methods of supply (tender, standing offer, sole source).

A.6 Preparation of draft bidder's list (including assessment of suppliers previous performance).

A.7 Development of criteria and methods of bid evaluation.

A.8 Preparation of solicitation documentation, and recommendation to project team on bid bonds or performance bonds, penalty clauses for late delivery, etc.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA
(A.6, A.7 and A.8 - if CIDA so requests)

A.9 Bid evaluation:

a. technical evaluation as required;

Responsibility for Sub-activity - CIDA
Participates in Sub-activity - PWGSC

b. time, cost, and "offer" evaluation;

c. recommendation for selection of supplier(s).

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA
(A.9 [b] and [c] - if CIDA so requests)

A.10 Prepare draft procurement contract.

Responsibility for Sub-activity - PWGSC
Information - CIDA

A.11 Negotiate contract.

A.12 Obtaining contract approval(s).

Responsibility for Sub-activity - PWGSC

A.13 Prepare and issue contract.

A.14 Approval of samples (if required).

Responsibility for Sub-activity - PWGSC
Information - CIDA

A.15 Changes to scope of contracts:

a. approve changes to statement of requirements, and/or terms and conditions;

Responsibility for Sub-activity - CIDA
Participates in Sub-activity - PWGSC

b. negotiate change and authorize contractor to proceed.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

A.16 Contract Administration including:

a. expediting and follow-up of delivery schedule compliance;
b. monitor if supplier is in production (no strikes, lockouts, bankruptcies);
c. monitor and action authorized change(s) compliance;
d. monitor contractor performance for service contracts awarded.

Responsibility for Sub-activity - PWGSC
Information - CIDA

A.17 Compliance with funds allocated to procurement and cash flow plans of the project.

A.18 Certification of progress claims that required work has been accomplished or items have been delivered.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

A.19 Supply documentary proof that items have been delivered to allow FAA section 34 certification and to allow closing out of procurement contracts. Responsibility for this activity to be allocated as required by the receipt of copies of invoices.

A.20 Requisition of cheque(s) to pay supplier(s).

Responsibility for Sub-activity - CIDA

A.21 a. Invoke warranty provisions where applicable if Crown still has title to the goods.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

b. Inform PWGSC of need to invoke warranty provisions if Recipient Country has

title to goods.

Responsibility for Sub-activity - CIDA
Information - PWGSC

c. Enforce warranty provisions.

A.22 Make recommendations to the CIDA procurement officer for the solution of any problems that may arise during procurement.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

B: Quality Assurance and Inspection Services

B.1 Material and associated services of repair, overhaul.
B.2 Food.
B.3 Food packaging.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

C: Marshalling And/or Freight Forwarding Services

Same as Section A above.

D: Transportation Services

D.1 Development of Transportation Plans for Individual Projects

1.1 Provide advice and guidance on anticipated shipping problems to be encountered in remote overseas areas.
1.2 Determine load port, discharge port and inland routing.
1.3 Determine transportation mode.

Responsibility for Sub-activity - CIDA
Participates in Sub-activity - PWGSC

1.4 Determine shipping schedule, including lay days and tender dates, based on:

- lead time required to procure transportation;

Responsibility for Sub-activity - PWGSC

- delivery schedule in recipient country;

Responsibility for Sub-activity - CIDA
Participates in Sub-activity - PWGSC

- need to co-ordinate with another shipment.

Responsibility for Sub-activity - CIDA/PWGSC

1.5 Estimate transportation and supervision rates.

Responsibility for Sub-activity - PWGSC

1.6 Estimate tonnages, when based on transportation and commodity costs.

1.7 Determine special bagging, packaging, handling, marshalling and transportation specifications.

1.8 Provide technical advice and assistance during negotiation of MOU with recipient country.

Responsibility for Sub-activity - CIDA
Participates in Sub-activity - PWGSC

1.9 Draft pertinent sections of the MOU with recipient country dealing with transportation

Responsibility for Sub-activity - CIDA

D.2 Preparation of Transportation Requisition (Form 10440)

2.1 Identify the following:

- commodity(s) to be shipped, including estimated tonnage;
- estimated cost of transportation;
- names and addresses of consignee and parties to be notified;
- shipping schedule (lay days);
- load port, discharge port and final destination;
- special instructions pertaining to freight contract conditions, delivery, supervision, packaging and marshalling;
- document distribution.

2.2 Determine port facilities, physical conditions of sites and transportation and communication conditions in recipient countries.

Responsibility for Sub-activity - CIDA
Participates in Sub-activity - PWGSC

2.3 Commit program/project funds.

Responsibility for Sub-activity - CIDA

D.3 Tender Invitations and Contract Awards for Ocean Charters

3.1 Review CIDA transportation requisitions (Form 10440) for errors or omissions.

Responsibility for Sub-activity - PWGSC

3.2 Calculate amount required for Letter of Credit.

3.3 Prepare list of firms to get tender invitations by referring to Master Source List.

3.4 Prepare tender invitations for transportation and supervision, incorporating all required terms and conditions.

Responsibility for Sub-activity - PWGSC

Participates in Sub-activity - CIDA
(D3.4 - if CIDA so requests)

3.5 Issue tender invitations and respond to inquiries from transportation contractors and superintendent firms.

Responsibility for Sub-activity - PWGSC

3.6 Evaluate bids to ensure that they are responsive, acquiring necessary clarification from bidders.

3.7 Adjust tonnages, if necessary, based on commodity and transportation cost estimates, and negotiate and adjust transportation contract conditions accordingly.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA
(D3.6 - if CIDA so requests)

3.8 Adjust commitment of funds, if necessary.

Responsibility for Sub-activity - CIDA

3.9 Recommend contract award.

Responsibility for Sub-activity - PWGSC

3.10 Concur with contract award.

Responsibility for Sub-activity - CIDA

3.11 Prepare transportation contract, or review Charter Party for errors or omissions and make necessary amendments.

3.12 Award and administer contract.

3.13 Prepare and issue superintendent contract to include:

- inspection of supplies at load port;
- inspection and acceptance of vessel;
- loading and unloading of cargo;
- overseeing inland transportation and delivery to consignee;
- provision of reports.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

3.14 Distribute appropriate documents to CIDA, transportation contractor, superintendent firm and applicable Embassy/Mission.

Responsibility for Sub-activity - PWGSC

D.4 Contracts Other than Ocean Charters

4.1 Review CIDA transportation requisitions.

Responsibility for Sub-activity - PWGSC

4.2 Interface with the marshalling and packaging warehouse to issue shipping instructions, verify invoices and resolve problems.

4.3 On FOB or FAS shipments, interface with suppliers to determine packaging details, acquire documents, acquire information on hazardous commodities and issue shipping instructions.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

4.4 Initiate action to obtain export permit, if required.

4.5 Solicit information from carriers on rates, services, transit times and shipping schedules; issue a "Request for Proposal," if required.

4.6 Assess all responses to ensure all terms and conditions are met.

Responsibility for Sub-activity - PWGSC

4.7 Adjust commitment of funds, if necessary.

Responsibility for Sub-activity - CIDA

4.8 Select carrier.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

4.9 Prepare and issue contract.

4.10 Distribute appropriate documents to CIDA and other parties, as required.

Responsibility for Sub-activity - PWGSC

D.5 Contract Administration and Follow-up for Ocean Charters

5.1 If adjustment to contract terms is required by CIDA:

- brief CIDA on resulting liabilities and obligations;
- negotiate contract amendments.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

5.2 Monitor vessel nomination and assess the nominated vessel and its estimated time of arrival (ETA) at load port.

Responsibility for Sub-activity - PWGSC

5.3 Accept or reject nominated vessel.

5.4 For bulk wheat shipments, make necessary tonnage adjustments to transportation contracts.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

5.5 Notify superintendent of nominated vessel and load port.

5.6 Notify transportation contractor and superintendent of suppliers and associated tonnages.

5.7 Notify suppliers of shipping instructions.

5.8 Coordinate movement of commodities from supplier plants to load port, resolving any problems.

Responsibility for Sub-activity - PWGSC

5.9 Resolve problems occurring during cargo loading, including arranging for replacement of damaged goods if time permits.

5.10 Resolve any problems occurring during unloading of cargo.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

5.11 Monitor inland delivery and resolve any problems.

5.12 Distribute appropriate documents to CIDA, superintendent firm, Canadian High Commission/Embassy and consignee.

Responsibility for Sub-activity - PWGSC

D.6 Contract Administration and Follow- up for Contracts Other than Ocean Charters

6.1 Follow-up with the supplier in order to monitor shipment of goods.

6.2 Follow-up with the carrier to monitor delivery of goods and to confirm sailing schedule.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

6.3 Ensure proper handling of dangerous commodities by:

- ensuring that labelling, packaging and documentation meet applicable regulations;
- issuing detailed shipping instructions to supplier.

Responsibility for Sub-activity - PWGSC

6.4 Investigate and resolve problems such as late deliveries and vessel cancellations.

6.5 Amend contracts, as required, to incorporate such changes as revised delivery address, adjusted tonnages and postponed projects.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

E: Audit and Payment

E.1 Audit shipping documents, including ocean bills of lading and airway bills.

E.2 Audit supplier and ocean and air freight invoices, adjust for loss, damage or short-shipment.

E.3 Audit superintendent invoices.

E.4 Submit invoices to CIDA and recommend for payment.

Responsibility for Sub-activity - PWGSC

E.5 Raise claims for lost or damaged goods and take necessary action.

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

E.6 Approve payment and requisition cheques.

Responsibility for Sub-activity - CIDA

F: Acceptance and Final Payment

Responsibility for Sub-activity - CIDA

G: Contract(s) Close-out and Clean-up

Responsibility for Sub-activity - PWGSC
Participates in Sub-activity - CIDA

Annex 3.5: Memorandum of Understanding Between PWGSC and the Canada Post Corporation

Introduction

1. This Memorandum of Understanding (MOU) entered into by Public Works and Government Services Canada (PWGSC) and the Canada Post Corporation (CPC) establishes the terms and conditions under which PWGSC will continue to provide its services to CPC, until such time as the MOU is cancelled or modified.

Purpose

2. To confirm that PWGSC will continue to provide services to CPC as requested, PWGSC will work with CPC to define the services, in whole or in part, and to modify procedures in order to meet the requirements of the Corporation. CPC will be charged for those services provided at approved Treasury Board rates. However, under certain circumstances, these rates may not be applicable, and CPC will negotiate specific rates with PWGSC.

Term

3. This MOU shall remain in force for a minimum period of one year and, in order to conform to any revision to services and procedures which may be necessary as per 2 above, shall be revised accordingly at that time. Any changes to services as provided for by this MOU will be made in writing. A minimum of six months' notice will be given prior to implementation of such change. However, if mutual agreement is reached, changes could be made without a waiting period.

Service Level

4. Requests for service and the provision of the service shall be at present levels of service, as described in the PWGSC Customer Manual.

Billing for Services

5. As at present, invoicing for services shall be on a regular basis, identifying services provided and detailing the relevant charges. CPC will be billed upon the same basis as government departments are billed for PWGSC services. Billing fees shall be at Treasury Board or mutually agreed rates.

Responsibilities

6. CPC will be responsible for defining requirements and agreeing with PWGSC on the degree of flexibility in the requirements and in delivery schedules.

7. PWGSC will establish sources, call for bids and negotiate and issue contracts on request and in accordance with the authorities described in paragraph 8 of this MOU. On behalf of CPC, PWGSC will administer the contract and ensure that all the terms and conditions have been met.

Authority

8. PWGSC will act as an agent for CPC under the following authorities which are hereby delegated to the Deputy Minister, PWGSC (who may further delegate any such authority from time to time):

   "In accordance with requisitions and/or instructions from duly authorized CPC personnel, authority to seek bids, proposals and quotations, and contract approval and signing authority for contracts, notices of award, formal agreements and amendments thereto."

9. PWGSC will modify its procedures and policies, as required, In order to conform to the authorities as delegated above.

Annex 3.6: Price and Availability Request

To: _____

Subject: Price and Availability Request **Our File:** _____

Your File:_____

Items: _____

_____

Attached is the price and delivery information requested by you. This information was obtained by means of (delete A or B as appropriate):

A. a request to the industry for estimates only, and therefore cannot be considered to be a firm commitment. To obtain a firm price and delivery for your requirements, close to that quoted in the attached, firm offers will have to be obtained and a contract issued within 6 months. To achieve this, your requisition would have to be received by this department no later than _____

B. competitive bids which contain a specific expiry date. The price and delivery quoted therefore is only valid for the exact commodity quoted, in the quantity stated, and provided your requisition is received by this department no later than _____.

It is important to note that any changes in the requirement may invalidate the attached information. If changes become necessary, they should be discussed with this department before a requisition is issued.

Any requisition submitted as a result of this study should quote our file number shown above.

The information contained herein shall under no condition be divulged to parties outside the Government and care shall be taken that its internal circulation is on a "need to know" basis. Any communication with the trade related to this information must be through this department.

If you have any enquiries concerning this matter, please contact _____ at telephone number _____

Att.: _____

Chapter 4 - National and International Trade Agreements

4.001 (2004-12-10) Comprehensive Land Claims Agreements (CLCAs), the North American Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement (WTO-AGP), the Canada-Korea Telecommunications Equipment Agreement (CKTEA) and the Agreement on Internal Trade (AIT) require Public Works and Government Services Canada (PWGSC) to comply with specific procedures when carrying out certain procurements. Therefore, a decision must be made as to whether or not the requisition is subject to a particular agreement, or a combination of agreements.

To determine coverage under the NAFTA, WTO-AGP, CKTEA and AIT agreements, the requisition value, the client, the type of good or service, and any exceptions or exclusions must be reviewed. Coverage under CLCAs is based on where the service will be performed or the good will be delivered.

The estimated amount of the Goods and Services Tax and/or the Harmonized Sales Tax must be included when determining the requisition value.

Comprehensive Land Claims Agreements

4.002 (2004-12-10) CLCAs contain specific government contracting obligations which PWGSC is legally obligated to comply with. These obligations apply when contracting for the provision of goods, services or construction in areas subject to CLCAs.

Procurement that is subject to CLCAs, and one or more of the trade agreements (NAFTA, WTO-AGP, CKTEA, AIT) may involve special procedures. (See 4.009, 4.010, 4.011 and 4.012.) Procurement that is subject to CLCAs, but not to any of the trade agreements, must adhere to all procurement policies applicable to non NAFTA, WTO-AGP, CKTEA and AIT procurements. For example, application of the Canadian Content Policy for requirements over $25,000.

To the extent possible the procedures and policies which implement the individual CLCAs are designed to achieve the following objectives which have been established by Treasury Board Secretariat:

(a) increase the participation by aboriginal groups in business opportunities in the settlement area;

(b) improve the capacity of aboriginal firms to compete for government procurement in the settlement area; and

(c) employ aboriginals at a representative level in the workforce of the settlement areas.

For any procurement which has contracting activities that take place within Comprehensive Land Claims Settlement Areas (CLCSAs), contracting officers should consult the Acquisition Policy and Process Directorate (APPD), at telephone number (819) 956-4744 to determine whether a CLCA may affect the overall procurement strategy. APPD will assist contracting officers in identifying these obligations and in developing methods of meeting them on a case-by-case basis.

4.003 (1999-06-21) The government is obligated under these CLCAs to ensure that claimant group enterprises have access to bid opportunities in the CLCSAs. This applies to the purchase of goods, services, and construction by any department, agency or Crown corporation of the federal government for final delivery or furtherance to a location covered by a CLCA. Most areas of Canada, north of the 60th parallel are covered by a CLCA. The only area south of the 60th parallel that is covered by a ratified CLCA is the northern part of Quebec. The origin of the

order (i.e. ordering office) does not determine the applicability of a CLCA, only the final delivery point and FOB for furtherance point(s).

No two agreements are exactly the same. First, contracting officers must determine, by identifying the final delivery point, if the requirement is affected. If it is, the corresponding agreement must be reviewed to see what is said about government procurement. There are no dollar thresholds, so the agreements apply to **all** applicable requirements regardless of dollar value.

Procurement Obligations

4.004 (1999-06-21) The agreements stipulate the applicability of certain criteria for the different stages of the procurement process from requirements definition to contract award. Some of these criteria are common to many of the agreements. The following example is representative of the government obligations in one phase of the procurement process. These obligations do not necessarily apply to all agreements.

Requirements Definition

4.005 (1996-01-01) Under CLCAs obligations, requirements definition must:

(a) avoid artificially inflated employment skills requirements;

(b) whenever possible, be designed to provide socio-economic opportunities to the claimant groups and firms; and,

(c) give consideration to separating requirements into commodity or geographic groupings to permit smaller and more specialized firms to bid.

Access to Nunavut Inuit Owned Lands

4.006 (2000-12-01) CLCAs make provisions for access to Inuit Owned Lands. The Nunavut Land Claims Agreement (NLCA) has a mandatory requirement to obtain a certificate of exemption for the right of access and entry to Inuit Owned Lands within the Nunavut Settlement Area. The Nunavut requires a written certificate of exemption from the Nunavut claimant group for the general public right, and government right, of entry and access to the Inuit Owned Lands of this settlement area as per Section 21.2.1 of the NLCA and discussions held with Nunavut Tunngavik Incorporated on May 27th, 1994. There are no fees connected with the issuance of this certificate.

Contracting officers must identify, whenever possible, the exact location of the contracting activity within this land claim settlement area. For more specific information on whether your requirement is occurring on Inuit Owned Lands, contracting officers are required to contact the Kitikmeot Lands Administration Office in Kugluktuk, Northwest Territories at (867) 982-3310.

Notification of Procurement

4.007 (2005-06-10) Notification of the requirement must be issued to the appropriate claimant group(s). For the procurement of goods, services or construction destined for locations covered by land claim agreements, fax a copy of the procurement notice to the land claimant group(s) listed under the applicable agreement:

James Bay and Northern Quebec Agreement

Makivik Corporation
3333 Place Cavendish, 3rd Floor
St-Laurent, QC H4M 2X6

Telephone: (514) 745-8880
Facsimile: (514) 745-3700

Oujé-Bougoumou
203 Opemiska Meskino
Oujé-Bougoumou, QC G0W 3C0
Telephone: (418) 745-3931
Facsimile: (418) 745-3844

Grand Council of the Crees (of Québec)
24 Bayswater Avenue
Ottawa, ON K1Y 2E4
Telephone: (613) 761-1655
Facsimile: (613) 761-1388

Naskapi Development Corporation
120-1000 St-Jean-Baptiste Avenue
Quebec, QC G2E 5G5
Telephone: (418) 871-5100
Facsimile: (418) 871-5254

Naskapi Indian Band of Québec
P.O. Box 970
Schefferville, QC G0G 2T0
Telephone: (418) 585-2686
Facsimile: (418) 585-3130

Inuvialuit Final Agreement

Inuvialuit Development Corporation
P.O. Bag # 7
Inuvik, NT X0E 0T0
Telephone: (867) 777-2419
Facsimile: (867) 777-3256

Inuvialuit Regional Corporation
P.O. Box 2120
Inuvik, NT X0E 0T0
Telephone: (867) 777-2737
Facsimile: (867) 777-2135

Gwich'in Comprehensive Land Claim Agreement

Gwich'in Tribal Council
P.O. Box 30
Fort MacPherson, NT X0E 0J0
Telephone: (867) 952-2330
Facsimile: (867) 952-2212

Nunavut Land Claims Agreement

Nunavut Tunngavik Incorporated
Business Development Department
P.O. Box 638
Iqaluit, NU X0A 0H0
Telephone: 1-888-646-0006
Facsimile: (867) 975-4949

Qikiqtani Inuit Association
P.O. Box 1340
Iqaluit, NU X0A 0H0
Telephone: (867) 979-5391 or 1-800-667-2742
Facsimile: (867) 979-3238

Qikiqtaaluk Corporation
P.O. Box 1228
Iqaluit, NU X0A 0H0
Telephone: (867) 979-8400
Facsimile: (867) 979-8433

Kakivak Association
P.O. Box 1419
Iqaluit, NU X0A 0H0
Telephone: (867) 979-0911 or 1-800-561-0911
Facsimile: (867) 979-3707

Kivalliq Inuit Association
P.O. Box 340
Rankin Inlet, NU X0C 0G0
Telephone: (867) 645-2800 or 1-800-220-6581
Facsimile: (867) 645-2348

Sakku Investments Corporation
P.O. Box 188
Rankin Inlet, NU X0C 0G0
Telephone: (867) 645-2805
Facsimile: (867) 645-2063

Kitikmeot Economic Development Commission
P.O. Box 1330
Cambridge Bay, NU X0B 0C0
Telephone: (867) 983-2095
Facsimile: (867) 983-2075

Nunasi Corporation
Corporate Controller
5107 48th Street
Yellowknife, NT X1A 1N5
Telephone: (867) 766-6450
Facsimile: (867) 920-4592

Kitikmeot Inuit Association
Lands Division
P.O. Box 360
Kugluktuk, NU X0B 0E0
Telephone: (867) 982-3310
Facsimile: (867) 982-3311

Umbrella Final Agreement of the Council for Yukon Indians

Council of Yukon First Nations
22 Nisutlin Drive
Whitehorse, YT Y1A 2S5
Telephone: (867) 667-7631

Facsimile: (867) 668-6577

Champagne and Aishihik First Nations Final Agreement

Champagne and Aishihik First Nations
Box 5309
Haines Junction, YT Y0B 1L0
Telephone: (867) 634-2288
Facsimile: (867) 634-2108

Little Salmon/Carmacks First Nation Final Agreement

Little Salmon/Carmacks First Nation
P.O. Box 135
Carmacks, YT Y0B 1C0
Telephone: (867) 863-5576
Facsimile: (867) 863-5710

First Nation of Nacho Nyak Dun Final Agreement

Nacho Nyak Dun First Nation
P.O. Box 220
Mayo, YT Y0B 1M0
Telephone: (867) 996-2265
Facsimile: (867) 996-2107

Selkirk First Nation Final Agreement

Selkirk First Nation
P.O. Box 40
Pelly Crossing, YT Y0B 1P0
Telephone: (867) 537-3331
Facsimile: (867) 537-3902

Teslin Tlingit Council Final Agreement

Teslin Tlingit Council
Box 133
Teslin, YT Y0A 1B0
Telephone: (867) 390-2532
Facsimile: (867) 390-2204

Vuntut Gwichin First Nation Final Agreement

Vuntut Gwichin
P.O. Box 94
Old Crow, YT Y0B 1N0
Telephone: (867) 966-3261
Facsimile: (867) 966-3800

Tr'ondëk Hwëch'in Final Agreement

Tr'ondëk Hwëch'in
P.O. Box 599
Dawson City, YT Y0B 1G0
Telephone: (867) 993-5385
Facsimile: (867) 993-6553

Ta'an Kwach'an Council Final Agreement

Mundessa Development Corporation
Box 32081
Whitehorse, YT Y1A 5P9
Telephone: (867) 668-3613
Facsimile: (867) 667-4295

Kluane First Nation Final Agreement

Kluane First Nation
P.O. Box 20
Burwash Landing, YT Y0B 1H0
Telephone: (867) 841-4013
Facsimile: (867) 841-5900

Sahtu Dene and Metis Comprehensive Land Claim Agreement

Fort Good Hope Metis Nation
Land Corporation, Local No. 54
Box 11
Fort Good Hope, NT X0E 0H0
Telephone: (867) 598-2105
Facsimile: (867) 598-2160

Ayoni Keh Land Corporation
c/o Colville Lake First Nation Band
Box 43, Colville Lake, NT X0E 1L0
Telephone: (867) 709-2700
Facsimile: (867) 709-2717

Déline Land Corporation
c/o Déline Dene Band Council
General Delivery, P.O. Box 156
Déline, NT X0E 0G0
Telephone: (867) 589-3618
Facsimile: (867) 589-3826

Tulita Land Corporation
c/o Fort Norman Dene Band
General Delivery
Tulita, NT X0E 0K0
Telephone: (867) 588-3734
Facsimile: (867) 588-4025

Fort Norman Metis Land Corporation
c/o Fort Norman Metis Nation, Local No. 60
General Delivery
Tulita, NT X0E 0K0
Telephone: (867) 588-3201
Facsimile: (867) 588-3806/4908

Yamoga Lands Corporation
c/o Fort Good Hope Dene Band
P.O. Box 18
Fort Good Hope, NT X0E 0H0
Telephone: (867) 598-2519

Facsimile: (867) 598-2437

Ernie McDonald Land Corporation
c/o Norman Wells Metis Nation, Local No. 59
P.O. Box 186
Norman Wells, NT X0E 0V0
Telephone: (867) 587-2455
Facsimile: (867) 587-2545

The Sahtu Secretariat Incorporated
P.O. Box 155
Déline, NT X0E 0G0
Telephone: (867) 589-4719
Facsimile: (867) 589-4908

NAFTA

4.008 (2003-05-30) The *North American Free Trade Agreement Implementation Act* sets out Canada's commitment to reduce trade barriers between Canada, the United States of America and the Federal Republic of Mexico. Chapter 10 of the Agreement focuses on achieving greater competition for, and transparency in, government procurement, eliminating protection of domestic products or suppliers or discrimination among foreign products or suppliers. It also details Canada's agreement to undertake certain government procurement functions in accordance with procedures prescribed in the Act.

To determine whether NAFTA is applicable, Chapter 10 of the Agreement must be consulted. In the following sections on determining NAFTA coverage, all references to an 'Annex' are to the annexes to Chapter 10 of the NAFTA.

For purposes of determining coverage, a requisition is considered to be one for:

(a) goods;
(b) services; or
(c) construction

based on the one which represents more than 50 percent of the estimated value of the requisition.

4.009 (2004-05-14) If all of the following four NAFTA criteria are met, the procurement is subject to NAFTA. If any one of the criteria is not met, the procurement is not subject to NAFTA.

(a) Determine the value of the requisition. See Article 1001 (Scope and Coverage) and Article 1002, Valuation of Contracts , and Annex 1001.2c, Country-Specific Thresholds.

The thresholds in the NAFTA are presented in U.S. dollars. A procurement may be subject to NAFTA if the requisition has a value in Canadian dollars as follows:

(i) for goods being procured by a federal government entity (including departments, and some Commissions and Boards), $38,000 (see Article 1001(1)(c)(i);

(ii) for services being procured by a federal government entity, $89,000 (see Article 1001(1)(c)(i));

(iii) for goods or services being procured by a federal government enterprise (usually Crown corporations), $445,000 (see Article 1001(1)(c)(ii);

(iv) for construction for federal government entities, $11,500,000 (see Article 1001

(1)(c)(i);

(v) for construction for federal government enterprises, $14,200,000 (see Article 1001(1)(c)(ii).

The values in Canadian dollars are based upon conversion factors as agreed upon in the Agreement and may be revised every two years. The above conversions are in effect until December 31, 2005.

(b) Determine the coverage by client. See Annex 1001.1a-1, Federal Government Entities - Schedule for Canada, and Annex 1001.1a-2, Government Enterprises - Schedule for Canada.

(c) Determine the coverage by type of requirement:

(i) goods - see Annex 1001.1b-1, Goods; or

(ii) services - see Annex 1001.1b-2, Services; or

(iii) construction - see Annex 1001.1b-3, Construction Services.

(d) Determine that the requirement is not exempt. See Article 1018, Exceptions, and Annex 1001.2b, General Notes.

Article 1(d) of Annex 1001.2b (General Notes) provides for set-asides for small and minority businesses. Procurement that is subject to a CLCA must be set-aside pursuant to this provision using either the Set-Aside Program for Aboriginal Business (SPAB) or the Land Claims Set-aside (LCSA), whichever is more appropriate. (See Section 9L for details on the SPAB and Section 9M for details on the LCSA.)

NOTE: The use of offsets for procurements covered by NAFTA is prohibited. See Article 1006, Prohibition of Offsets.

WTO-AGP

4.010 (2004-12-10) The World Trade Organization Agreement on Government Procurement (WTO-AGP) is an agreement which aims to secure greater international competition for government procurement. The WTO-AGP supersedes the General Agreement on Tariffs and Trade Government Procurement Code by extending the previous coverage of goods to now include services and construction, much like NAFTA. The national treatment and non-discrimination provisions and procurement procedures of the WTO-AGP are similar to those of NAFTA.

To determine whether the WTO-AGP is applicable, the Agreement must be consulted. In the following sections on determining WTO-AGP coverage, all references to an “Annex” are to the annexes to the WTO-AGP.

If all of the following four WTO-AGP criteria are met, the procurement is subject to WTO-AGP. If any one of the criteria is not met, the procurement is not subject to WTO-AGP.

(a) Determine the value of the requisition. See Article I, Scope and Coverage; Article II, Valuation of Contracts, and Appendix I, Annex 1, Federal Government Entities.

The thresholds in the WTO-AGP are presented in Special Drawing Rights, the unit of account of the International Monetary Fund. A procurement may be subject to WTO-AGP if the requisition has a value in Canadian dollars as follows for the period January 1, 2004 to December 31, 2005:

(i) for goods and services being procured by a federal government entity (including departments, and some Commissions and Boards), $261,300. See Annex 1, Federal Government Entities.

(ii) for construction for federal government entities $10,000,000.

(b) Determine the coverage by client. See Annex 1, Federal Government Entities.

(c) Determine the coverage by type of requirement:

(i) goods - see Annex 1, Federal Government Entities, or

(ii) services - see Annex 1, Federal Government Entities, and Annex 4, Services.

The WTO-AGP identifies services coverage according to the United Nations Central Product Classification system of classification. The conversion to PWGSC's classification system is provided in *Supply Manual* Annex 4.1 (only services listed are covered.)

(iii) construction - see Annex 1, Federal Government Entities, and Annex 5, Construction Services.

(d) Determine that the requirement is not exempt. See Article XXIII, Exceptions to the Agreement, and Appendix I, General Notes.

Article 1(d) of Appendix I, General Notes, provides for set-asides for small and minority businesses. Procurement that is subject to a Comprehensive Land Claims Agreement (CLCA) must be set-aside pursuant to this provision using either the Set-Aside Program for Aboriginal Business (SPAB) or the Land Claims Set-Aside (LCSA), whichever is more appropriate. See Section 9L for details on the SPAB and Section 9M for details on the LCSA.

NOTE: The use of offsets for procurements covered by WTO-AGP is prohibited. See Article XVI, Offsets.

CKTEA

4.011 (2004-12-10) The Canada-Korea Telecommunications Equipment Agreement (CKTEA) is a bilateral agreement between Canada and Korea which covers federal government procurement of telecommunications goods and incidental services (services included in a covered goods contract). The CKTEA was signed in early July 1999 (see Annex 4.2.) The Treasury Board Policy implementing the CKTEA was approved in May 2001.

Implementation of the CKTEA is different from implementation of NAFTA and the WTO-AGP in that, when a procurement is covered by the CKTEA, preference may be given to suppliers of Canadian and/or Korean goods.

Procurement covered by both the CKTEA and the WTO-AGP should follow procedures set out for the WTO-AGP, as Canada has committed through the WTO-AGP to open these procurements to Korea and the other WTO-AGP members.

With the exception of items listed under Federal Supply Classification (FSC) 58, procurement which may be considered procurement of a Covered Good in accordance with the above definition is also covered by the WTO-AGP.

Procurement covered by the CKTEA, but not the WTO-AGP, should follow the special procedures set out in this Manual.

Special procedures for procurement covered by the CKTEA combine elements from procedures applying to the WTO-AGP and to the Canadian Content Policy. Any questions on application of the CKTEA should be directed to the Acquisition Strategy and Relations Directorate, at telephone number (819) 956-6497.

The national treatment and non-discrimination provisions and procurement procedures of the CKTEA are similar to those for the WTO-AGP.

To determine whether the CKTEA is applicable, the Agreement (see Annex 4.2) and the Treasury Board Policy implementing the Agreement must be consulted.

If all of the following four CKTEA criteria are met, the procurement is subject to CKTEA. If any one of the criteria is not met, the procurement is not subject to CKTEA:

(a) Determine if procurement is for mainly telecommunications goods, rather than for services or construction. See Annex 4.2, ANNEX 1;

(b) Determine the value of the requisition. See CKTEA, Annex 4.2, ARTICLE 1, Objective, Definitions and Scope of the Agreement; and WTO-AGP, Article II, Valuation of Contracts, and

The thresholds in the CKTEA are presented in Special Drawing Rights (SDRs), the unit of account of the International Monetary Fund. For the period January 1, 2004 to December 31, 2005, a procurement may be subject to CKTEA if the requisition has a value in Canadian dollars of $261,300. See CKTEA, Annex 4.2, ARTICLE 1.

(c) Determine the coverage by client. See CKTEA, Annex 4.2, ANNEX 1.

(d) Determine that the procurement is covered by the Agreement:

(i) The CKTEA does not apply to the following contracts:

– procurement of goods and services with a view to commercial resale or use in the production of goods for commercial sale;

– procurement in respect of set-asides for small and minority businesses; or

– procurement for the Departments of Transport, Fisheries and Oceans, and Communications respecting FSC 36, 70 and 74.

(ii) Exceptions to the Agreement are the same as in Article XXIII of the WTO-AGP.

AIT

4.012 (2003-05-30) The Agreement on Internal Trade (AIT) relating to government procurement is a comprehensive Agreement on Canadian Internal Trade, in recognition of the need to reduce barriers to trade within Canada.

Chapter Five, Procurement, of the AIT, is intended to "establish a framework that will ensure equal access to procurement for all Canadian suppliers in order to contribute to a reduction in purchasing costs and the development of a strong economy, in a context of transparency and efficiency".

In the following sections on determining AIT coverage, all references to an “Annex” are to the annexes to Chapter Five, Procurement, of the AIT.

If all of the following four AIT criteria are met, the procurement is subject to AIT. If any one of the criteria is not met, the procurement is not subject to AIT.

(a) Determine the value of the requisition. A procurement may be subject to AIT if the requisition value is:

(i) $25,000 or greater, in cases where the largest portion of the procurement is for goods;

(ii) $100,000 or greater, in cases where the largest portion of the procurement is for services, except those services excluded by Annex 502.1B, Services Covered by Chapter Five; or

(iii) $100,000 or greater, in the case of construction.

(b) Determine the coverage by client. Entities listed in Annex 502.1A, Government Entities Covered by Chapter Five, are subject to the AIT procurement procedures.

Entities listed in Annex 502.2A, Government Entities Excluded from Chapter Five are excluded from Chapter Five of the AIT.

(c) Determine the coverage by the type of requirement.

(i) All requirements for the purchase, lease or rental of goods are covered.

(ii) All services are covered except for those listed in Annex 502.1B, Services Covered by Chapter Five.

(iii) All construction procurement is covered.

(d) Determine that the procurement is not exempt. See Article 507, Non-application, and Article 1802, Aboriginal Peoples; Article 1803, Culture; and Article 1804, National Security of Chapter Eighteen, Part VI Final Provisions.

Procurement which is subject to a Comprehensive Land Claims Agreement (CLCA) can also be subject to the AIT. Based on Article 1802 of the AIT, legal counsel at Industry Canada considers that the notification and other requirements in the CLCAs are "measures", as defined in Chapter Two, General Definitions of the AIT, and, that, to the extent they are "severable" from the procurement as a whole, are excluded from the obligations of the AIT. The procurement itself and all other aspects of it remain covered. This means that provisions contained in the CLCAs, such as notification procedures or evaluation criteria favouring claimant groups, must be complied with, despite the fact that they may appear to be inconsistent with corresponding provisions in the AIT.

4.013 (2004-12-10) Contracting officers should note that when the procurement is covered by more than one agreement, the procedures to be followed are the procedures which are considered the most rigorous, for example, for limited tendering reasons, procurement covered by NAFTA, WTO-AGP and AIT, only the limited tendering reasons that are common to all three agreements are available as options. (See 5.031.)

Canadian International Trade Tribunal

4.014 (2004-12-10) NAFTA, WTO-AGP, CKTEA and AIT require that each party to the specific agreement maintain an independent bid challenge authority. The Canadian International Trade Tribunal (CITT) has been designated as the bid challenge authority for Canada for NAFTA, WTO-AGP, CKTEA and AIT. A potential supplier may file a complaint concerning a procurement action to the CITT, on the grounds that any aspect of the procurement process

relating to a requirement covered by NAFTA, WTO-AGP, CKTEA or AIT is unfair or discriminatory.

Complaints to the CITT should be addressed to:

Canadian International Trade Tribunal
Procurement Review Division
Standard Life Centre
333 Laurier Avenue West
Ottawa, Ontario K1A 0G7

Telephone: (613) 990-1988
Facsimile: (613) 992-3686

4.015 (2004-12-10) The Tribunal's mandate authorizes it to receive complaints pertaining to any aspect of the procurement process up to and including contract award, conduct inquiries and make determinations. In dealing with a complaint, the Tribunal must determine whether the government institution responsible for the procurement under review has complied with the requirements of NAFTA, WTO-AGP, CKTEA and AIT and such other procedural requirements, as prescribed in the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.

4.016 (2005-06-10) All Public Works and Government Services Canada (PWGSC) actions in response to a complaint filed with the CITT are co-ordinated through the PWGSC Acquisitions Strategy and Relations Directorate (ASRD),. All requests, decisions, reports, letters, etc., to the CITT shall be coordinated by ASRD in consultation with Legal Services and the procurement organization. The procurement organization is responsible for preparing a chronology of events that will form the "backbone" of the Government Institution Report (GIR); legal services will produce the remaining sections, with input from the procurement organization, other departmental specialists, and the client department, as required. The procurement organization's management remains responsible to review and approve the GIR prior to sign-off.

The Assistant Deputy Minister, Acquisitions Branch, is the signing authority for requests for the rescission of Postponement of Award Orders; the GIR; replies to determinations where PWGSC is committing funds to pay complaint costs, bid preparation costs and/or lost profit to a prevailing complainant; and, any letters specifying the amount PWGSC is willing to pay.

Contracting officers must ensure that complete documentation and records, including a signed and dated record of all communications with suppliers, are maintained in order to substantiate that the procurement process was carried out in accordance with the obligations of the trade agreements.

Throughout the complaint process, PWGSC will keep the client informed of actions taken in response to the complaint, as well as any notices, decisions, information, etc., received from the CITT.

4.017 (2001-12-10) Prior to initiating a complaint to the CITT, suppliers should be encouraged to resolve problems directly with PWGSC by first making the appropriate contracting officer aware of the matter giving rise to the problem. All objections brought to the attention of the contracting officer should be handled with a minimum of delay, while exercising due care and judgement.

Experience demonstrates that there are often minor errors, omissions, or other inadvertent actions which can be quickly clarified or corrected to the satisfaction of all concerned thus removing the basis of many problems and concerns at the outset.

4.018 (2004-05-14) Contracting officers may contact the APPD, either by telephone at (819) 956-6411 or by facsimile at (819) 956-1265, for assistance with respect to an actual or potential CITT action.

Details about the CITT, including its complaint and inquiry process, are in the publication *Procurement Review Process - A Descriptive Guide*. As well on the CITT Website, the CITT Determinations and Notices of Motion and Orders can be viewed.

Annex 4.1: Services Coverage for the WTO-AGP Defined by the Common Classification System

(2004-12-10)

The World Trade Organization Agreement on Government Procurement (WTO-AGP) services coverage is contained in Annex 4 of the WTO-AGP and is defined in terms of the United Nations Central Product Classification (CPC). To ensure a consistent application of services coverage by Public Works and Government Services Canada contracting officers, the WTO-AGP list of covered services has been translated into the North American Free Trade Agreement Common Classification System (CCS). The CCS list is an exhaustive list of services covered by the WTO-AGP and is provided below. The list also identifies the corresponding CPC system codes.

B. Special Studies and Analysis (not R&D)

B000 Chemical/Biological Studies and Analyses. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B001 Endangered Species Studies - Plant and Animal. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B002 Animal and Fisheries Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B003 Grazing/Range Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B004 Natural Resource Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B005 Oceanological Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B009 Other Natural Sciences Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B100 Air Quality Analyses. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B101 Environmental Studies Development of Environmental Impact Statements and Assessments. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B102 Soil Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B103 Water Quality Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B104 Wildlife Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B109 Other Environmental Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B205 Building Technology Studies. **Relates to CPC:** 8671, Architectural Services; 8672, Engineering

Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B206 Energy Studies. **Relates to CPC:** 8671, Architectural Services; 8672, Engineering Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B207 Technology Studies. **Relates to CPC:** 8671, Architectural Services; 8672, Engineering Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B208 Housing and Community Development Studies (incl. Urban/Town Planning Studies). **Relates to CPC:** 8671, Architectural Services; 8672, Engineering Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B219 Other Engineering Studies. Relates to CPC: 8671 Architectural Services; 8672 Engineering Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B3 Administrative Support Studies [specifically for general management consulting; marketing management consulting; human resources management consulting; and production management consulting]. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B300 Cost Benefit Analyses. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505 Production management consulting services

B301 Data Analyses (other than scientific). **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B302 Feasibility Studies (non-construction). **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B303 Mathematical/Statistical Analyses. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B304 Regulatory Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B305 Intelligence Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B306 Defense Studies. **Relates to CPC:** 86501 General management consulting services; 86503 Marketing management consulting services; 86504 Human resources management consulting services; 86505 Production management consulting services

B307 Security Studies (Physical and Personal). **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B308 Accounting/Financial Management Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services; 862, Accounting, auditing and bookkeeping services

B309 Trade Issue Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B310 Foreign Policy/National Security Policy Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B311 Organization/Administrative/ Personnel Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B312 Mobilization/Preparedness Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B313 Manpower Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B314 Acquisition Policy/Procedures Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B329 Other Administrative Support Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B400 Aeronautic/Space Studies. **Relates to** CPC 8672, Engineering services

B502 Recreation Studies. **Relates to** CPC 86501, General management consulting services

B507 Legal Studies [specifically advisory services on foreign and international law]. **Relates to** CPC 861, Legal services (advisory services on foreign and international law only)

C. Architect and Engineering Services

C111 Administrative and Service Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C113 Educational Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering

services for transportation infrastructure turnkey projects)

C114 Hospital Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C115 Industrial Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C116 Residential Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C117 Warehouse Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C118 Research and Development Facilities. **Relates to CPC:** 8671 Architectural services; 8672 Engineering services; 8673 Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C119 Other Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C121 Conservation and Development. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C122 Highways, Roads, Streets, Bridges and Railways. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C123 Electric Power Generation (EPG). **Relates to CPC:** 8671 Architectural services; 8672 Engineering services; 8673 Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C124 Utilities. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C129 Other Non-Building Structures. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C130 Restoration. **Relates to CPC:** 8671 Architectural services; 8672 Engineering services; 8673 Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C211 Architect - Engineer Services (incl. landscaping, interior layout and designing). **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C212 Engineering Drafting Services. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering

services for transportation infrastructure turnkey projects)

C213 A&E Inspection Services. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C214 A&E Management Engineering Services. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C215 A&E Production Engineering Services (incl. Design and Control and Building Programming). **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C219 Other Architect and Engineering Services. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

D. Information Processing and Related Telecommunications Services

D301 ADP Facility Operation and Maintenance Services. **Relates to CPC:** 841, Consultancy services related to the installation of computer hardware; 849, Other computer services

D302 ADP Systems Development Services. **Relates to** CPC 842, Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

D303 ADP Data Entry Services. **Relates to** CPC 843, Data processing services, including processing, tabulation and facilities management services

D306 ADP Systems Analysis Services. **Relates to** 842, Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

D307 Automated Information System Design and Integration Services. **Relates to** CPC 842, Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

D308 Programming Services. **Relates to** CPC 842, Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

D309 Information and Data Broadcasting or Data Distribution Services except D309A, Radio and Television Towers and Systems. **Relates to CPC:** 7523, Enhanced/value added facsimile services, including store and forward, store and retrieve; Code and protocol conversion; 843, Data processing services, including processing, tabulation and facilities management services

D310 ADP Backup and Security Services. **Relates to** CPC 844, Data base services

D311 ADP Data Conversion Services. **Relates to** CPC 844, Data base services

D312 ADP Optical Scanning Services. **Relates to** CPC 843, Data processing services, including processing, tabulation and facilities management services

D313 Computer Aided Design/Computer Aided Manufacturing (CAD/CAM) Services. **Relates to** CPC 842, Software implementation services, including systems and software consulting services,

systems analysis, design, programming and maintenance services

D314 ADP System Acquisition Support Services (Includes preparation of statement of work, benchmarks, specifications, etc.). **Relates to** CPC 844, Data base services

D315 Digitizing Services (Includes cartographic and geographic information). **Relates to** CPC 843, Data processing services, including processing, tabulation and facilities management services

D316 Telecommunications Network Management Services. **Relates to** CPC 7523, Data transmission services and Electronic data interchange (EDI)

D317 Automated News Services, Data Services, or Other Information Services. Buying data (the electronic equivalent of books, periodicals, newspapers, etc.). **Relates to** CPC 7523, Electronic mail, voice mail, on-line information and data base retrieval and electronic data interchange (EDI)

D399 Other ADP and Telecommunications Services (incl. data storage on tapes, Compact Disk (CD), etc.) [specifically related to ADP services]. **Relates to** CPC 849, Other computer services

E. Environmental Services

E101 Air Quality Support Services. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E102 Industrial Investigation Surveys and Technical Support Related to Air Pollution. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E103 Water Quality Support Services. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E104 Industrial Investigation Surveys and Technical Support Related to Water Pollution. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E106 Toxic Substances Support Services. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E107 Hazardous Substance Analysis. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E108 Hazardous Substance Removal, Cleanup, and Disposal Services and Operational Support. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and other services

E109 Leaking Underground Storage Tank Support Services. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and other services

E110 Industrial Investigations, Surveys and Technical Support for Multiple Pollutants. **Relates to** CPC 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment

E111 Oil Spill Response including Cleanup, Removal, Disposal and Operational Support. **Relates to CPC:** 883, Services incidental to mining; 940, Sewage and refuse disposal, sanitation and other services

E199 Other Environmental Services. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

F. Natural Resources Services

F001 Forest/Range Fire Suppression/Presuppression Services (incl. Water Bombing). **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F002 Forest/Range Fire Rehabilitation Services (non-construction). **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F003 Forest Tree Planting Services. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F007 Seedling Production/Transplanting Services. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F008 Tree Breeding Services (incl. ornamental shrub). **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F009 Tree Thinning Services. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F010 Other Range/Forest Improvements Services (non-construction). **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F011 Pesticides /Insecticides Support Services {specifically related to forestry and logging]. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F040 Surface Mining Reclamation Services (non-construction). **Relates to** CPC 883, Services incidental to mining, including drilling and field services

F041 Well Drilling. **Relates to** CPC 883, Services incidental to mining, including drilling and field services

F042 Other Services Incidental to Mining Except Those Listed in F040 and F041. **Relates to** CPC 883, Services incidental to mining, including drilling and field services

F051 Survey Line Clearing Services. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

H. Quality Control, Testing, Inspection and Technical Representative Services
[except with reference to FSC 58 and transportation equipment]. **Relates to** CPC 8676, Technical testing and analysis services including quality control and inspection (except with reference to FSC 58 and transportation equipment

J. Maintenance, Repair, Modification, Rebuilding and Installation of Goods/Equipment - JX Repair
[specifically the repair of: personal and household goods; footwear and leather goods; electrical household appliances; watches, clocks, jewellery, garment and household textile; fabricated metal products machinery and equipment; accounting and computing machinery; electrical

machinery and apparatus; and, medical, precision, and optical instruments in the following FSCs: 65, Medical, dental, and veterinary equipment and supplies; 66, Instruments and laboratory equipment; 67, Photographic equipment; 70, General purpose ADP Supplies and support equipment; 71, Furniture; 72, Household and commercial furnishings and appliances; 73, Food preparation and servicing equipment; 74, Office machines, text processing systems and visible recording equipment; 75, Office supplies and devices; 77, Musical instruments, phonographs, and home-type radios; 78, Recreational and athletic equipment; 84, Clothing, individual equipment and insignia]. **Relates to CPC:** 633, Repair services of personal and household goods; 8861 - 8864 & 8866, Repair services incidental to metal products, machinery and equipment

K. Custodial Operations and Related Services

K100 Custodial - Janitorial Services. **Relates to** CPC 874, Building cleaning services

K102 Food Services. **Relates to** CPC 642/3, Food and beverage serving services

K104 Trash/Garbage Collection Services - Including Portable Sanitation Services. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and similar services

K106 Insect and Rodent Control Services. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and similar services

K111 Carpet Cleaning. **Relates to** CPC 874, Building cleaning services

K114 Waste Treatment and Storage. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and similar services

K199 Other Custodial and Related Services. **Relates to CPC:** 641, Hotel and similar accommodation services; 874, Building cleaning services; 940, Sewage and refuse disposal, sanitation and similar services

R. Professional, Administrative and Management Support Services

R001 Specifications Development Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R002 Technology Sharing/Utilization Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R003 Legal Services [specifically advisory services on foreign and international law]. **Relates to** CPC 861 Legal services (advisory services on foreign and international law)

R005 Technical Assistance. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R006 Technical Writing Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R007 Systems Engineering Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R008 Engineering and Technical Services (incl. Mechanical, Electrical, Chemical, Electronic Engineering). **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R009 Accounting Services. **Relates to** CPC 862, Accounting, auditing and bookkeeping services

R010 Auditing Services. **Relates to** CPC 862, Accounting, auditing and bookkeeping services

R011 Ongoing Audit Operations Support. **Relates to** CPC 862, Accounting, auditing and bookkeeping services

R013 Real Property Appraisals Services. **Relates to** CPC 822, Real estate services on a fee or contract basis

R014 Operations Research Studies / Quantitative Analysis Studies. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R015 Simulation. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R019 Other Professional Services. **Relates to CPC:** 863, Taxation services (excl. legal serv); 8660, Services related to management consulting (except 66602, Arbitration and conciliation services)

R103 Courier and Messenger Services. **Relates to CPC:** 7512, Commercial courier services (including multi-modal); 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R111 Personal Property Management Services. **Relates to CPC:** 821, Real estate services involving own or leased property; 822, Real estate services on a fee or contract basis

R112 Information Retrieval (non-automated). **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R113 Data Collection Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R114 Logistics Support Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R115 Contract, Procurement, and Acquisition Support Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R118 Real Estate Brokerage Services. **Relates to CPC:** 821, Real estate services involving own or leased property; 822, Real estate services on a fee or contract basis

R119 Industrial Hygienics. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R120 Policy Review/Development Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R121 Program Evaluation Studies. **Relates to CPC:** 86501, General management consulting; 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R122 Program Management/Support Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R123 Program Review/Development Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R199 Other Administrative and Management Support Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

V. Transportation, Travel and Relocation Services

V503 Travel Agent Services. **Relates to** CPC 7471, Travel agency and tour operator services

W. Lease and Rental of Equipment

[specifically: agricultural machinery and equipment without operators; construction machinery and equipment without operators; office machinery and equipment (including computers) without operators; and other machinery and equipment without operators; furniture and other household appliances; pleasure and leisure equipment; and other personal and household goods in the following FSCs: 37, Agricultural machinery and equipment; 38, Construction, mining, excavating and highway maintenance equipment; 65, Medical, dental, and veterinary equipment and supplies; 66, Instruments and laboratory equipment; 67, Photographic equipment; 70, General purpose ADP Supplies and support equipment; 71, Furniture; 72, Household and commercial furnishings and appliances; 73, Food preparation and serving equipment; 74, Office machines, text processing systems and visible recording equipment; 75, Office supplies and devices; 77, Musical instruments, phonographs, and home-type radios; 78, Recreational and athletic equipment; 84, Clothing, individual equipment and insignia]. **Relates to CPC:** 83106 to 83109, Leasing or rental services concerning machinery and equipment without operator; 83203 to 83209, Leasing or rental services concerning personal and household goods.

Annex 4.2: Canada-Korea Agreement on the Procurement of Telecommunications Equipment (CKTEA)

Agreement between

the Government of the Republic of Korea

and

the Government of Canada

on the Procurement of Telecommunications Equipment

The Government of the Republic of Korea (hereinafter "Korea"), of the one part, and **the Government of Canada** (hereinafter "Canada"), of the other part (hereinafter collectively referred to as the "Parties" and singularly as a "Party"),

Recognizing the vital role played by telecommunications services and infrastructures in promoting and sustaining economic growth;

Reaffirming the Parties' obligations under the World Trade Organization ("WTO") agreements, including the WTO Agreement on Government Procurement (the "AGP"), the Ministerial Declaration on Trade in Information Technology Products (the "ITA") and the WTO Fourth Protocol to the General Agreement on Trade in Services (the "GATS"), also referred to as the WTO Agreement on Basic Telecommunications ("the GBT Agreement");

Considering the Parties' commitment to liberalize their respective telecommunications equipment, government procurement and basic telecommunications service markets to foreign competition in accordance with GATT 1994, the AGP and the GBT Agreement, respectively;

Understanding that the increased competition resulting from the implementation of these WTO agreements by Korea and Canada will encourage telecommunications equipment manufacturers and service providers to compete vigorously with one another and to offer the best goods and services for the most competitive prices possible;

Seeking to extend reciprocal, transparent and non-discriminatory access for the Parties' telecommunications equipment manufacturers and service providers to procurement by entities covered by this Agreement; and

Affirming that the competitiveness of suppliers and service providers, not government intervention, should be the principal determinant of industrial success and international trade;

Have agreed as follows:

Article 1

Objective, Definitions and Scope of the Agreement

1. The purpose of this Agreement is to secure reciprocal, transparent and non-discriminatory access for the Parties' suppliers and service providers to the procurement of goods and incidental services by the entities listed in Annex 1(a) and 1(b) (hereinafter collectively referred to as the "entities" and singularly as an "entity").

2. For the purpose of this Agreement:

(a) "goods" means:

(i) telecommunications (wireline and wireless) equipment and materials originating in the territories of the Parties that are components of telecommunications networks, including switching, transmission, access and terminal equipment, or that are used in the development, configuration, installation, operation, maintenance, repair and management of telecommunications networks; and

(ii) research and development equipment, testing and measurement equipment and training equipment that are included in a tender for the procurement of telecommunications equipment and materials covered by this Agreement.

(b) "incidental service" means any service that is included in a tender for the procurement of a good covered by this Agreement.

(c) "territory" means:

(i) with respect to Korea, the territory of Korea as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial areas over which Korea exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of natural resources of such areas.

(ii) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

3. This Agreement applies to any laws, regulations, procedures or practices of the Parties relating to procurement:

(a) by entities listed in Annex 1(a) in the case of Korea and in Annex 1(b) in the case of Canada;

(b) of goods and incidental services; and

(c) where the value of the contract to be awarded is a minimum of 130,000 SDR (Special Drawing Rights).

4. The value of SDR in Korean Won and Canadian Dollars shall be fixed in accordance with the procedures established by the WTO Committee on Government Procurement and specifically the Decision on Procedural Matters under the AGP (1994) - Modalities for Notifying Threshold Figures in National Currencies (GPA/1 - Annex 3).

5. This Agreement does not apply to the following contracts:

(a) procurement of goods and services with a view to commercial resale or use in the production of goods for commercial sale;

(b) for Korea:

- single tendering procurement involving set-asides for small and medium-sized businesses;

- procurement of satellites pursuant to Korea's Aviation and Space Industry Development Promotion Law for a five-year period commencing on January 1, 1997 on which Korea's accession to the AGP became effective; and

(c) for Canada:

- procurement in respect of set-asides for small and minority businesses;

- procurement for the Departments of Transport, Fisheries and Oceans, and Communications respecting Federal Supply Classifications 36, 70 and 74.

Article 2

Market Access and Principles of Non-discrimination

With respect to the procurement of goods and incidental services by the entities, each Party shall provide to the goods and incidental services of the other Party, and to the suppliers of such goods and incidental services of the other Party, treatment no less favourable than that accorded to its own goods, incidental services and suppliers, and the goods, incidental services and suppliers of any third country.

Article 3

Procurement Procedures

1. Subject to paragraph 2 of this Article, the Parties agree, for the entities' procurement covered by this Agreement, to incorporate into this Agreement by reference the following articles of the AGP, as amended from time to time, *mutatis mutandis*, except to the extent that the procedures and practices contained therein are modified by this Agreement:

Article II	Valuation of Contracts
Article IV	Rules of Origin
Article VI	Technical Specifications
Article VII	Tendering Procedures
Article VIII	Qualification of Suppliers
Article IX	Invitation to Participate Regarding Intended Procurement
Article X	Selection Procedures
Article XI	Time-limits for Tendering and Delivery
Article XII	Tender Documentation
Article XIII	Submission, Receipt and Opening of Tenders and awarding of Contracts
Article XIV	Negotiation
Article XV	Limited Tendering
Article XVII	Transparency
Article XVIII	Information and Review as Regards Obligations of Entities
Article XIX	Information and Review as Regards Obligations of Parties
Article XXIII	Exceptions to the Agreement

2. The Parties agree that, for the purposes of AGP Article IX and XVIII incorporated by reference into this Agreement, notice shall be published in the appropriate publication listed in Annex 3 of this Agreement.

3. In the qualification and selection of suppliers, goods and incidental services, evaluation of bids and award of contracts:

(a) the entities shall not, either explicitly or implicitly, impose, seek or consider offsets[1]; and

(b) the private sector telecommunications operators in the territories of the Parties shall not

[1] For the purpose of this Agreement, offsets include measures used to encourage local development or improve the balance of payments accounts by means of domestic content, licensing and/or transfer of technology, counter-trade, investment requirements, or similar requirements.

be required or encouraged by the Parties, explicitly or implicitly, to impose, seek or consider offsets.

4. A Party or an entity of a Party may limit suppliers who qualify to those that can demonstrate that accepting their bid will not result in incompatibility, technical difficulty or disproportionately high costs in the operation and maintenance of the network of the Party or the entity of the Party. Such a limitation of suppliers may not be applied to avoid maximum possible competition or to constitute a means of discriminating against suppliers of the other Party or protecting domestic suppliers.

Article 4

Bid Challenge Procedures

With respect to procurement by the entities, the Parties shall provide non- discriminatory, timely, transparent and effective procedures enabling suppliers and service providers to challenge alleged breaches of this Agreement arising in the context of procurement in which they have, or have had, an interest. Consultation and challenge procedures involving the entities and bodies reviewing bid challenges shall include, as a minimum, those procedures set out in Article XX of the AGP, *mutatis mutandis*. The entities shall normally follow the recommendations of their respective review bodies.

Article 5

Consultations and Dispute Settlement

1. Unless otherwise mutually agreed, the Parties shall meet no less than once a year to discuss any matter affecting the operation and implementation of this Agreement, including a review of the Annexes to this Agreement, with a view to updating the Annexes to reflect changes in the Parties' telecommunications services and equipment markets, as well as any other issue relating to this Agreement.

2. Where necessary, either Party may request a consultation to discuss any aspect of this Agreement. When a Party requests consultations on any matter affecting the operation of this Agreement, such consultations shall be held not later than 30 days following the date on which the request is received, unless otherwise mutually agreed by the Parties.

3. To the extent necessary to ensure effective implementation of this Agreement, the Parties shall, upon the request of either Party, exchange information on legislation, other measures or imminent changes affecting or likely to affect procurement policies or practices of entities covered by this Agreement.

4. Each Party shall give sympathetic consideration to the concern of the other Party and work to reach a mutually acceptable resolution of any issue arising in connection with the interpretation or application of this Agreement.

5. If either Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, it may request consultations under this Article.

6. In the event of a dispute under this Agreement, the Parties shall endeavour to resolve the dispute by means of consultations within 90 days of the date of the initial request for consultations. The consultation period can be extended upon the mutual agreement of the Parties.

7. If a dispute is not resolved through consultations between the Parties within 90 days of the date of the initial request for consultations or such other period of time as may be mutually agreed upon, either Party may initiate an arbitration proceeding. The arbitration proceeding shall be initiated and governed according to the Arbitration Procedures set forth in Annex 2 to this

Agreement.

Article 6

Application of Other Agreements

The Parties affirm their rights and obligations pursuant to the WTO, the AGP and other multilateral agreements negotiated under the auspices of the WTO. In the event of any inconsistency between this Agreement and any agreement between the Parties other than those multilateral agreements mentioned above, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement or agreed by the Parties in writing.

Article 7

Final Provisions

1. This Agreement shall enter into force on the first day of the month following the date on which the Parties have notified each other that their implementation process has been completed.

2. The Parties may agree on any modification of, or addition to, this Agreement, including the updating of the list of the entities of the Parties due to, among other things, a change in the legal status of an entity, by mutual consent.

3. When so agreed and approved in accordance with the applicable legal procedure of each Party, a modification or addition shall constitute an integral part of this Agreement.

4. If a Party wishes to terminate this Agreement, it shall notify the other Party in writing of such intention, and the termination of this Agreement will take effect 180 days after the date on which the notification is received.

5. The Annexes attached to this Agreement shall form an integral part of this Agreement.

6. The provisions of this Agreement shall apply to the entities' successors.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Ottawa, this 5th day of July 1999, in the English, French and Korean languages, each text being equally authentic.

_____	_____
For the Government of the Republic of Korea	**For the Government of Canada**

Annex 1

Entity Coverage

Annex 1 a) - Korea

Entities which procure in accordance with the provisions of this Agreement

Korea Telecom (KT)

Annex 1 b) - Canada

Entities which procure in accordance with the provisions of this Agreement

Department of Agriculture
Department of Communications
Department of Consumer and Corporate Affairs
Department of Employment and Immigration
Immigration and Refugee Board
Employment and Immigration Commission
Department of Energy, Mines and Resources
Atomic Energy Control Board
National Energy Board (on its own account)
Department of the Environment
Department of External Affairs
Canadian International Development Agency (on its own account)
Department of Finance
Office of the Superintendent of Financial Institutions
Canadian International Trade Tribunal
Municipal Development and Loan Board
Department of Fisheries and Oceans
Department of Forestry
Department of Indian Affairs and Northern Development
Department of Industry, Science and Technology
Science Council of Canada
National Research Council of Canada
Natural Sciences and Engineering Research Council of Canada
Department of Justice
Canadian Human Rights Commission
Statute Revision Commission
Supreme Court of Canada
Department of Labour
Canada Labour Relations Board
Department of National Health and Welfare
Medical Research Council
Department of National Revenue
Department of Public Works
Department of Secretary of State of Canada
Social Science and Humanities Research Council
Office of the Coordinator, Status of Women
Public Service Commission
Department of the Solicitor General
Correctional Service of Canada
National Parole Board
Department of Supply and Services (on its own account)
Canadian General Standards Board

Department of Transport (except the Canadian Coast Guard)
Treasury Board Secretariat and the Office of the Controller General
Department of Veterans Affairs
Veterans Land Administration
Department of Western Economic Diversification (on its own account)
Atlantic Canada Opportunities Agency (on its own account)
Auditor General of Canada
Federal Office of Regional Development (Quebec)
(on its own account)
Canadian Centre for Management Development
Canadian Radio-Television and Telecommunications Commission (on its own account)
Canadian Sentencing Commission
Civil Aviation Tribunal
Commissioner for Federal Judicial Affairs
Competition Tribunal Registry
Copyright Board
Emergency Preparedness Canada
Federal Court of Canada
Grain Transportation Agency (on its own account)
Hazardous Materials Information Review Commission
Information and Privacy Commissioners
Investment Canada
Department of Multiculturalism and Citizenship
The National Archives of Canada
National Farm Products Marketing Council
The National Library
National Transportation Agency (on its own account)
Northern Pipeline Agency (on its own account)
Patented Medicine Prices Review Board
Petroleum Monitoring Agency
Privy Council Office
Canadian Intergovernmental Conference Secretariat
Commissioner of Official Languages
Public Service Staff Relations Board
Office of the Secretary to the Governor General
Office of the Chief Electoral Officer
Federal Provincial Relations Office
Procurement Review Board
Statistics Canada
Tax Court of Canada, Registry of the
Agricultural Stabilization Board
Canadian Aviation Safety Board
Canadian Centre for Occupational Health and Safety
Canadian Transportation Accident Investigations and Safety Board
Director of Soldier Settlement
Director, The Veterans Land Act
Fisheries Prices Support Board
National Battlefields Commission

Annex 2

Arbitration Procedures

1. In the event of a dispute under this Agreement which the Parties are unable to resolve within 90 days of the date of the initial request for consultations or such other period of time as may be mutually agreed upon, either Party may initiate an arbitration proceeding, pursuant to Article 5, paragraph 7 of this Agreement. Such proceedings shall be subject to the procedures set out in this Annex.

2. Within 60 days after receipt of a request for arbitration through diplomatic channels, an arbitral panel shall be constituted by each Party appointing one member to the arbitral panel. The two members shall then select a national of a third party country who, upon approval by the Parties, shall be appointed the Chairman of the arbitral panel. The Chairman shall be appointed within 60 days from the date of appointment of the other two members of the arbitral panel.

3. If, within the periods specified in paragraph 2 of this Annex, the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Party or is prevented from discharging the said function, the Member of the International Court of Justice next in seniority, who is not a national of either Party, shall be invited to make the necessary appointments.

4. The arbitral panel shall determine its own procedures. The arbitral panel shall reach its decision by a majority of votes. Such decision shall be binding on both Parties. Unless otherwise agreed, the decision of the arbitral panel shall be rendered within 180 days of the appointment of the Chairman in accordance with paragraphs 2 or 3 of this Annex.

5. Each Party shall bear the costs of its own member of the panel and of its representation in the arbitral proceedings; the costs related to the Chairman and any remaining costs shall be borne equally by the Parties. The arbitral panel may, however, in its decision direct that a higher proportion of costs shall be borne by either of the Parties, and this award shall be binding on both Parties.

6. The Parties shall implement the panel decision. If either Party cannot agree on the manner for resolution of the dispute, it will notify the other Party within 30 days of the rendering of the panel decision. The non-complying Party may propose compensation or other remedial action to the other Party and to the panel. If the other Party cannot agree to such proposed compensation or other remedial action within 60 days after the rendering of the panel decision, it may propose to the panel the suspension or withdrawal of equivalent benefits under this Agreement. Such suspension or withdrawal shall take effect 30 days after it is proposed, unless the panel disapproves such action; in the latter event, the panel shall make a ruling binding on the Parties respecting suspension or withdrawal of equivalent benefits.

Annex 3

Publications Utilized

Korea -

Major daily newspapers of national circulation
Planned internet homepage of KT
Contact point: The Quality Assurance and Logistics Support Group of KT

Canada -

Government Electronic Tendering System

Annex 4

Origin of Goods and Services

1. The Parties agree to review their existing non-preferential rules of origin regimes for the purpose of establishing mutually acceptable rules of origin governing the scope of goods subject to this Agreement, as referenced in Article 1.2(a), within 180 days after the signing of this Agreement. In establishing such rules of origin, the Parties shall take into account principles applied in the normal course of international trade, such as the use of changes in tariff classification to reflect substantial transformation.

2. The Parties agree, for the entities' procurement covered by this Agreement, to incorporate into this Agreement by reference Article IV, paragraph 1 of the AGP.

3. The Parties agree to examine the results of the work programme for the harmonization of rules of origin for goods currently underway under the Agreement on Rules of Origin in Annex 1A of the WTO Agreement and the negotiations regarding trade in services with the objective of adopting those results as the rules of origin for the purpose of implementing their commitments under this Agreement.

4. For the purpose of the provision of an incidental service, each Party shall grant temporary entry to service suppliers of the other Party who qualify according to its immigration laws and regulations and are otherwise qualified for entry under applicable measures relating to public health and safety and national security.

5. Incidental services shall be deemed to originate in the territory of a Party if at least 50% of the value of such incidental services is provided by a person or persons of that Party.

6. For the purposes of this Agreement, "person" has the same meaning as in Article XXVIII of the GATS.

7. If a Party or an entity of a Party is unable to verify the origin of goods or services tendered in a procurement subject to this Agreement, pursuant to the rules of origin established by the Parties under this Annex, that Party or the entity of that Party may refuse to consider the tender.

Chapter 5 - Sourcing Strategy

Determining the Extent of Competition

5.001 (1994-06-23) Whenever possible, contractors are to be selected using a competitive process. The flexibility to depart from this approach depends on the procurement framework being followed. The type of competitive solicitation that may be used will also depend on the procurement framework.

5.002 (2002-12-13) The *Government Contracts Regulations* (GCR) require the competitive soliciting of bids before any contract is entered into. However, contracts may be entered into without soliciting bids when:

"(a) the need is one of pressing emergency in which delay would be injurious to the public interest;

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.

(b) the estimated expenditure does not exceed $25,000; or $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 $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;

Contracting authorities are nevertheless expected to solicit bids whenever it is cost effective to do so.

(c) the nature of the work is such that it would not be in the public interest to solicit bids;

"This provision is normally reserved for dealing with security considerations or to alleviate some significant socio-economic disparity.

(d) only one supplier person or firm is capable of performing the contract.

This exception is quite definite and should be invoked only where patent or copyright requirements or technical compatibility factors and technological expertise suggest that only one contractor exists."

Treasury Board Contracting Policy
Section 10.2

Use of the National Security Exceptions

5.007 (2004-12-10) The national security exceptions provided for in the North America Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement (WTO-AGP), the Canada-Korea Telecommunications Equipment Agreement (CKTEA) and the Agreement on Internal Trade (AIT) allow Canada to remove a procurement from some or all of the obligations of the relevant trade agreement(s) where Canada considers it necessary to do so in order to protect its national security interests specified in the text of the national security exceptions. The purpose of the national security exceptions is to ensure that parties to the

agreements are not required in any way to compromise these interests through application of the obligations of the trade agreements.

5.008 (2003-12-12) Texts of the National Security Exceptions

(a) NAFTA: Article 1018: Exceptions

"1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes."

(b) WTO-AGP: Article XXIII: Exceptions to the Agreement

"1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes."

(c) CKTEA: Incorporates WTO-AGP Article XXIII by reference.

(d) AIT: Article 1804: National Security

"Nothing in this Agreement shall be construed to:

(i) require the Federal Government to provide, or allow access to, information the disclosure of which it determines to be contrary to national security; or

(ii) prevent the Federal Government from taking any action that it considers necessary to protect national security interests or, pursuant to its international obligations, for the maintenance of international peace and security."

5.009 (2003-12-12) The national security exceptions can be invoked to entirely remove the procurement from the obligations of the relevant trade agreements or to allow the use of some otherwise non-conforming measure.

5.010 (2004-05-14) The Canadian International Trade Tribunal (CITT), in its decision PR-98-005, has found that "the most senior level of substantive policy formulation and advice to the department on all supply operations activities..." has the authority to invoke the use of the national security exception, to exclude a procurement from the NAFTA, WTO-AGP, CKTEA and the AIT. For Public Works and Government Services Canada (PWGSC) that authority is the Assistant Deputy Minister of the Acquisitions Branch (ADM/AB).

5.011 (2004-05-14) Furthermore, PWGSC has decided that this specific authority will not be delegated to a lower official level because of the nature of the exception and having regard to s.24(2)(d) of the *Department of Public Works and Government Services Act*. PWGSC has further decided that a national security exception will not be invoked by anyone other than the ADM/AB.

5.012 (2003-12-12) Therefore, the following procedure is now in effect:

(a) All requests to invoke the national security exceptions to exclude a procurement from the WTO-AGP, NAFTA, CKTEA or the AIT, or any combination of the agreements, will

normally be submitted by the client department to the ADM/AB for approval, regardless of dollar value.

(b) A request must be in the form of a letter from the responsible ADM, or equivalent to the ADM level, at the client department. The letter must explain the nature of the proposed procurement and, depending upon which trade agreement(s) applies, how it relates to:

(i) Canada's "national security interests" or, pursuant to Canada's international obligations, "the maintenance of international peace and security". (AIT: Article 1804(b)); and/or

(ii) Canada's "essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes". (NAFTA: Article 1018.1 / WTO-AGP: Article XXIII).

(c) In reviewing requests to invoke the national security exception, the ADM/AB will be considering only the issue of whether or not to invoke the national security exception and will not be considering, at that time, other matters such as procurement methods, Procurement Plans or authority to enter into the contract. Client departments should work with contracting officers in determining which method of procurement should be used, in parallel with any request for approval of a national security exception, bearing in mind that even in situations where the national security exception is invoked, it remains government policy to compete requirements, subject to the exceptions to competitive contracting provided in the *Government Contracts Regulations* (GCRs).

(d) The utilization of the national security exceptions must be documented. In documents used to seek authority to enter into contract, and on the file, contracting officers must explain clearly that the national security exception is being invoked, specifying each of the trade agreements from which the procurement is being excluded and include a copy of the NSE approval on the file.

5.013 (2003-12-12) Contracting officers should bear in mind that invoking a national security exception to the trade agreements does not affect the obligation to comply with the GCRs in respect of such matters as sole source justifications, other sourcing strategy issues and contracting authority limits. Procurements for which an NSE is invoked remain subject to other relevant regulations and governmental and departmental policies, which may include posting a Notice of Proposed Procurement or an Advanced Contract Award Notice on the Government Electronic Tendering Services where appropriate, though the requirements of security may, in some cases, preclude such actions.

5.014 (2004-12-10) Within PWGSC, the Acquisition Strategy and Relations Directorate (ASRD) reviews, on behalf of the ADM/AB, requests to invoke the national security exception. Once approved, ASRD will notify the ADM/AB who, in turn, will provide a written confirmation to the client department that the national security exception has been invoked.

Contracting officers seeking advice to aid client departments in properly framing and requesting a national security exception should contact ASRD at (819) 956-6501.

Comprehensive Land Claims Agreements

5.020 (1996-01-01) Dependent upon the requirement, competition may be restricted to claimant group enterprises located within a certain Comprehensive Land Claim Settlement Area (CLCSA). For example, certain agreements make provision for the "right of first refusal" for the provision of certain commodities, i.e. business opportunities and ventures that are contracted out with respect to Parks and the right of first refusal to any new licenses to carry on economic activities related to wildlife and tourism.

Other agreements make provisions for giving the claimant group enterprises "first consideration or first priority" in sourcing certain requirements, i.e. silviculture services, management of designated heritage sites, and first consideration in providing technical and support services for contracts related to surveying the CLCSA.

5.021 (1996-06-03) Standing Offers and other supply arrangements are also affected by CLCAs. Contracting officers must notify all claimant groups of this type of procurement opportunity, especially when the contracting officer is unaware of which client department will issue a call-up against a standing offer.

The origin of the order (i.e. ordering office) does not determine the applicability of a CLCA, only the final delivery point.

5.022 (2004-12-10) For any procurement which has contracting activities that take place within a CLCSA, contracting officers should consult the Acquisition Policy and Process Directorate (APPD), at telephone number (819) 956-4744 to determine whether a CLCA may affect the overall procurement strategy. APPD will assist contracting officers in identifying these obligations and in developing methods of meeting them on a case-by-case basis.

NAFTA, WTO-AGP, CKTEA and AIT

5.030 (2004-12-10) With the introduction of trade agreements like North America Free Trade Agreement (NAFTA), World Trade Organization Agreement on Government Procurement (WTO-AGP), Canada-Korea Telecommunications Equipment Agreement (CKTEA) and Agreement on Internal Trade (AIT), the non-competitive approach to the procurement process is limited tendering. Limited tendering is a process which allows deviations from the competitive process including the ability to contact a sole or single supplier or a number of suppliers individually. This in fact means that it is possible to have a competitive procurement within a limited tendering procurement. This concept should be kept in mind when examining the following circumstances (limited tendering reasons) for NAFTA, WTO-AGP, CKTEA and AIT. (See 5.031, 5.032, 5.033, 5.036 and 5.037.) For procurements covered by the CKTEA, the limited tendering rules of the WTO-AGP are applied (see Annex 4.2, ARTICLE 3).

In procedures 5.031, 5.032, 5.033, 5.036 and 5.037 the applicable Contract Award Process (CAP) Code is included with each of the limited tendering reasons. This was done in order to ensure that the comparable limited tendering reason for each of the agreements (NAFTA, WTO-AGP, CKTEA and AIT) will be coded by contracting officers in a consistent manner. Annex 5.3 - Contract Award Process (CAP) Codes illustrates the permissible CAP Codes depending on the type of solicitation chosen for the particular procurement.

"...limited tendering procedures are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Parties or protection of domestic suppliers." (NAFTA Agreement, Article 1016.1.)

5.031 (2001-12-10) For procurements subject to either NAFTA, WTO-AGP, CKTEA and AIT, limited tendering procedures may only be used 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 tenders submitted come 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; (CAP Code 05)

(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; (CAP Code 71)

(c) where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures; (CAP Code 81)

(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 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; (CAP Code 74) and

* For procurements subject to AIT only, compatibility with existing equipment or services is acceptable and would be subject to a less stringent test than the interchangeability under NAFTA, WTO-AGP, and CKTEA.

(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. 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. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be competed, where applicable; (CAP Code 72)

(f) for goods purchased on a commodity market; (CAP Code 20)

(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; (CAP Code 21) and

(h) for a contract to be awarded to the winner of an (architectural) design** contest (CAP Code 22), on condition that 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; and

(ii) organized with a view to awarding the design contract to the winner; and

(iii) to be judged by an independent jury.***

** For procurements subject to NAFTA only, the design contest is specifically architectural.

*** For procurements subject to AIT only, conditions for an independent jury are not required.

5.032 (1996-01-01) In addition, for procurements subject to NAFTA and/or AIT, the use of limited tendering procedures may also be applied 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 (CAP Code 23).

5.033 (1996-06-03) In addition, for procurements subject to **WTO-AGP alone**, limited tendering procedures may be used under the following conditions:

(a) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become 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 percent of the amount of the main contract; (CAP Code 24) and

(b) 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 of the WTO-AGP 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 (CAP Code 25).

5.036 (1996-01-01) In addition, for procurements subject to AIT only (see Article 506), the following circumstances may be used to justify deviations from the competitive procurement procedures of the AIT, provided that it is not done so for the purpose of avoiding competition between suppliers or in order to discriminate against suppliers of any other Party:

(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 Five of the AIT; (CAP Code 87)

(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 for use in the construction or repair of roads; (CAP Code 87) and

(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. (CAP Code 90)

5.037 (1996-01-01) Where only one supplier is able to meet the requirements of a procurement, an entity may use procurement procedures that are different from those described in AIT Article 506 (paragraphs 1 through 10), in the following circumstances:

(a) for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly; (CAP Code 86)

(b) for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor; (CAP Code 87)

(c) 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; (CAP Code 87)

(d) for the procurement of subscriptions to newspapers, magazines or other periodicals; (CAP Code 87) and

(e) for the procurement of real property (CAP Code 87).

5.038 (1996-01-01) The client must provide the rationale for any exception to competitive procurement. It is up to the contracting officer to determine the acceptability of the rationale. If there is no or inadequate substantiation, the contracting officer must advise the client of alternative products or sources, and attempt to reach agreement with the client on the most appropriate procurement strategy. When differences cannot be resolved, the next level of management should be consulted.

If a sole source issue cannot be resolved up to the director general level, a recommendation is to be submitted to the Departmental Executive Committee, and possible involvement of the Minister considered.

Competitive Processes

5.040 (1997-03-31) It is the contracting officer's responsibility to select the most effective process for notifying suppliers of a bid opportunity by taking into consideration the requirements of the trade agreements and the policies set out in this chapter.

Procurements Subject to Trade Agreements

5.041 (2001-12-10) For procurements subject to NAFTA, WTO-AGP, CKTEA or AIT, or a combination of these, public advertisement/notification provisions specified within these trade agreements must be followed. The procedures to be followed are generally consistent for all of the agreements. When there are inconsistencies, the contracting officer must select the procedures that demonstrate the highest example of openness, e.g. the longer of two bidding periods.

Competitive procurements covered by NAFTA and/or the WTO-AGP must be advertised on the Government Electronic Tendering Service (GETS) and in the *Government Business Opportunities (GBO)* only. Procurements that are covered by the AIT and/or CKTEA must be advertised on GETS only. A procurement that is covered by the AIT and/or the CKTEA, and is also covered by NAFTA or the WTO-AGP must be advertised on both GETS and in the GBO. Additional notification processes (e.g. direct contact with suppliers), are not permitted.

Publication on the GETS, and, in the GBO for NAFTA or the WTO-AGP procurements is required when using:

(a) Open tendering; and,

(b) Selective tendering,

(i) Covered by NAFTA and WTO-AGP (or these agreements in combination with other agreements including the AIT and/or CKTEA):

- When using a one-time source list, notice must be published to invite suppliers to qualify for inclusion on the list. Notice must also be given to solicit bids. This would normally require the publishing of two separate notices.

- When using a permanent source list, a notice must be published annually identifying the existence of the source list and how to qualify and notice must also be published for each bid solicitation involving the use of the list; and,

(ii) Covered by AIT only when using a one-time or permanent source list a notice must be published annually identifying the existence of the source list and how to qualify.

For procurements subject to the Comprehensive Land Claims Agreements (CLCAs), contracting officers must check the particular CLCA to ensure that correct notification has been provided.

Procurements Not Subject to Trade Agreements

5.043 (2002-12-13) For procurements not subject to trade agreements, government policy requires that bids be solicited competitively before entering into a contract. Competition can be achieved by soliciting bids through public advertising (GETS or other public media) or by referring to source lists. Non-competitive procurement will only be used in specific circumstances. (See 5.002.)

This is consistent with the *Government Contracts Regulations*, Part 1, Section 7, as follows:

"7. A contracting authority shall solicit bids by:

(a) giving public notice, in a manner consistent with generally accepted trade practices, of a call for bids respecting a proposed contract; or

(b) inviting bids on a proposed contract from suppliers on the supplier's list."

Public Advertising

5.044 (1997-09-15) PWGSC's preferred process for notifying potential suppliers is to publicly advertise requirements on the GETS. (See 7B.160.)

When advertising through the GETS may not achieve the necessary results, the use of other public media (e.g. newspapers, trade journals, etc.), in addition or instead, can be considered on a case-by-case basis. (See 5.048.)

When public advertising (GETS or other public media) is used, potential suppliers may be notified directly about the opportunity.

When public advertising other than the GETS is used, the procurement officer is responsible for preparing the Notice of Proposed Procurement and for distributing bid documents directly to suppliers. Ensure that the name and telephone number of the contracting officer is included in the notice. Any associated costs will be at the department's expense.

The Treasury Board Open Bidding Contracting Authorities can only be used when a procurement has been advertised on the GETS and/or in the GBO. When the GETS and/or GBO are not used, the traditional competitive authorities must be used. (See 6A.020.)

Source Lists

5.046 (2002-12-13) When public advertising is not considered the most effective means to notify potential suppliers of a bid opportunity, source lists must be used. Advertising on the GETS in order to generate a source list is an option which can be considered.

Source lists can be developed and maintained by individual sectors or regions for specific commodities. Suppliers may apply to be listed at any time, and all qualified suppliers are to be included on the list within a reasonably short time.

When using source lists, it is essential that the selection of potential suppliers is fair and ensures equity of opportunity.

Normally, where source lists are used, other than rotational source lists:

(a) any other supplier making a request may be provided with a bid solicitation and be considered for evaluation; and

(b) these lists may be supplemented by a contracting officer's knowledge of potential sources and recommendations made by the client.

Automated Source Lists, i.e. AVRS and SELECT, provide a systematic rotation of vendors in order to ensure equity of opportunity for suppliers, and must be used where they apply. For SELECT, only those firms identified in the rotation are entitled to be invited and to bid.

Selecting the Notification Process

5.047 (2002-12-13) Except for those procurements covered under NAFTA, WTO-AGP, CKTEA or AIT, public advertising (GETS or other public media) is not required for the following:

(a) Procurements for the protection of Canada's essential security interests; this can only be exercised when:

(i) the Department of National Defence (DND) certifies that the requirement meets national security requirements, or

(ii) the bid documentation from any client is classified "TOP SECRET", "SECRET" or "CONFIDENTIAL" or designated "PROTECTED";

(b) procurements from government rehabilitation institutions (e.g. CORCAN);

(c) local procurements made by Public Works and Government Services Canada (PWGSC) offices abroad;

(d) Major Crown Projects;

(e) procurements for bulk foods and fertilizer made in furtherance of "tied aid" to developing countries;

(f) procurements subject to direction by Cabinet, legislation or regulations such as the Small Arms Replacement Project, Munitions Supply Program, Foreign Military Sales, and Shipbuilding;

(g) procurements subject to the Canada/U.S. Defence Production Sharing Program, or the European Research, Development and Production agreements;

(h) procurements for the Canadian Commercial Corporation (CCC).

For these requirements, source lists may be appropriate.

5.048 (1997-09-15) When choosing a notification process other than the preferred GETS, contracting officers must have a clear rationale. Issues to be considered include the following:

(a) what are the reasons for not using the GETS?
(b) what are the expected benefits of using another process?
(c) how will an alternate sourcing strategy compare to the GETS:
- in achieving openness, fairness, transparency, and access?
- in achieving competitiveness, value for money, efficiency/economy, and client service?
(d) will the use of source lists or other public media withstand public scrutiny?

Combinations of notification processes may resolve any deficiencies in using one process alone.

The Treasury Board Open Bidding Contracting Authorities can only be used when a procurement has been advertised on the GETS and/or in the GBO. When the GETS and/or GBO are not used, the traditional competitive authorities must be used. (See 6A.020.)

NAFTA, WTO-AGP, CKTEA and AIT Tendering Approaches

5.050 (2001-12-10) For procurements under NAFTA, WTO-AGP, CKTEA or AIT, there are three tendering approaches.

(a) Open Tendering - where a Notice of Proposed Procurement (NPP) is advertised, any individual, firm or other eligible supplier is free to submit a bid.

Open Tendering is the preferred approach.

(b) Selective Tendering -

(i) Selective Tendering not involving the use of a permanent list of suppliers* - a two stage procurement where potential bidders express an interest in participating and meet predetermined qualifications for participation publicized in the NPP at the first stage. Bid documentation is issued to those bidders meeting the qualifications at the second stage. For NAFTA, WTO-AGP and CKTEA, an NPP must be published at both stages of the procurement (it is also acceptable to amend the original NPP once the bid closing date has been determined). Any supplier who wishes to bid at the second stage may do so, as long as there is sufficient time to carry out the qualification process.

(ii) Selective Tendering involving the use of a permanent list of suppliers - where a source list is developed and maintained and qualified suppliers for the product or service in question are issued the bid documentation. Any other potential supplier who requests bid documentation must be considered. For NAFTA, WTO-AGP, CKTEA and AIT, an annual notice of the existence of the source list must be published (use the NPP form). For AIT, when using a source list, all qualified suppliers in a given category on a source list must be invited to bid for all procurement in that category.

(c) Limited Tendering - a process which allows for deviations from the above procurement practices. In situations, where a specific limited tendering justification can be applied, limiting the number of suppliers, to one or more suppliers, is allowed (see 5.030).

*A permanent list of suppliers is a source list.

5.051 (2003-05-30) In addition to the above, specific government enterprises (Crown corporations) subject to NAFTA, Annex 1001.1a-2), may use a notice of planned procurement to advertise potential procurements. This notice is normally published at the start of a fiscal year and lists potential procurements for the enterprise in the upcoming fiscal year.

A response from potential suppliers to a notice of planned procurement is not required.

The notice of planned procurement may also be used as a notice regarding a qualification system. When used in this manner, a response from suppliers would be required; bid documentation is issued to those bidders meeting the qualifications.

Determining Eligible Bidders

5.060 (1995-07-01) Normally, any individual, firm or other entity may submit a bid.

5.061 (2004-12-10) A government department, agency, or Crown corporation (or a company owned, in whole or in part, by any of these), whether federal, provincial or municipal, or from another country, may be sourced if it:

(a) is the sole source for the good or service; or

(b) has established itself as competing with private industry. The organization must have proven, to the satisfaction of PWGSC, that it is indeed competing with private industry in the normal course of business. It must not have an unfair competitive advantage over other potential bidders, either through subsidization or through the absence of any liability to pay corporate income taxes; or

(c) is a federal service delivery unit which has been designated a Special Operating Agency (SOA) and is competing with private sector suppliers to provide goods or services to the federal government. See Treasury Board Secretariat (TBS) Population Affiliation Report, Section 6, for a list of SOAs.

Under the Common Services Policy, TBS confirmed that the following common service organization "is authorized to engage in the competitive process to serve departments."

Training and Development Canada (TDC) for the provision of training consulting services.

The Policy also allows departments and agencies to purchase services from Consulting and Audit Canada and TDC, as internal suppliers, on a negotiated, sole source basis.

Arrangements between government entities are not considered contracts within the meaning of the Government Contracts Regulations, the TBS Contracting Policy, and Canada's international agreements. An appropriate form of documentation for the procurement must be prepared with the assistance of Legal Services.

5.062 (1995-07-01) PWGSC, on behalf of the federal government, has entered into agreements in the form of Memoranda of Understanding (MOU) with all the provinces and territories. These agreements, which apply only to the ministries or departments specified in the MOUs, allow the federal and provincial/territorial governments to provide goods and services to each other by means of Supply Transfer Orders.

5.063 (1995-07-01) Universities and not-for-profit organizations may be sourced for knowledge-oriented requirements when private industry is not able or willing to undertake the work, or when the university or organization is a recognized centre of excellence in the particular field involved. In sourcing from universities or not-for-profit organizations, competition shall be used whenever possible.

5.065 (2004-05-14) Whenever possible, Public Works and Government Services Canada provides CORCAN (Special Operating Agency of Correctional Services of Canada) with adequate, stable and continuing market outlets for items or product lines identified in Supply Arrangement number E60PQ-000008/001/PQ.

If a procurement is to be sourced through CORCAN, the special procedures in Section 9A apply. Direct enquiries, by telephone, to the coordinator in Furniture Division, Commercial and Consumer Products Directorate, Acquisitions Branch, at (819) 956-3816.

Set-Aside Program for Aboriginal Business

5.066 (1997-03-31) In accordance with the Procurement Strategy for Aboriginal Business and the Set-Aside Program for Aboriginal Business announced on March 27, 1996, requirements designated by client departments as set aside will be restricted to qualified Aboriginal businesses. Detailed

procedures for conducting set aside procurements are set out in Section 9L - Set-Aside Program for Aboriginal Business - Conducting Set-Aside Procurements.

CKTEA

5.067 (2004-12-10) The Canada-Korea Telecommunications Equipment Agreement (CKTEA) is an international trade agreement signed by the Government of the Republic of Korea and the Government of Canada covering the procurement of telecommunications equipment (see 4.011). Any questions on application of the CKTEA should be directed to the Acquisition Strategy and Relations Directorate, at telephone number (819) 956-6497.

5.068 (2001-12-10) Under the CKTEA, a Covered Good is defined as:

(a) telecommunications (wireline and wireless) equipment and materials originating in the territories of Canada and Korea that are components of telecommunications networks, including switching, transmission, access and terminal equipment, or that are used in the development, configuration, installation, operation, maintenance, repair and management of telecommunications networks; and

(b) research and development equipment, testing and measurement equipment and training equipment that are included in a tender for the procurement of telecommunications equipment and materials covered by the CKTEA.

For procurements involving the following Federal Supply Classification (FSC) 58 categories, the procedures detailed in this Manual must always be followed:

N5805 Telephone and Telegraph Equipment
N5815 Teletype and Facsimile Equipment
N5820020 to N5820700 Radio Transmitters, Receivers and Transceivers

Other categories of FSC 58 may also be covered by the CKTEA if the good could be considered a Covered Good as defined above.

With the exception of items listed under FSC 58, procurement which may be considered procurement of a Covered Good in accordance with the above definition is also covered by the WTO-AGP. Procurement covered by both Agreements should follow procedures set out for the WTO-AGP, as Canada has committed through the WTO-AGP to open these procurements to Korea and the other WTO-AGP members.

For procurement covered by the CKTEA, but not by the WTO-AGP, the following definitions are applicable:

(a) A good is considered a Canadian or Korean Good, if it is considered so under Canada's "Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations". Article 8 of these Regulations, which provides for a NAFTA tariff preference override, cannot be used to determine whether a good is Canadian.

(b) "Incidental Service" means any service that is included in a tender for the procurement of a Covered Good under this Agreement.

A service provided by an individual based in Canada or Korea is considered a Canadian or Korean service, respectively. Where a requirement consists of only one service, which is being provided by more than one individual, the service will be considered Canadian or Korean if a minimum of 60 percent of the total bid price for the service is provided by individuals based in Canada or Korea respectively.

(c) "Territory" means:

(i) with respect to Korea, the territory of Korea as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial areas over which Korea exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of natural resources of such areas.

(ii) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources.

5.069 (2002-05-24) The bidder will certify Canadian and/or Korean content by signing a statement that the products offered meet the definition of Canadian and/or Korean Goods and Services. The certification forms are contained in the *Standard Acquisition Clauses and Conditions* (SACC) Manual, under clause numbers K5001T, K5002T, K5003T, K5004T, K5005T, K5006T, K5011T, K5013T and K5014T.

Canadian Content Policy

5.070 (2005-06-10) The Canadian Content Policy is a Cabinet-mandated policy. The Policy encourages industrial development in Canada by limiting, in specific circumstances, competition for government procurement opportunities to suppliers of Canadian goods and services.

The Policy applies to procurement carried out by the former Supply and Services Canada (SSC), now a part of Public Works and Government Services Canada. Therefore, it would not normally apply to construction procurement unless this procurement had been previously carried out by SSC.

Note: The complete text of the Canadian Content Policy can be found in Annex 5.1.

5.071 (2001-12-10) The Canadian Content Policy applies to competitive procurements, publicly advertised, with an estimated value of $25,000 or more, **except** for the following:

(a) government procurements subject to the NAFTA, WTO-AGP or CKTEA;

(b) procurements made in furtherance of aid to developing countries, but does apply to purchases made by the Canadian International Development Agency (CIDA) on its own account;

(c) procurements made by Public Works and Government Services Canada (PWGSC) Supply Operations Offices located outside Canada; and

(d) Cabinet-mandated Sourcing, including Sourcing Relating to Shipbuilding, Ship Repair, Refit and Mid-Life Modernization.

5.072 (2004-12-10) A good wholly manufactured or originating in Canada is considered a Canadian good. A product containing imported components may also be considered Canadian for the purpose of this policy when it has undergone sufficient change in Canada, in a manner that satisfies the definition specified under the North American Free Trade Agreement (NAFTA) Rules of Origin (see Annex 5.5). For photocopiers, computers and office equipment within Federal Supply Classification (FSC) groups 36, 70 and 74, only the products of CIRCLE Canada and MERIT Partnership Program firms or companies in Priority Group 1 prior to April 1992 are considered Canadian (See 5.073).

A service provided by an individual based in Canada is considered a Canadian service. Where a requirement consists of only one service, which is being provided by more than one individual,

the service will be considered Canadian if a minimum of 80 percent of the total bid price for the service is provided by individuals based in Canada.

5.073 (2005-06-10) Other Canadian Goods and Services:

(a) CIRCLE Canada and MERIT Partnership Program: For photocopiers, computers and office equipment within FSC groups 36, 70 and 74, only the products of the following firms are considered Canadian goods:

(i) MERIT Partner under the MERIT Partnership Program (administered by Industry Canada [IC] and Public Works and Government Services Canada [PWGSC]);

(ii) Companies which, on March 31,1992, were allocated to Priority Group 1 under the Priority Groups Policy in effect at that time; or

(iii) CIRCLE Canada companies as agreed on by IC and PWGSC.

(b) **Textiles**: Textiles are considered to be Canadian goods according to a modified rule of origin, copies of which are available from the Clothing and Textiles Division, Logistics, Electrical, Fuel and Transportation Directorate.

5.074 (2003-12-12) The bidder will certify Canadian content by signing a statement that the products offered meet the definition of Canadian Goods and Services. The certification forms are contained in the *Standard Acquisition Clauses and Conditions* (SACC) Manual under clause numbers K4001T, K4002T, K4003T, K4004T, K4005T, K4006T, K4011T, K4013T, and K4014T.

Procurement Review for Socio-Economic Benefits

5.090 (2003-05-30) In accordance with government objectives, as described in Treasury Board (TB) Procurement Review Policy, procurement strategies for goods and services between $2M and $100M are considered for potential socio-economic benefits.

5.091 (2003-05-30) The review process is carried out through the interdepartmental Procurement Review Committee (PRC), which is responsible for providing linkages between the government's industrial and regional benefits policy and other national objectives to individual procurements.

5.092 (2001-10-12) PRC decisions should be consistent with other government objectives, e.g. the pre-eminence of operational requirements, competition, fairness and accessibility. Review decisions are binding on PWGSC and the client and are manifested primarily in the bid evaluation criteria.

5.093 (2002-05-24) Mandatory procurement review does not apply to:

(a) foreign aid by or on behalf of the Canadian International Development Agency;

(b) procurements by the Canadian Commercial Corporation on behalf of entities not subject to this policy, e.g. foreign governments;

(c) the acquisition, modification and routine maintenance of real property;

(d) security requirements by or on behalf of the Canadian Security Establishment of the Department of National Defence; the Canadian Security Intelligence Service; and the Royal Canadian Mounted Police for the purpose of pursuing criminal investigations; and

Notwithstanding this exemption, the above organizations must apply the principles of the policy where appropriate, consistent with the security requirements of their procurement.

In cases of emergency, as defined in the TB Contracting Policy, departments may enter into contract without submitting the procurement review pursuant to this policy. Such action should be noted in any subsequent submission or report to TB or TB Secretariat, and should also be reported to the PRC Secretariat within sixty (60) days.

5.094 (2001-12-10) The PRC divides procurements into the following categories:

A. NAFTA, WTO-AGP, and CKTEA requirements

G. All other including requirements subject to AIT with the following exceptions: Foreign Military Sales, Security Services, Temporary Help Services, procurements under the Munitions Supply Program and requirements subject to the Shipbuilding Policy.

5.095 (2001-12-10) The Advisory Council on Repair and Overhaul (ACRO) will carry out the review process for military repair and overhaul requirements, under the strategic direction of the PRC.

For Major Crown Projects (MCPs), or those requirements exceeding $100M, the Senior Project Advisory Committees (SPAC) will, in accordance with the TB Policy on Management of MCPs, continue to carry out associated procurement review functions. It is the responsibility of the client department to convene a SPAC.

5.096 (2005-06-10) For proposed procurements between $2M and $100M, the contracting officer must complete a "Detail Document" (see Annex 5.2), and forward it to the PRC Secretariat once it has been reviewed by their individual Sector approval processes.

The PRC Secretariat is part of the Risk, Integrity and Strategic Management Sector, and can be reached either by telephone: (819) 956-7424 or via e-mail at: mailto:PRC.Secretariat@pwgsc.gc.ca.

The following process is followed for review and approval of requirements:

(a) The Detail Document is forwarded to PRC Committee members by e-mail. Committee members are given five (5) working days to review each individual requirement. At any time within those five (5) days, members can request that the PRC Secretariat place a requirement on hold pending further discussions or clarifications.

(b) Queries on a particular requirement sent to the PRC Secretariat by Committee members will be forwarded directly to the responsible contracting officer for direct reply.

(c) If no queries or concerns have been received at the end of the fifth day, the PRC Secretariat will then issue a Record of Decision (see Annex 5.2.1).

(d) Copies of both the Detail Document and Record of Decision are provided to all PRC members and the responsible PWGSC contracting officer whose name has been indicated on the Detail Document.

(e) A requirement which has been placed on hold will only be released once direction to do so has been received by e-mail from the PRC member who has made such a request.

(f) Contracting requirements which are initially under $2M must be reviewed by the PRC if the contract value increases to $2M and above.

(g) Amendments to a requirement must be added to the Detail Document by the contracting officer and returned to the PRC Secretariat for forwarding to PRC members for further review. PRC members are given three (3) working days to review amendments. At the end of this time period, a Record of Decision will be issued.

When completing the Detail Document, the following should be taken into consideration:

(a) Socio-economic benefits, if any, must be clearly indicated in the Detail Document.

(b) The Project Value should clearly identify whether it is one contract or part of a project involving several requirements to be sent for individual PRC review and approval, or whether the PRC is being requested to approve the entire project. If this is the case, then this should be clearly stated in the detail document.

5.097 (2001-12-10) Copies of the PRC Detail Document and Record of Decision must be kept on the contracting file.

5.098 (2001-12-10) When a PRC review is required, the Secretariat will, as part of the background document, request that the contracting officer develop procurement strategies for consideration by the PRC. As a member of the PRC, the contracting officer plays a major role in these deliberations. The PRC's recommendations are recorded in a Record of Review which accompanies the contract submission to TB.

5.099 (1995-07-01) Recommendations that involve increased cost or risk must be supported by a cost-benefit analysis using the factors set out in the TB policy. This analysis is carried out by the department whose program will be supported by the benefits being sought.

5.100 (1995-07-01) The use of relative weightings for evaluating socio-economic benefits should be limited, except in special circumstances, to procurements exceeding $50 million.

When relative weightings are utilized for evaluating socio-economic benefits, TB approval of the procurement strategy is required before release of the bid solicitation regardless of delegated levels. TB approval will be sought by the department acting as proponent of the alternate strategies.

5.101 (1995-07-01) Where socio-economic benefits form part of the bid evaluation, the PRC may request that the contracting authority provide a briefing on the results of the bid evaluation.

The contracting authority may be required to provide the PRC with feedback relative to the results of the Committee's recommendations. However, monitoring the achievement of the benefits being sought is the responsibility of the department whose program was supported by the socio-economic benefits.

5.103 (1995-07-01) All procurements which contain a requirement for **any local content or regional economical benefit**, including those procurements for which the PRC has imposed local content or regional economic benefits, contracting officers must ensure that the NPP/solicitation documentation contains details of the restrictions or practices. When the value of the procurement is $2 million or below and local content or regional economic benefits have been sought, these procurements must be reported as "exceptional circumstances." In order to prepare the report, it will be necessary for contracting officers to include the details of the restrictions in the Contract Award Notice also.

Shipbuilding, Repair, Refit and Modernization

5.104 (2003-12-12) The PWGSC procedures for sourcing suppliers for work on Canadian government vessels derive from the government's Shipbuilding, Repair Refit and Modernization Policy. The objective of the policy is to encourage competition amongst Canadian shipyards. For all competitive shipbuilding requirements as defined in the above-mentioned Policy, subject to AIT, contracting officers must ensure that the details of the restrictions or practices are highlighted in the Notice of Proposed Procurement (NPP)/solicitation documentation.

The **NPP/solicitation documentation** must contain the following statement:

> "The sourcing strategy relating to this procurement will be limited to suppliers in the (as applicable) Province or Territory of Origin or the (as applicable) Area of Origin in accordance with the Shipbuilding, Repair Refit and Modernization Policy."

For procurements below $2 million subject to the Shipbuilding, Repair Refit and Modernization Policy, the Contract Award Notice (CAN) must also contain these details.

The following procedures (5.105 to 5.111) apply only when the procurement is not subject to NAFTA, WTO-AGP, or CKTEA. NAFTA, Chapter 10, Annex 1001.2b, paragraph 1.(a) and WTO-AGP, Annex 4, exempts "shipbuilding and repair". The CKTEA covers telecommunications equipment.

5.105 (2003-12-12) Definitions specific to the sourcing strategy of shipbuilding, ship repair, refit and mid-life modernization procurements are as follows:

(a) Origin of the vessel - the operational home port of the vessel.

(b) Area of Origin - the following Areas of Origin are recognized:

Eastern Canada: Atlantic Canada (Newfoundland and Labrador, Prince Edward Island, Nova Scotia and New Brunswick), Quebec and Ontario.

Western Canada: All shipyards west of Ontario and those in the Yukon, Nunavut and Northwest Territories.

(c) Province or Territory of Origin - The following Provinces or Territories of Origin are recognized:

Newfoundland and Labrador
Nova Scotia
New Brunswick
Prince Edward Island
Quebec
Ontario
Manitoba
Saskatchewan
Alberta
British Columbia
Nunavut Territory
Northwest Territories
Yukon

5.106 (2003-12-12) For procurements $25,000 and below, competitions may be limited to the Province or Territory of Origin of the vessel.

5.107 (2003-12-12) For new construction requirements over $25,000, competitions are to be conducted on a nation-wide basis when the following conditions are present:

(a) The statement of requirement is sufficiently defined to permit assessment of competing bids by common standards.

(b) Available shipyards, both in Eastern Canada and in Western Canada, have the technical capability to perform the work.

(c) The vessel being procured is of a type that can be transferred and for which contingency

costs (see 5.110) are not unrealistic in relation to the total price.

5.108 (2003-12-12) For new construction requirements over $25,000, competitions are to be conducted within the Area of Origin when all conditions, except 5.107, are present.

5.109 (2003-12-12) For ship repair, refit and mid-life modernization requirements over $25,000, competitions are to be conducted within the Region of Origin of the vessel, provided adequate competition exists.

If adequate competition (two or more bidders) does not exist, the requirement may still remain in the Area of Origin provided a satisfactory contractual agreement can be reached with the one available capable shipyard. If a satisfactory contractual agreement cannot be reached, the competition is to be extended on a nation-wide basis.

5.110 (2003-12-12) Contingency costs for ship repair, refit and modernization requirements shall be only those costs which are directly related with the transfer of the vessel as defined below:

(a) **For vessels that can be transported unmanned**: Solicitation documents will specify the pick-up point and the delivery point. Bidders will be required to provide a cost to transport the vessel from the pick-up point and once the work is completed, a cost to transport the vessel to the delivery point. In cases where the Government will retain responsibility for delivery of the vessel to and from the shipyard/ship repair facility and the vessel's home port, using commercial towing, railway, highway transportation or other suitable means, solicitation documents will identify the cost of such transportation as the vessel transfer cost that will be added to the evaluation price. (See SACC Manual clause A0240T.)

(b) **For vessels that are manned for transport**: Solicitation documents will identify the contingency cost that will be added to the evaluation price for the transfer of the vessel and its minimum delivery crew based on the geographical distance to and from the vessel's home port location and the shipyard/ship repair facility where the work will be undertaken, and:

(i) The fuel cost based on the current market price for fuel and the vessel's fuel consumption at its most economical speed.

(ii) For unmanned refits, transportation costs for the minimum delivery crew base on the latest Treasury Board directives. (See SACC Manual clause A0240T.)

(iii) For manned refits, contingency costs shall only include the fuel costs for transferring the vessel and shall not include any costs for transporting the crew. (See SACC Manual clause A0240T.)

5.111 (2003-12-12) Procurements by direct allocation of contracts to specific shipyards are to be made only in cases where the conditions permitting nation-wide, area and Province or Territory competitions are not present. Such cases will arise when one or more of the following conditions exist:

(a) Only one shipyard is capable of performing the work.

(b) Performance of the work necessitates access to particular facilities that are adjacent to one shipyard.

(c) The statement of requirement is not sufficiently defined to permit assessment of competitive bids by common standards.

(d) Emergency requirements necessitate use of the nearest yard capable of performing the

work.

(e) Special operational considerations of the client limit movement of the vessel beyond a specified location.

Supplier Qualifications

5.116 (2001-12-10) Suppliers to the Canadian government must demonstrate to the satisfaction of the Canadian government that they have the legal, technical, financial and management competence to discharge the contract. The eligibility of suppliers to bid may be restricted by requiring bidders to meet pre-established qualification criteria. (See Section 6B.)

For procurements subject to NAFTA, WTO-AGP, CKTEA or any combinations of these agreements, interested potential bidders who do not meet such a specified standard must be able to apply for the qualification after the notice of procurement is advertised, and the process of qualification must be started promptly. No discrimination between foreign suppliers or between domestic or foreign suppliers shall be made when establishing qualification criteria.

A particular area for attention is personnel security screening and/or organization's security clearance, where, due to the time it can take to process such requirements, it may be necessary to stipulate appropriate security screening requirements as a mandatory element of bids. (See 6C.270 and 6C.275.)

Requirements below $25,000

5.117 (2004-05-14) Requirements below $25,000 (including all applicable taxes) are considered to be low dollar value (LDV) procurements. When identifying an LDV requirement based on the estimated value of the final contract, contracting officers must not split or artificially divide requirements to meet the LDV threshold. (See 6A.001.)

Contracting officers are to procure LDV requirements below $25,000 (including all applicable taxes) using the most efficient and cost effective approach to select a contractor either by soliciting bids or by directing the requirement to a single supplier when it is not cost effective to call for bids.

Contracting officers will determine the most appropriate procurement strategy for each LDV requirement in order to obtain best value and ensure the timeliness and cost effectiveness of each contract, while respecting Public Works and Government Services Canada (PWGSC's) Guiding Principles which include client service, competition, accountability and equal treatment (See Chapter 1).

Contracting officers are to use the electronic tools available to them to identify and select a supplier on a competitive or directed basis. Examples of tools include the Supplier Registration Information (SRI) service, Automated Vendor Rotation System (AVRS), SELECT, Government Electronic Tendering Service (GETS), telephone and online trade directories, or any other electronic tool available to identify and select a supplier.

Contracting officers are to use the appropriate tools in the following order of precedence to select a supplier:

(a) Departmental electronic tools such as e-Purchasing;
(b) Existing standing offers or supply arrangements;
(c) Request for Quotation (via letter, e-mail or facsimile) or a Telephone Buy;
(d) GETS.

Contracting officers must document the procurement file with the rationale to support the procurement strategy. Contracting officers must also document the basis on which the

estimated value of the contract (i.e. below $25,000) was established.

Procurement Business Number

5.123 (2004-05-14) Firms interested in receiving a contract from Public Works and Government Services Canada (PWGSC) are encouraged to register in the Supplier Registration Information (SRI) system. An important feature of the SRI is the Procurement Business Number (PBN), created using the Canada Revenue Agency Business Number, to uniquely identify a company and its branches, divisions, or offices, where appropriate. The Government of Canada provides notice on GETS as well as on the Contracts Canada Website.

All Canadian companies are required to have a PBN prior to contract award in order to receive a PWGSC contract (see 7D.415). In exceptional circumstances, PWGSC may decide to award, at its own discretion, a contract to a company without a PBN. In these cases, the Director General's approval is required. At this moment, non-Canadian firms are strongly encouraged to obtain a PBN but do not require one. The requirement for a PBN (see SACC Manual clause A9109T) must be included in all solicitation documents.

A PBN can be obtained by registering in the SRI system, a database of registered suppliers interested in doing business with the federal government. This can be done either on-line, at the Contracts Canada Website or through a Supplier Registration Agent. For non-Internet registration, suppliers can contact the Contracts Canada InfoLine at 1-800-811-1148 or (819) 956-3440, in the National Capital Area, to obtain the telephone number of the nearest Supplier Registration Agent.

Controlled Goods

5.124 (2003-05-30) Bill S-25 amended the *Defence Production Act* (DPA) and established a new regime for regulating access to certain controlled military and military related goods, technical data and technology, referred to as controlled goods (see 6B.192). The amended DPA and the *Controlled Goods Regulations* came into force on 30 April 2001. It requires all "persons" in Canada examining, possessing, or transferring controlled goods, to another person in Canada to be registered, exempt or excluded from registration under the Controlled Goods Program (CGP). (See Chapter 12 for a definition of controlled goods.)

To meet this requirement, the CGP, a federal government program, was established under the DPA and the *Controlled Goods Regulations*. The CGP is administered by Public Works and Government Services Canada.

Contracting officers are invited to visit the CGP Website for more information.

Geographic Factors

5.126 (2004-05-14) Regional offices are to source requirements below $25,000 (including all applicable taxes) within their geographic area provided the area has adequate sources of supply (which may include suppliers of foreign goods or services) and offers the required level of service to clients and fair value for the taxpayer's dollar.

Federal Contractors Program for Employment Equity

5.128 (2003-12-12) The Federal Contractors Program for Employment Equity (FCP-EE) procedures apply, with exceptions listed in 5.129 below, to suppliers of goods and services who employ 100 people or more, and bid on requirements of $200,000 or more (including all applicable taxes).

The $200,000 threshold should include the amount of option years, when included in contracts and standing offers.

Any joint venture partner with 100 or more employees is required to certify its commitment to implement employment equity when bidding on solicitations valued at $200,000 or more (including all applicable taxes).

Requests for Standing Offers and supply arrangements are also subject to the FCP-EE procedures, whenever the total procurement requirements are estimated at $200,000 or more (including all applicable taxes).

The employment equity requirements of the FCP-EE apply to foreign suppliers only if they have a resident workforce in Canada of 100 or more permanent full or permanent part-time employees .

Exclusions from the FCP-EE

5.129 (2003-12-12) The FCP-EE policy does not apply to:

(a) contractors having a combined work force of less than 100 employees in Canada;

(b) offshore suppliers who will conduct and perform the work outside Canada;

(c) federally regulated companies, i.e. those companies regulated under the Canada Labour Code and Crown corporations, as they have to comply with the provisions of the *Employment Equity Act*;

(d) Canadian Commercial Corporation (CCC) contracts where CCC, as the prime contractor, purchases goods and services from Canadian sources and sells the products to foreign governments or international agencies through back-to-back contracts;

(e) contracts with or on behalf of provincial governments;

(f) construction contracts and contracts for the acquisition or lease of real property (Architecture & Engineering [A&E] Services requirements are not excluded);

(g) subcontractors.

Requirements estimated at $200,000 or more

5.130 (2004-12-10) Contracts *(including standing offers and supply arrangements)* for goods and services requirements *(including A&E services)* valued at $200,000 or more *(*including all applicable taxes*)* may be awarded only to vendors who:

(a) have signed and submitted a Certificate of Commitment (LAB 116B) and have not been declared ineligible by Human Resources and Skills Development Canada (HRSDC) to receive government contracts over the *Government Contracts Regulations* (GCRs) threshold for solicitation of bids (currently $25,000) as a result of a finding of non-compliance, or as a result of having voluntarily withdrawn from the Program for a reason other than a reduction in their workforce; or

(b) have provided a valid certification number, **prior to contract award**; or

(c) are exempted from the employment equity policy (see 5.129).

When the bid is accompanied by an original certificate, the contracting officer will forward that original to the:

Manager, Workplace Equity Program

Human Resources and Skills Development Canada
Portage II, 10th Floor
165 Hotel de Ville Street
Gatineau, Québec K1A 0J2

OR fax at (819) 953-8768.

Contracts valued above $25,000 to under $200,000

5.131 (2004-05-14) Contracts (*including standing offers and supply arrangements*) valued above $25,000 (including all applicable taxes) to under $200,000 must be awarded only to vendors who, if subject to FCP-EE in the past, have not been declared "ineligible" by HRSDC to receive government contracts over the GCR threshold for solicitation of bids (currently $25,000) as a result of a finding of non-compliance, or as a result of having voluntarily withdrawn from the Program for a reason other than a reduction in their workforce.

Compliance Reviews

5.132 (2004-05-14) Once a certified contractor receives a contract of $200,000 or more, the organization is required to honour its commitment of implementing employment equity as an ongoing obligation, and not simply during the life of the contract. HRSDC provides assistance to contractors throughout this process. It also monitors the contractor's performance in relation to employment equity criteria, and conducts compliance reviews. The findings and recommendations of HRSDC are forwarded to the contractor involved, who is expected to initiate remedial action should the findings be unfavourable. Contractors have the right to appeal to the Minister of HRSDC, and an independent assessor will study the findings.

Sanctions for non-compliance or withdrawal from FCP-EE

5.133 (2003-12-12) Findings of non-compliance will be communicated to Public Works and Government Services Canada which will be advised that the contractor, due to its failure to live up to the commitment to implement employment equity, will be declared ineligible to do business or receive federal contracts valued over the threshold for solicitation of bids, as set out in the GCRs (currently at $25,000).

Contractors who voluntarily withdraw from the FCP-EE for any reason other than the decrease of their workforce are subject to the same sanction as those who are found non-compliant as a result of a compliance review.

In either case, the contractor's Certificate of Commitment number will be cancelled and the contractor in question will not be eligible to receive government contracts over the threshold for solicitation of bids as set out in the GCRs (currently at $25,000).

Reinstatement

5.134 (2004-12-10) To be reinstated, ineligible contractors must contact HRSDC and demonstrate compliance with the requirements of the FCP-EE prior to bidding on contract opportunities.

The List of Certified Employers with their certificate numbers, as well as the List of Ineligible Contractors (withdrawn) can be verified on Publiservice site. ***(NOTE: Only federal government employees can access this site****).*

For policy advice and guidance, contact the Workplace Equity Program Advisor directly at (819) 953-7495, or the PWGSC policy advisor at (819) 956-4744.

Solicitation Methods

5.135 (2004-05-14) Before deciding on the type of solicitation to be used, the contracting officer should ensure that the good or service is not available through a current Standing Offer (SO) or Supply Arrangement (SA). If the requirement is available using an SO or an SA and demonstrates good value for that procurement, the contracting officer should advise the client of the option.

The list of National Master Standing Offers (NMSOs), Regional Master Standing Offers (RMSOs) and Departmental Individual Standing Offers (DISOs) is available from the Standing Offer Coordination Office (SOCO), Electronic Processes Directorate, telephone (819) 956-3382. SOCO provides information associated with the administrative aspects of SOs, including:

(a) facilitating the exchange of information on SOs between PWGSC and clients;

(b) preparing, updating and coordinating the distribution of indices of all NMSOs, DISOs, and RMSOs; and,

(c) coordinating the distribution of NMSOs, DISOs and RMSOs originating from PWGSC headquarters.

Invitation to Tender

5.137 (1995-07-01) An Invitation to Tender (ITT) should be used when all of the following criteria apply:

(a) two or more sources are considered capable of supplying the requirement; and

(b) the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria; and

(c) the market conditions are such that tenders can be submitted on a common pricing basis; and

(d) it is intended to accept the lowest-priced responsive tender without negotiations; and

(e) the evaluation of tenders will exclude any Product, Resource, Operating and Contingency (PROC) costs or socio-economic considerations, other than the employment equity provisions.

5.139 (1995-07-01) Of the possible solicitation methods, tenders are unique in that they can be opened publicly. Public opening should be considered for all ITTs estimated to exceed $25,000, except for those that are classified. ITTs for requirements less than $25,000 may be opened publicly if circumstances warrant.

Public opening should be considered for any tender where the contract award will have a high degree of public visibility.

Request for Proposal

5.142 (1995-07-01) A Request for Proposal (RFP) should be used when one or more of the criteria for issuing an ITT cannot be met, such as:

(a) only one source is being solicited; or

(b) it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirement; or

(c) owing to the nature of the requirement, suppliers are invited to propose a solution to a

problem, requirement or objective and the selection of the contractor is based on the effectiveness of the proposed solution rather than on price alone.

5.143 (1995-07-01) Proposals shall be evaluated in accordance with specific criteria set out in the RFP.

5.144 (2001-10-12) The preparation of proposals is often costly to industry. To keep the total cost to industry down while ensuring freedom of access to potential suppliers, consideration should be given to soliciting proposals in two steps.

During the first step of this process, suppliers are requested to provide letters of interest and qualifications, from which a short list is developed. During the second step, suppliers on the short list are requested to submit detailed proposals.

Suppliers not included on the short list can request the RFP and submit proposals.

Such a process might be appropriate where many potential suppliers are known. Contracting officers should note, however, the special procedures required under NAFTA, WTO-AGP and CKTEA for selective tendering.

Request for Quotation

5.148 (2004-05-14) A Request for Quotation (RFQ) can be used to solicit bids for low dollar value (LDV) requirements below $25,000 (including all applicable taxes) from one or more suppliers. An RFQ solicitation may not include all of the terms and conditions required to form a contract and the response or quotation provided by the bidder may be used to form the applicable contract document, along with the terms and conditions and final pricing. (See 7E.500.)

There may be instances for requirements below $25,000 (including all applicable taxes) when it will be more appropriate to solicit bids using an Invitation to Tender or a Request for Proposal (RFP). For example, an RFP may be more appropriate for a requirement which may be used to establish specifications for a future contract.

Telephone Buys

5.150 (2004-05-14) A Telephone Buy is a form of an RFQ that can be used to solicit bids by telephone for requirements below $25,000 (including all applicable taxes). Written confirmation from the bidder is not required for bids received by telephone but the contracting officer must record the details of the telephone bid on the procurement file. A verbal contract may be entered into by telephone but must be confirmed in writing by issuing the applicable contract document. (See 7E.500.)

Standing Offer

5.153 (2002-13-12) A Standing Offer (SO) is not a contract. It is an offer made by an offeror (a supplier or a provider) for the provision of certain goods and/or services to clients at prearranged prices or a prearranged pricing basis, under set terms and conditions, that is open for acceptance by one or more authorized user(s) on behalf of Canada during a specified period of time. A separate contract is formed each time a call-up for the provision of goods and/or services is made against a Standing Offer. When a call-up is made, it constitutes an unconditional acceptance by Canada of the supplier's offer for the provision, to the extent specified, of the goods and/or services described in the SO. Canada's liability shall be limited to the actual value of the call-ups made by the duly authorized user(s) representing Canada within the period specified in the Standing Offer.

Prior to commencing any procurement action, the contracting officer must determine if a procurement instrument such as a standing offer exists to procure the requisitioned goods

and/or services. In the affirmative, the contracting officer should advise the client of the availability and suitability of that procurement instrument. If it can be used, the client should be encouraged to use it.

Methods of Supply

5.154 (2002-12-13) The SO method of supply **is** usually considered when:

(a) one or more clients repetitively order(s) the same range of goods, services, or both and the actual demand (e.g. quantity, delivery date, delivery point) is not known in advance; and

(b) some of the following conditions are present:

(i) the goods, services, or both are well defined;

(ii) prearranged prices or a prearranged pricing basis can be established at the outset and there is no need nor any intention to negotiate them at the time of the call-up;

(iii) the goods, services, or both are readily available and are to be ordered (called-up) as-and-when the requirement arises;

(iv) at the time of the call-up, there is no need nor any intention to further negotiate the terms and conditions.

5.155 (2002-12-13) The SO method of supply **cannot** be used when:

(a) prices, pricing basis or terms and conditions are not stated or are subject to change at any time at the discretion of the supplier; or

(b) the authorized users of the standing offers intend to negotiate further the prearranged prices, pricing basis, or set terms and conditions of the SO; or

(c) it is intended to solicit bids each time goods and/or services are required.

In these cases, another method of supply such as a Supply Arrangement (SA) should be considered. (See 5.190 and Section 9J.)

Approximation Given in Good Faith

5.157 (2002-12-13) The quantity of goods and / or level of services specified in the Request for Standing Offer (RFSO) and the resulting SO(s) are only an approximation of the requirements given in good faith by Canada to the offerors.

Government Policies, Regulations and Procedures including Trade Agreements

5.159 (2002-12-13) All government policies, regulations and procedures related to contracting, including those required under the trade agreements, apply to the standing offer method of supply.

The total estimated expenditure of the requirement (the whole project /program) proposed to be satisfied by the standing offer method of supply, GST/HST included, is to be used to determine the applicability of any procedures required by any trade agreement to which the Government of Canada is signatory.

When procedural requirements of any trade agreement apply to a standing offer method of

supply, the complete procurement process, including all standing offers authorized for use and their ensuing call-ups, falls within the purview of the Canadian International Trade Tribunal (CITT).

Approval and Signing Authority

5.162 (2002-12-13) Approval, signing and amendment authorities are set out in annexes 6.1 through 6.2 of this manual.

The Contract Planning and Advanced Approval (CPAA) or formal procurement plan issued to seek advance approval to use of the SO method of supply is to be approved based on the total estimated value, GST/HST included, of the requirement (the whole project / program) that is proposed to be satisfied by this method of supply. Therefore, if it is intended to issue more than one SO pursuant to an RFSO, it is the sum of the total estimated value, GST/HST included, of all resultant standing offers that is to be used to obtain CPAA or formal procurement plan approval.

When more than one SO will be authorized for use, the signing authority level is to be determined based on the total estimated value of each individual SO, not the total estimated value of the requirement.

Treasury Board Contracting Limits

5.164 (2003-05-30) A call-up issued against an SO constitutes an individual contract and normal Treasury Board contracting limits apply. The call-up limits for PWGSC on behalf of clients are set out in Section 6A. For most clients, their individual call-up limits (inclusive of GST/HST) are usually the normal Treasury Board contracting limits as follows:

	Competitive	Non-Competitive
Goods/Construction	$400,000	$40,000
Services Excluding A&E	$400,000	$100,000
A&E Services	$40,000	$40,000
Transport Canada Services	$2 million	$100,000

NOTE: *For a detailed breakdown of Treasury Board contracting limits, refer to Treasury Board Contracting Policy, Appendix C, Treasury Board Contracts Directive, Part I, Basic Contracting Limits and Part II, Exceptional Contracting Limits.*

PWGSC Call-up Limitation

5.166 (2002-12-13) PWGSC has the authority to further limit the value of individual call-ups.

Treasury Board Approval

5.168 (2002-12-13) TB approval is required when individual call-ups will exceed the contracting limits specified in the TB Contracting Policy.

Limitation of Expenditure

5.170 (2002-12-13) The inclusion of a Limitation of Expenditure in standing offers is optional. The contracting officer will determine the need for inclusion of a limit on the basis of the type of SO (Master or Individual), the degree of control over total expenditures and the needs of the client.

SACC clause M4506D, Financial Limitation, may apply.

Coding in the Automated Buyer Environment (ABE) System

5.172 (2002-12-13) While the limitation of expenditure in standing offers is optional, the contracting officer must enter the estimated expenditure/value of all standing offers in the Procurement Summary in ABE. The use of $0 or $1 as a document value in the Procurement Summary in ABE, is not acceptable.

The above coding requirement does not apply to Departmental Individual Standing Offers (DISOs) because the financial information for DISOs is captured at the time of call-ups. Contracting officers are therefore required to enter $0 as the estimated expenditure/value of the DISO and the actual value of the call-up against a DISO.

Types of Standing Offers

5.174 (2002-12-13) There are five types of standing offers:

(a) National Master Standing Offer (NMSO) - for use by several authorized users identified in the NMSO for delivery throughout Canada.

(b) Regional Master Standing Offer (RMSO) - for use by several authorized users identified in the RMSO for delivery within a specific geographic area.

(c) National Individual Standing Offer (NISO) - for use by a specific authorized user identified in the NISO for delivery throughout Canada.

(d) Regional Individual Standing Offer (RISO) - for use by a specific authorized user identified in the RISO for delivery within a specified geographic area.

(e) Departmental Individual Standing Offer (DISO) - for use by PWGSC only on behalf of one or more client(s) identified in the DISO.

Authorized Users

5.176 (2003-05-30) Authorized users of standing offers could include any departments and agencies listed in Schedule I, Schedule II and Schedule III of the *Financial Administration Act*.

5.177 (2002-12-13) A Request for Standing Offer (RFSO) shall include the following information, as a minimum:

(a) a clear definition of the requirement and the period for making call-ups;
(b) information on the number of standing offers intended to be authorized for use;
(c) clear evaluation criteria;
(d) clear offeror selection methodology;
(e) clear ranking methodology where applicable;
(f) clear call-up procedure(s);
(g) a notice to bidders regarding disclosure of their unit prices (see SACC clause M0090T);
(h) instructions, information, terms and conditions applicable to the RFSO;
(i) offer preparation instructions;
(j) terms and conditions applicable to the ensuing call-ups.

Whenever practical, the Request for Standing Offer should include an estimated utilization.

Competitive and Non-competitive Call-ups

5.180 (2002-12-13) Competitive call-ups:

The Best Standing Offer:
In many instances, only one SO will be authorized for use. For some requirements, only the offer that meets all the requirements of the RFSO and provides best value (highest ranked) will be retained. In such instances, the resulting call-ups are considered competitive and the competitive call-up authorities can be used.

Multiple Standing Offers:
In other instances, more than one SO will be authorized for use based on a reasonable expectation of business activity such that a single offeror would lack the capacity to meet the demands. In such cases, clear ranking methodologies and call-up procedures must be described in the RFSO, so that potential offerors are aware of these when preparing their submissions, and in the standing offers, to guide the authorized call-up authority(ies) when making call-ups. Two models of multiple standing offers are described below:

(a) **Right of first refusal basis:**
The call-up procedures require that when a requirement is identified, the authorized call-up authority shall approach the offeror of the highest ranked standing offer to determine if the requirement can be satisfied by that offeror. If the highest ranked offeror is able to meet the requirement, the call-up is made against its standing offer. If that offeror is unable to meet the requirement, the authorized call-up authority will approach the offeror of the next ranked SO. The authorized call-up authority will continue and proceed as above until one offeror indicates that it can meet the requirement of the call-up. In other words, call-ups are made based on the “right of first refusal” basis. Where the highest ranked offeror is unable to fulfil the need, the authorized call-up authority is required to document his/her file appropriately. The resulting call-ups are nonetheless considered competitive and the competitive call-up authorities can be used.

(b) **Proportional basis:**
The call-up procedures require that call-ups be issued on a proportional basis such that the offeror of the highest ranked standing offer receives the largest predetermined amount of the work, the offeror of the second highest ranked standing offer receives the second largest predetermined amount of the work, etc. (e.g. 50 percent to highest ranked offer, 30 percent to next highest ranked offer and 20 percent to third highest ranked offer). This predetermined distribution of the resulting work is to be described in the RFSO so that potential offerors are aware of these when preparing their submissions. It is also known as “collective best value”. The highest ranked standing offer represents the best value for Canada and its offeror receives the greatest portion of the work. A clear advantage in terms of distribution of expected business volume should be given to the offeror of the highest ranked standing offer (e.g. 20 percent or more than the next offer) and the same for the others. The determination of what constitutes a clear advantage is the responsibility of the contracting officer and may vary by commodity, service or by business case. The resultant call-ups are considered competitive and the competitive call-up authorities can be used.

Master standing offers are not suitable for the proportional basis approach. Where individual standing offers are to be authorized based on the proportional basis approach, the contracting officer should inform the authorized user of his/her obligation to monitor call-up activities to ensure work is allocated in accordance with predetermined work distribution.

In both cases (a) and (b) above, contracting officers should clearly state in the RFSO the expected number of standing offers that are intended to be authorized for use. If the intention is that multiple standing offers will be authorized for use, the RFSO should state the basis upon which call-ups will be issued; right of first refusal or proportional. If call-ups are to be issued against standing offers issued under the proportional basis approach, the breakdown should be stated (e.g. 50 percent, 30 percent and 20 percent) in the RFSO.

In addition to the above, when the intention is that multiple standing offers will be authorized for use, contracting officers should include a condition that only those standing offers who are within, for example, 10 percent of the best priced offer, will be considered.

Furthermore, a system must be in place to monitor call-up activity and ensure that call-ups are allocated in accordance with the predetermined work distribution, resulting ranking and call-up procedures specified in the standing offers.

5.181 (2002-12-13) Non-competitive call-ups:

In other instances, more than one SO will be authorized for use but no ranking is established. This would occur, for example, when prices are sought for a full range of items contained in a catalogue items and ranking of offers is impossible. The authorized call-up authority may choose whichever SO to use. For some requirements, the contracting officers may set parameters to guide the authorized users in the selection of one of the standing offers. Call-ups made against these standing offers are non-competitive and only the non-competitive call-up authorities can be used.

An SO may be directed on a non-competitive basis to one offeror for its full range of catalogue products or services. The resulting call-ups are non-competitive and only the non-competitive call-up authorities can be used.

Duplication of Standing Offers

5.182 (2004-05-14) Contracting officers should not authorize a second SO if one already exists for the same commodity, client, and geographical area. For example, a request for a RISO or RMSO should not be issued if an NMSO already exists. Conversely, an NMSO should not be established without consultation with the Regions. (Refer to **Standing Offer Index)**

In their role of commodity managers, Acquisitions Branch is responsible to coordinate the issuance of standing offers. Where a contracting officer proposes to put in place an SO similar to one already in existence, the commodity manager responsible for the commodity and/or service must first approve it. If deemed appropriate, the commodity manager will approve the issuance of that similar or duplicate SO. The contracting officer who proposed this similar or duplicate standing offer remains responsible to develop the procurement strategy and implement it, like any other procurement. In the approval document (CPAA or procurement plan), contracting officers will indicate that this is for the issuance of an SO similar to an existing one, explain why it is required and indicate that the responsible commodity manager has approved its release.

Standing Offer Forms

5.184 (2005-06-10) The following forms are used for call-ups against an SO: (forms are available in ELF and on-line).

Forms Number	Forms Title
PWGSC-TPSGC 942	Call-up Against a Standing Offer
PWGSC-TPGSC 942-2	Call-up Against a Standing Offer - Multiple Delivery
PWGSC-TPSGC 944	Call-up Against Multiple Standing Offers *(English version only - French version is PWGSC-TPSGC 945*.)
PWGSC-TPSGC 8251	Call-up Against a Standing Offer for Temporary Help
PWGSC-TPSGC 2829	Call up Against a Standing Offer - Real Property Sector

PWGSC-TPSGC 7169	Call-up Against a Standing Offer for Commissionaire Services
PWGSC-TPSGC 7169-1	Call-up Against a Standing Offer for Security Guard Services
PWGSC-TPSGC 191	Acquisition Card Application (MasterCard) [1] may also be used at the time of the call-up against Standing Offers, as an alternative to other payment methods identified in the Standing Offers. [2]

Industrial Security

5.186 (2002-12-13) The contracting officer, in conjunction with the client must determine:

(a) the minimum level of security required by potential offerors to participate in the Standing Offer Method of Supply.

Security requirements must be stipulated in both the RFSO and the Standing Offer and Call-up Authority. Call-ups must identify, when applicable, security requirements that are in accordance with the terms and conditions of the SO. A Security Requirements Check List (SRCL), must be attached to any such call-up, and a copy must be forwarded to PWGSC Industrial Security for action, when the call-up is made.

OR

(b) if the SO is NOT to be used with call-ups where any level of security is required.

Withdrawal of a Standing Offer

5.188 (2002-12-13) If an offeror wishes to withdraw its SO after it has been authorized for use, unless otherwise indicated in the SO it must provide no less than thirty (30) days written notification to the contracting authority of its intent to withdraw. A “Revision to the Standing Offer and Call-up Authority” would then be issued by the contracting authority notifying all the authorized users and the offeror of the effective date of the withdrawal. Call-ups received by the offeror prior to the effective withdrawal date are legally binding and must be honored.

Supply Arrangements (SA)

5.190 (2002-12-13) An SA is a method of supply where clients, under the framework of the Arrangement, may solicit bids from a pool of prescreened vendors.

5.192 (2002-12-13) An SA may be used when:

(a) a commodity is procured on a regular basis (goods or services), and

(b) an SO is not suitable, due to variables in resulting call-ups (e.g. varying methods/basis of payment, or the statement of work or commodity cannot be adequately defined in advance), and

(c) the commodity or service value is best expressed as a ceiling price, and

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1 Because use of a credit card results in immediate payment to the vendor, the normal payment period and interest on overdue accounts provisions do not apply. (See SACC Manual clauses M3503T and M3503C.)

2 Contracting officers should verify if the client(s) need such a service and include appropriate details in the standing offers. In such cases a call-up form may, or may not, be warranted.

(d) if clients are intended to be able to negotiate price reductions from the ceiling price, and

(e) it is more efficient for PWGSC to operate as the provider of the framework and not as the contractual authority.

See Section 9J for SA procedures.

Annex 4.1: Services Coverage for the WTO-AGP Defined by the Common Classification System

(2004-12-10)

The World Trade Organization Agreement on Government Procurement (WTO-AGP) services coverage is contained in Annex 4 of the WTO-AGP and is defined in terms of the United Nations Central Product Classification (CPC). To ensure a consistent application of services coverage by Public Works and Government Services Canada contracting officers, the WTO-AGP list of covered services has been translated into the North American Free Trade Agreement Common Classification System (CCS). The CCS list is an exhaustive list of services covered by the WTO-AGP and is provided below. The list also identifies the corresponding CPC system codes.

B. Special Studies and Analysis (not R&D)

B000 Chemical/Biological Studies and Analyses. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B001 Endangered Species Studies - Plant and Animal. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B002 Animal and Fisheries Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B003 Grazing/Range Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B004 Natural Resource Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B005 Oceanological Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B009 Other Natural Sciences Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B100 Air Quality Analyses. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B101 Environmental Studies Development of Environmental Impact Statements and Assessments. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B102 Soil Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B103 Water Quality Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B104 Wildlife Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B109 Other Environmental Studies. **Relates to** CPC 8676, Technical testing and analysis services (except with reference to FSC 58 and transportation equipment)

B205 Building Technology Studies. **Relates to CPC:** 8671, Architectural Services; 8672, Engineering

Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B206 Energy Studies. **Relates to CPC:** 8671, Architectural Services; 8672, Engineering Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B207 Technology Studies. **Relates to CPC:** 8671, Architectural Services; 8672, Engineering Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B208 Housing and Community Development Studies (incl. Urban/Town Planning Studies). **Relates to CPC:** 8671, Architectural Services; 8672, Engineering Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B219 Other Engineering Studies. Relates to CPC: 8671 Architectural Services; 8672 Engineering Services; 8673, Integrated Engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects); and 8674, Urban planning and landscape architectural services

B3 Administrative Support Studies [specifically for general management consulting; marketing management consulting; human resources management consulting; and production management consulting]. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B300 Cost Benefit Analyses. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505 Production management consulting services

B301 Data Analyses (other than scientific). **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B302 Feasibility Studies (non-construction). **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B303 Mathematical/Statistical Analyses. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B304 Regulatory Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B305 Intelligence Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B306 Defense Studies. **Relates to CPC:** 86501 General management consulting services; 86503 Marketing management consulting services; 86504 Human resources management consulting services; 86505 Production management consulting services

B307 Security Studies (Physical and Personal). **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B308 Accounting/Financial Management Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services; 862, Accounting, auditing and bookkeeping services

B309 Trade Issue Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B310 Foreign Policy/National Security Policy Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B311 Organization/Administrative/ Personnel Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B312 Mobilization/Preparedness Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B313 Manpower Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B314 Acquisition Policy/Procedures Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B329 Other Administrative Support Studies. **Relates to CPC:** 86501, General management consulting services; 86503, Marketing management consulting services; 86504, Human resources management consulting services; 86505, Production management consulting services

B400 Aeronautic/Space Studies. **Relates to** CPC 8672, Engineering services

B502 Recreation Studies. **Relates to** CPC 86501, General management consulting services

B507 Legal Studies [specifically advisory services on foreign and international law]. **Relates to** CPC 861, Legal services (advisory services on foreign and international law only)

C. Architect and Engineering Services

C111 Administrative and Service Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C113 Educational Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering

services for transportation infrastructure turnkey projects)

C114 Hospital Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C115 Industrial Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C116 Residential Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C117 Warehouse Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C118 Research and Development Facilities. **Relates to CPC:** 8671 Architectural services; 8672 Engineering services; 8673 Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C119 Other Buildings. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C121 Conservation and Development. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C122 Highways, Roads, Streets, Bridges and Railways. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C123 Electric Power Generation (EPG). **Relates to CPC:** 8671 Architectural services; 8672 Engineering services; 8673 Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C124 Utilities. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C129 Other Non-Building Structures. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C130 Restoration. **Relates to CPC:** 8671 Architectural services; 8672 Engineering services; 8673 Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C211 Architect - Engineer Services (incl. landscaping, interior layout and designing). **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C212 Engineering Drafting Services. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering

services for transportation infrastructure turnkey projects)

C213 A&E Inspection Services. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C214 A&E Management Engineering Services. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C215 A&E Production Engineering Services (incl. Design and Control and Building Programming). **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

C219 Other Architect and Engineering Services. **Relates to CPC:** 8671, Architectural services; 8672, Engineering services; 8673, Integrated engineering services (excluding 86731, Integrated engineering services for transportation infrastructure turnkey projects)

D. Information Processing and Related Telecommunications Services

D301 ADP Facility Operation and Maintenance Services. **Relates to CPC:** 841, Consultancy services related to the installation of computer hardware; 849, Other computer services

D302 ADP Systems Development Services. **Relates to** CPC 842, Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

D303 ADP Data Entry Services. **Relates to** CPC 843, Data processing services, including processing, tabulation and facilities management services

D306 ADP Systems Analysis Services. **Relates to** 842, Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

D307 Automated Information System Design and Integration Services. **Relates to** CPC 842, Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

D308 Programming Services. **Relates to** CPC 842, Software implementation services, including systems and software consulting services, systems analysis, design, programming and maintenance services

D309 Information and Data Broadcasting or Data Distribution Services except D309A, Radio and Television Towers and Systems. **Relates to CPC:** 7523, Enhanced/value added facsimile services, including store and forward, store and retrieve; Code and protocol conversion; 843, Data processing services, including processing, tabulation and facilities management services

D310 ADP Backup and Security Services. **Relates to** CPC 844, Data base services

D311 ADP Data Conversion Services. **Relates to** CPC 844, Data base services

D312 ADP Optical Scanning Services. **Relates to** CPC 843, Data processing services, including processing, tabulation and facilities management services

D313 Computer Aided Design/Computer Aided Manufacturing (CAD/CAM) Services. **Relates to** CPC 842, Software implementation services, including systems and software consulting services,

systems analysis, design, programming and maintenance services

D314 ADP System Acquisition Support Services (Includes preparation of statement of work, benchmarks, specifications, etc.). **Relates to** CPC 844, Data base services

D315 Digitizing Services (Includes cartographic and geographic information). **Relates to** CPC 843, Data processing services, including processing, tabulation and facilities management services

D316 Telecommunications Network Management Services. **Relates to** CPC 7523, Data transmission services and Electronic data interchange (EDI)

D317 Automated News Services, Data Services, or Other Information Services. Buying data (the electronic equivalent of books, periodicals, newspapers, etc.). **Relates to** CPC 7523, Electronic mail, voice mail, on-line information and data base retrieval and electronic data interchange (EDI)

D399 Other ADP and Telecommunications Services (incl. data storage on tapes, Compact Disk (CD), etc.) [specifically related to ADP services]. **Relates to** CPC 849, Other computer services

E. Environmental Services

E101 Air Quality Support Services. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E102 Industrial Investigation Surveys and Technical Support Related to Air Pollution. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E103 Water Quality Support Services. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E104 Industrial Investigation Surveys and Technical Support Related to Water Pollution. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E106 Toxic Substances Support Services. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E107 Hazardous Substance Analysis. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

E108 Hazardous Substance Removal, Cleanup, and Disposal Services and Operational Support. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and other services

E109 Leaking Underground Storage Tank Support Services. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and other services

E110 Industrial Investigations, Surveys and Technical Support for Multiple Pollutants. **Relates to** CPC 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment

E111 Oil Spill Response including Cleanup, Removal, Disposal and Operational Support. **Relates to CPC:** 883, Services incidental to mining; 940, Sewage and refuse disposal, sanitation and other services

E199 Other Environmental Services. **Relates to CPC:** 8676, Technical testing and analysis services including quality control and inspection except with reference to FSC 58 and transportation equipment; 940, Sewage and refuse disposal, sanitation and other services

F. Natural Resources Services

F001 Forest/Range Fire Suppression/Presuppression Services (incl. Water Bombing). **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F002 Forest/Range Fire Rehabilitation Services (non-construction). **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F003 Forest Tree Planting Services. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F007 Seedling Production/Transplanting Services. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F008 Tree Breeding Services (incl. ornamental shrub). **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F009 Tree Thinning Services. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F010 Other Range/Forest Improvements Services (non-construction). **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F011 Pesticides /Insecticides Support Services {specifically related to forestry and logging]. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

F040 Surface Mining Reclamation Services (non-construction). **Relates to** CPC 883, Services incidental to mining, including drilling and field services

F041 Well Drilling. **Relates to** CPC 883, Services incidental to mining, including drilling and field services

F042 Other Services Incidental to Mining Except Those Listed in F040 and F041. **Relates to** CPC 883, Services incidental to mining, including drilling and field services

F051 Survey Line Clearing Services. **Relates to** CPC 8814, Services incidental to forestry and logging, including forest management

H. Quality Control, Testing, Inspection and Technical Representative Services
[except with reference to FSC 58 and transportation equipment]. **Relates to** CPC 8676, Technical testing and analysis services including quality control and inspection (except with reference to FSC 58 and transportation equipment

J. Maintenance, Repair, Modification, Rebuilding and Installation of Goods/Equipment - JX Repair
[specifically the repair of: personal and household goods; footwear and leather goods; electrical household appliances; watches, clocks, jewellery, garment and household textile; fabricated metal products machinery and equipment; accounting and computing machinery; electrical

machinery and apparatus; and, medical, precision, and optical instruments in the following FSCs: 65, Medical, dental, and veterinary equipment and supplies; 66, Instruments and laboratory equipment; 67, Photographic equipment; 70, General purpose ADP Supplies and support equipment; 71, Furniture; 72, Household and commercial furnishings and appliances; 73, Food preparation and servicing equipment; 74, Office machines, text processing systems and visible recording equipment; 75, Office supplies and devices; 77, Musical instruments, phonographs, and home-type radios; 78, Recreational and athletic equipment; 84, Clothing, individual equipment and insignia]. **Relates to CPC:** 633, Repair services of personal and household goods; 8861 - 8864 & 8866, Repair services incidental to metal products, machinery and equipment

K. Custodial Operations and Related Services

K100 Custodial - Janitorial Services. **Relates to** CPC 874, Building cleaning services

K102 Food Services. **Relates to** CPC 642/3, Food and beverage serving services

K104 Trash/Garbage Collection Services - Including Portable Sanitation Services. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and similar services

K106 Insect and Rodent Control Services. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and similar services

K111 Carpet Cleaning. **Relates to** CPC 874, Building cleaning services

K114 Waste Treatment and Storage. **Relates to** CPC 940, Sewage and refuse disposal, sanitation and similar services

K199 Other Custodial and Related Services. **Relates to CPC:** 641, Hotel and similar accommodation services; 874, Building cleaning services; 940, Sewage and refuse disposal, sanitation and similar services

R. Professional, Administrative and Management Support Services

R001 Specifications Development Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R002 Technology Sharing/Utilization Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R003 Legal Services [specifically advisory services on foreign and international law]. **Relates to** CPC 861 Legal services (advisory services on foreign and international law)

R005 Technical Assistance. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R006 Technical Writing Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R007 Systems Engineering Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R008 Engineering and Technical Services (incl. Mechanical, Electrical, Chemical, Electronic Engineering). **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R009 Accounting Services. **Relates to** CPC 862, Accounting, auditing and bookkeeping services

R010 Auditing Services. **Relates to** CPC 862, Accounting, auditing and bookkeeping services

R011 Ongoing Audit Operations Support. **Relates to** CPC 862, Accounting, auditing and bookkeeping services

R013 Real Property Appraisals Services. **Relates to** CPC 822, Real estate services on a fee or contract basis

R014 Operations Research Studies / Quantitative Analysis Studies. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R015 Simulation. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R019 Other Professional Services. **Relates to CPC:** 863, Taxation services (excl. legal serv); 8660, Services related to management consulting (except 66602, Arbitration and conciliation services)

R103 Courier and Messenger Services. **Relates to CPC:** 7512, Commercial courier services (including multi-modal); 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R111 Personal Property Management Services. **Relates to CPC:** 821, Real estate services involving own or leased property; 822, Real estate services on a fee or contract basis

R112 Information Retrieval (non-automated). **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R113 Data Collection Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R114 Logistics Support Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R115 Contract, Procurement, and Acquisition Support Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R118 Real Estate Brokerage Services. **Relates to CPC:** 821, Real estate services involving own or leased property; 822, Real estate services on a fee or contract basis

R119 Industrial Hygienics. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R120 Policy Review/Development Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R121 Program Evaluation Studies. **Relates to CPC:** 86501, General management consulting; 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R122 Program Management/Support Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R123 Program Review/Development Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

R199 Other Administrative and Management Support Services. **Relates to** CPC 8660, Services related to management consulting (except 86602, Arbitration and conciliation services)

V. Transportation, Travel and Relocation Services

V503 Travel Agent Services. **Relates to** CPC 7471, Travel agency and tour operator services

W. Lease and Rental of Equipment

[specifically: agricultural machinery and equipment without operators; construction machinery and equipment without operators; office machinery and equipment (including computers) without operators; and other machinery and equipment without operators; furniture and other household appliances; pleasure and leisure equipment; and other personal and household goods in the following FSCs: 37, Agricultural machinery and equipment; 38, Construction, mining, excavating and highway maintenance equipment; 65, Medical, dental, and veterinary equipment and supplies; 66, Instruments and laboratory equipment; 67, Photographic equipment; 70, General purpose ADP Supplies and support equipment; 71, Furniture; 72, Household and commercial furnishings and appliances; 73, Food preparation and serving equipment; 74, Office machines, text processing systems and visible recording equipment; 75, Office supplies and devices; 77, Musical instruments, phonographs, and home-type radios; 78, Recreational and athletic equipment; 84, Clothing, individual equipment and insignia]. **Relates to CPC:** 83106 to 83109, Leasing or rental services concerning machinery and equipment without operator; 83203 to 83209, Leasing or rental services concerning personal and household goods.

Annex 4.2: Canada-Korea Agreement on the Procurement of Telecommunications Equipment (CKTEA)

Agreement between

the Government of the Republic of Korea

and

the Government of Canada

on the Procurement of Telecommunications Equipment

The Government of the Republic of Korea (hereinafter "Korea"), of the one part, and **the Government of Canada** (hereinafter "Canada"), of the other part (hereinafter collectively referred to as the "Parties" and singularly as a "Party"),

Recognizing the vital role played by telecommunications services and infrastructures in promoting and sustaining economic growth;

Reaffirming the Parties' obligations under the World Trade Organization ("WTO") agreements, including the WTO Agreement on Government Procurement (the "AGP"), the Ministerial Declaration on Trade in Information Technology Products (the "ITA") and the WTO Fourth Protocol to the General Agreement on Trade in Services (the "GATS"), also referred to as the WTO Agreement on Basic Telecommunications ("the GBT Agreement");

Considering the Parties' commitment to liberalize their respective telecommunications equipment, government procurement and basic telecommunications service markets to foreign competition in accordance with GATT 1994, the AGP and the GBT Agreement, respectively;

Understanding that the increased competition resulting from the implementation of these WTO agreements by Korea and Canada will encourage telecommunications equipment manufacturers and service providers to compete vigorously with one another and to offer the best goods and services for the most competitive prices possible;

Seeking to extend reciprocal, transparent and non-discriminatory access for the Parties' telecommunications equipment manufacturers and service providers to procurement by entities covered by this Agreement; and

Affirming that the competitiveness of suppliers and service providers, not government intervention, should be the principal determinant of industrial success and international trade;

Have agreed as follows:

Article 1

Objective, Definitions and Scope of the Agreement

1. The purpose of this Agreement is to secure reciprocal, transparent and non-discriminatory access for the Parties' suppliers and service providers to the procurement of goods and incidental services by the entities listed in Annex 1(a) and 1(b) (hereinafter collectively referred to as the "entities" and singularly as an "entity").

2. For the purpose of this Agreement:

(a) "goods" means:

(i) telecommunications (wireline and wireless) equipment and materials originating in the territories of the Parties that are components of telecommunications networks, including switching, transmission, access and terminal equipment, or that are used in the development, configuration, installation, operation, maintenance, repair and management of telecommunications networks; and

(ii) research and development equipment, testing and measurement equipment and training equipment that are included in a tender for the procurement of telecommunications equipment and materials covered by this Agreement.

(b) "incidental service" means any service that is included in a tender for the procurement of a good covered by this Agreement.

(c) "territory" means:

(i) with respect to Korea, the territory of Korea as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial areas over which Korea exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of natural resources of such areas.

(ii) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

3. This Agreement applies to any laws, regulations, procedures or practices of the Parties relating to procurement:

(a) by entities listed in Annex 1(a) in the case of Korea and in Annex 1(b) in the case of Canada;

(b) of goods and incidental services; and

(c) where the value of the contract to be awarded is a minimum of 130,000 SDR (Special Drawing Rights).

4. The value of SDR in Korean Won and Canadian Dollars shall be fixed in accordance with the procedures established by the WTO Committee on Government Procurement and specifically the Decision on Procedural Matters under the AGP (1994) - Modalities for Notifying Threshold Figures in National Currencies (GPA/1 - Annex 3).

5. This Agreement does not apply to the following contracts:

(a) procurement of goods and services with a view to commercial resale or use in the production of goods for commercial sale;

(b) for Korea:

- single tendering procurement involving set-asides for small and medium-sized businesses;

- procurement of satellites pursuant to Korea's Aviation and Space Industry Development Promotion Law for a five-year period commencing on January 1, 1997 on which Korea's accession to the AGP became effective; and

(c) for Canada:

- procurement in respect of set-asides for small and minority businesses;

- procurement for the Departments of Transport, Fisheries and Oceans, and Communications respecting Federal Supply Classifications 36, 70 and 74.

Article 2

Market Access and Principles of Non-discrimination

With respect to the procurement of goods and incidental services by the entities, each Party shall provide to the goods and incidental services of the other Party, and to the suppliers of such goods and incidental services of the other Party, treatment no less favourable than that accorded to its own goods, incidental services and suppliers, and the goods, incidental services and suppliers of any third country.

Article 3

Procurement Procedures

1. Subject to paragraph 2 of this Article, the Parties agree, for the entities' procurement covered by this Agreement, to incorporate into this Agreement by reference the following articles of the AGP, as amended from time to time, *mutatis mutandis*, except to the extent that the procedures and practices contained therein are modified by this Agreement:

Article II	Valuation of Contracts
Article IV	Rules of Origin
Article VI	Technical Specifications
Article VII	Tendering Procedures
Article VIII	Qualification of Suppliers
Article IX	Invitation to Participate Regarding Intended Procurement
Article X	Selection Procedures
Article XI	Time-limits for Tendering and Delivery
Article XII	Tender Documentation
Article XIII	Submission, Receipt and Opening of Tenders and awarding of Contracts
Article XIV	Negotiation
Article XV	Limited Tendering
Article XVII	Transparency
Article XVIII	Information and Review as Regards Obligations of Entities
Article XIX	Information and Review as Regards Obligations of Parties
Article XXIII	Exceptions to the Agreement

2. The Parties agree that, for the purposes of AGP Article IX and XVIII incorporated by reference into this Agreement, notice shall be published in the appropriate publication listed in Annex 3 of this Agreement.

3. In the qualification and selection of suppliers, goods and incidental services, evaluation of bids and award of contracts:

(a) the entities shall not, either explicitly or implicitly, impose, seek or consider offsets[1]; and

(b) the private sector telecommunications operators in the territories of the Parties shall not

[1] For the purpose of this Agreement, offsets include measures used to encourage local development or improve the balance of payments accounts by means of domestic content, licensing and/or transfer of technology, counter-trade, investment requirements, or similar requirements.

be required or encouraged by the Parties, explicitly or implicitly, to impose, seek or consider offsets.

4. A Party or an entity of a Party may limit suppliers who qualify to those that can demonstrate that accepting their bid will not result in incompatibility, technical difficulty or disproportionately high costs in the operation and maintenance of the network of the Party or the entity of the Party. Such a limitation of suppliers may not be applied to avoid maximum possible competition or to constitute a means of discriminating against suppliers of the other Party or protecting domestic suppliers.

Article 4

Bid Challenge Procedures

With respect to procurement by the entities, the Parties shall provide non- discriminatory, timely, transparent and effective procedures enabling suppliers and service providers to challenge alleged breaches of this Agreement arising in the context of procurement in which they have, or have had, an interest. Consultation and challenge procedures involving the entities and bodies reviewing bid challenges shall include, as a minimum, those procedures set out in Article XX of the AGP, *mutatis mutandis*. The entities shall normally follow the recommendations of their respective review bodies.

Article 5

Consultations and Dispute Settlement

1. Unless otherwise mutually agreed, the Parties shall meet no less than once a year to discuss any matter affecting the operation and implementation of this Agreement, including a review of the Annexes to this Agreement, with a view to updating the Annexes to reflect changes in the Parties' telecommunications services and equipment markets, as well as any other issue relating to this Agreement.

2. Where necessary, either Party may request a consultation to discuss any aspect of this Agreement. When a Party requests consultations on any matter affecting the operation of this Agreement, such consultations shall be held not later than 30 days following the date on which the request is received, unless otherwise mutually agreed by the Parties.

3. To the extent necessary to ensure effective implementation of this Agreement, the Parties shall, upon the request of either Party, exchange information on legislation, other measures or imminent changes affecting or likely to affect procurement policies or practices of entities covered by this Agreement.

4. Each Party shall give sympathetic consideration to the concern of the other Party and work to reach a mutually acceptable resolution of any issue arising in connection with the interpretation or application of this Agreement.

5. If either Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, it may request consultations under this Article.

6. In the event of a dispute under this Agreement, the Parties shall endeavour to resolve the dispute by means of consultations within 90 days of the date of the initial request for consultations. The consultation period can be extended upon the mutual agreement of the Parties.

7. If a dispute is not resolved through consultations between the Parties within 90 days of the date of the initial request for consultations or such other period of time as may be mutually agreed upon, either Party may initiate an arbitration proceeding. The arbitration proceeding shall be initiated and governed according to the Arbitration Procedures set forth in Annex 2 to this

Agreement.

Article 6

Application of Other Agreements

The Parties affirm their rights and obligations pursuant to the WTO, the AGP and other multilateral agreements negotiated under the auspices of the WTO. In the event of any inconsistency between this Agreement and any agreement between the Parties other than those multilateral agreements mentioned above, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement or agreed by the Parties in writing.

Article 7

Final Provisions

1. This Agreement shall enter into force on the first day of the month following the date on which the Parties have notified each other that their implementation process has been completed.

2. The Parties may agree on any modification of, or addition to, this Agreement, including the updating of the list of the entities of the Parties due to, among other things, a change in the legal status of an entity, by mutual consent.

3. When so agreed and approved in accordance with the applicable legal procedure of each Party, a modification or addition shall constitute an integral part of this Agreement.

4. If a Party wishes to terminate this Agreement, it shall notify the other Party in writing of such intention, and the termination of this Agreement will take effect 180 days after the date on which the notification is received.

5. The Annexes attached to this Agreement shall form an integral part of this Agreement.

6. The provisions of this Agreement shall apply to the entities' successors.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Ottawa, this 5th day of July 1999, in the English, French and Korean languages, each text being equally authentic.

_____	_____
For the Government of the Republic of Korea	**For the Government of Canada**

Annex 1

Entity Coverage

Annex 1 a) - Korea

Entities which procure in accordance with the provisions of this Agreement

Korea Telecom (KT)

Annex 1 b) - Canada

Entities which procure in accordance with the provisions of this Agreement

Department of Agriculture
Department of Communications
Department of Consumer and Corporate Affairs
Department of Employment and Immigration
Immigration and Refugee Board
Employment and Immigration Commission
Department of Energy, Mines and Resources
Atomic Energy Control Board
National Energy Board (on its own account)
Department of the Environment
Department of External Affairs
Canadian International Development Agency (on its own account)
Department of Finance
Office of the Superintendent of Financial Institutions
Canadian International Trade Tribunal
Municipal Development and Loan Board
Department of Fisheries and Oceans
Department of Forestry
Department of Indian Affairs and Northern Development
Department of Industry, Science and Technology
Science Council of Canada
National Research Council of Canada
Natural Sciences and Engineering Research Council of Canada
Department of Justice
Canadian Human Rights Commission
Statute Revision Commission
Supreme Court of Canada
Department of Labour
Canada Labour Relations Board
Department of National Health and Welfare
Medical Research Council
Department of National Revenue
Department of Public Works
Department of Secretary of State of Canada
Social Science and Humanities Research Council
Office of the Coordinator, Status of Women
Public Service Commission
Department of the Solicitor General
Correctional Service of Canada
National Parole Board
Department of Supply and Services (on its own account)
Canadian General Standards Board

Department of Transport (except the Canadian Coast Guard)
Treasury Board Secretariat and the Office of the Controller General
Department of Veterans Affairs
Veterans Land Administration
Department of Western Economic Diversification (on its own account)
Atlantic Canada Opportunities Agency (on its own account)
Auditor General of Canada
Federal Office of Regional Development (Quebec)
(on its own account)
Canadian Centre for Management Development
Canadian Radio-Television and Telecommunications Commission (on its own account)
Canadian Sentencing Commission
Civil Aviation Tribunal
Commissioner for Federal Judicial Affairs
Competition Tribunal Registry
Copyright Board
Emergency Preparedness Canada
Federal Court of Canada
Grain Transportation Agency (on its own account)
Hazardous Materials Information Review Commission
Information and Privacy Commissioners
Investment Canada
Department of Multiculturalism and Citizenship
The National Archives of Canada
National Farm Products Marketing Council
The National Library
National Transportation Agency (on its own account)
Northern Pipeline Agency (on its own account)
Patented Medicine Prices Review Board
Petroleum Monitoring Agency
Privy Council Office
Canadian Intergovernmental Conference Secretariat
Commissioner of Official Languages
Public Service Staff Relations Board
Office of the Secretary to the Governor General
Office of the Chief Electoral Officer
Federal Provincial Relations Office
Procurement Review Board
Statistics Canada
Tax Court of Canada, Registry of the
Agricultural Stabilization Board
Canadian Aviation Safety Board
Canadian Centre for Occupational Health and Safety
Canadian Transportation Accident Investigations and Safety Board
Director of Soldier Settlement
Director, The Veterans Land Act
Fisheries Prices Support Board
National Battlefields Commission

Annex 2

Arbitration Procedures

1. In the event of a dispute under this Agreement which the Parties are unable to resolve within 90 days of the date of the initial request for consultations or such other period of time as may be mutually agreed upon, either Party may initiate an arbitration proceeding, pursuant to Article 5, paragraph 7 of this Agreement. Such proceedings shall be subject to the procedures set out in this Annex.

2. Within 60 days after receipt of a request for arbitration through diplomatic channels, an arbitral panel shall be constituted by each Party appointing one member to the arbitral panel. The two members shall then select a national of a third party country who, upon approval by the Parties, shall be appointed the Chairman of the arbitral panel. The Chairman shall be appointed within 60 days from the date of appointment of the other two members of the arbitral panel.

3. If, within the periods specified in paragraph 2 of this Annex, the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Party or is prevented from discharging the said function, the Member of the International Court of Justice next in seniority, who is not a national of either Party, shall be invited to make the necessary appointments.

4. The arbitral panel shall determine its own procedures. The arbitral panel shall reach its decision by a majority of votes. Such decision shall be binding on both Parties. Unless otherwise agreed, the decision of the arbitral panel shall be rendered within 180 days of the appointment of the Chairman in accordance with paragraphs 2 or 3 of this Annex.

5. Each Party shall bear the costs of its own member of the panel and of its representation in the arbitral proceedings; the costs related to the Chairman and any remaining costs shall be borne equally by the Parties. The arbitral panel may, however, in its decision direct that a higher proportion of costs shall be borne by either of the Parties, and this award shall be binding on both Parties.

6. The Parties shall implement the panel decision. If either Party cannot agree on the manner for resolution of the dispute, it will notify the other Party within 30 days of the rendering of the panel decision. The non-complying Party may propose compensation or other remedial action to the other Party and to the panel. If the other Party cannot agree to such proposed compensation or other remedial action within 60 days after the rendering of the panel decision, it may propose to the panel the suspension or withdrawal of equivalent benefits under this Agreement. Such suspension or withdrawal shall take effect 30 days after it is proposed, unless the panel disapproves such action; in the latter event, the panel shall make a ruling binding on the Parties respecting suspension or withdrawal of equivalent benefits.

Annex 3

Publications Utilized

Korea -

Major daily newspapers of national circulation
Planned internet homepage of KT
Contact point: The Quality Assurance and Logistics Support Group of KT

Canada -

Government Electronic Tendering System

Annex 4

Origin of Goods and Services

1. The Parties agree to review their existing non-preferential rules of origin regimes for the purpose of establishing mutually acceptable rules of origin governing the scope of goods subject to this Agreement, as referenced in Article 1.2(a), within 180 days after the signing of this Agreement. In establishing such rules of origin, the Parties shall take into account principles applied in the normal course of international trade, such as the use of changes in tariff classification to reflect substantial transformation.

2. The Parties agree, for the entities' procurement covered by this Agreement, to incorporate into this Agreement by reference Article IV, paragraph 1 of the AGP.

3. The Parties agree to examine the results of the work programme for the harmonization of rules of origin for goods currently underway under the Agreement on Rules of Origin in Annex 1A of the WTO Agreement and the negotiations regarding trade in services with the objective of adopting those results as the rules of origin for the purpose of implementing their commitments under this Agreement.

4. For the purpose of the provision of an incidental service, each Party shall grant temporary entry to service suppliers of the other Party who qualify according to its immigration laws and regulations and are otherwise qualified for entry under applicable measures relating to public health and safety and national security.

5. Incidental services shall be deemed to originate in the territory of a Party if at least 50% of the value of such incidental services is provided by a person or persons of that Party.

6. For the purposes of this Agreement, "person" has the same meaning as in Article XXVIII of the GATS.

7. If a Party or an entity of a Party is unable to verify the origin of goods or services tendered in a procurement subject to this Agreement, pursuant to the rules of origin established by the Parties under this Annex, that Party or the entity of that Party may refuse to consider the tender.

Chapter 5 - Sourcing Strategy

Determining the Extent of Competition

5.001 (1994-06-23) Whenever possible, contractors are to be selected using a competitive process. The flexibility to depart from this approach depends on the procurement framework being followed. The type of competitive solicitation that may be used will also depend on the procurement framework.

5.002 (2002-12-13) The *Government Contracts Regulations* (GCR) require the competitive soliciting of bids before any contract is entered into. However, contracts may be entered into without soliciting bids when:

"(a) the need is one of pressing emergency in which delay would be injurious to the public interest;

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.

(b) the estimated expenditure does not exceed $25,000; or $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 $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;

Contracting authorities are nevertheless expected to solicit bids whenever it is cost effective to do so.

(c) the nature of the work is such that it would not be in the public interest to solicit bids;

"This provision is normally reserved for dealing with security considerations or to alleviate some significant socio-economic disparity.

(d) only one supplier person or firm is capable of performing the contract.

This exception is quite definite and should be invoked only where patent or copyright requirements or technical compatibility factors and technological expertise suggest that only one contractor exists."

Treasury Board Contracting Policy
Section 10.2

Use of the National Security Exceptions

5.007 (2004-12-10) The national security exceptions provided for in the North America Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement (WTO-AGP), the Canada-Korea Telecommunications Equipment Agreement (CKTEA) and the Agreement on Internal Trade (AIT) allow Canada to remove a procurement from some or all of the obligations of the relevant trade agreement(s) where Canada considers it necessary to do so in order to protect its national security interests specified in the text of the national security exceptions. The purpose of the national security exceptions is to ensure that parties to the

agreements are not required in any way to compromise these interests through application of the obligations of the trade agreements.

5.008 (2003-12-12) Texts of the National Security Exceptions

(a) NAFTA: Article 1018: Exceptions

"1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes."

(b) WTO-AGP: Article XXIII: Exceptions to the Agreement

"1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes."

(c) CKTEA: Incorporates WTO-AGP Article XXIII by reference.

(d) AIT: Article 1804: National Security

"Nothing in this Agreement shall be construed to:

(i) require the Federal Government to provide, or allow access to, information the disclosure of which it determines to be contrary to national security; or

(ii) prevent the Federal Government from taking any action that it considers necessary to protect national security interests or, pursuant to its international obligations, for the maintenance of international peace and security."

5.009 (2003-12-12) The national security exceptions can be invoked to entirely remove the procurement from the obligations of the relevant trade agreements or to allow the use of some otherwise non-conforming measure.

5.010 (2004-05-14) The Canadian International Trade Tribunal (CITT), in its decision PR-98-005, has found that "the most senior level of substantive policy formulation and advice to the department on all supply operations activities..." has the authority to invoke the use of the national security exception, to exclude a procurement from the NAFTA, WTO-AGP, CKTEA and the AIT. For Public Works and Government Services Canada (PWGSC) that authority is the Assistant Deputy Minister of the Acquisitions Branch (ADM/AB).

5.011 (2004-05-14) Furthermore, PWGSC has decided that this specific authority will not be delegated to a lower official level because of the nature of the exception and having regard to s.24(2)(d) of the *Department of Public Works and Government Services Act*. PWGSC has further decided that a national security exception will not be invoked by anyone other than the ADM/AB.

5.012 (2003-12-12) Therefore, the following procedure is now in effect:

(a) All requests to invoke the national security exceptions to exclude a procurement from the WTO-AGP, NAFTA, CKTEA or the AIT, or any combination of the agreements, will

normally be submitted by the client department to the ADM/AB for approval, regardless of dollar value.

(b) A request must be in the form of a letter from the responsible ADM, or equivalent to the ADM level, at the client department. The letter must explain the nature of the proposed procurement and, depending upon which trade agreement(s) applies, how it relates to:

(i) Canada's "national security interests" or, pursuant to Canada's international obligations, "the maintenance of international peace and security". (AIT: Article 1804(b)); and/or

(ii) Canada's "essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes". (NAFTA: Article 1018.1 / WTO-AGP: Article XXIII).

(c) In reviewing requests to invoke the national security exception, the ADM/AB will be considering only the issue of whether or not to invoke the national security exception and will not be considering, at that time, other matters such as procurement methods, Procurement Plans or authority to enter into the contract. Client departments should work with contracting officers in determining which method of procurement should be used, in parallel with any request for approval of a national security exception, bearing in mind that even in situations where the national security exception is invoked, it remains government policy to compete requirements, subject to the exceptions to competitive contracting provided in the *Government Contracts Regulations* (GCRs).

(d) The utilization of the national security exceptions must be documented. In documents used to seek authority to enter into contract, and on the file, contracting officers must explain clearly that the national security exception is being invoked, specifying each of the trade agreements from which the procurement is being excluded and include a copy of the NSE approval on the file.

5.013 (2003-12-12) Contracting officers should bear in mind that invoking a national security exception to the trade agreements does not affect the obligation to comply with the GCRs in respect of such matters as sole source justifications, other sourcing strategy issues and contracting authority limits. Procurements for which an NSE is invoked remain subject to other relevant regulations and governmental and departmental policies, which may include posting a Notice of Proposed Procurement or an Advanced Contract Award Notice on the Government Electronic Tendering Services where appropriate, though the requirements of security may, in some cases, preclude such actions.

5.014 (2004-12-10) Within PWGSC, the Acquisition Strategy and Relations Directorate (ASRD) reviews, on behalf of the ADM/AB, requests to invoke the national security exception. Once approved, ASRD will notify the ADM/AB who, in turn, will provide a written confirmation to the client department that the national security exception has been invoked.

Contracting officers seeking advice to aid client departments in properly framing and requesting a national security exception should contact ASRD at (819) 956-6501.

Comprehensive Land Claims Agreements

5.020 (1996-01-01) Dependent upon the requirement, competition may be restricted to claimant group enterprises located within a certain Comprehensive Land Claim Settlement Area (CLCSA). For example, certain agreements make provision for the "right of first refusal" for the provision of certain commodities, i.e. business opportunities and ventures that are contracted out with respect to Parks and the right of first refusal to any new licenses to carry on economic activities related to wildlife and tourism.

Other agreements make provisions for giving the claimant group enterprises "first consideration or first priority" in sourcing certain requirements, i.e. silviculture services, management of designated heritage sites, and first consideration in providing technical and support services for contracts related to surveying the CLCSA.

5.021 (1996-06-03) Standing Offers and other supply arrangements are also affected by CLCAs. Contracting officers must notify all claimant groups of this type of procurement opportunity, especially when the contracting officer is unaware of which client department will issue a call-up against a standing offer.

The origin of the order (i.e. ordering office) does not determine the applicability of a CLCA, only the final delivery point.

5.022 (2004-12-10) For any procurement which has contracting activities that take place within a CLCSA, contracting officers should consult the Acquisition Policy and Process Directorate (APPD), at telephone number (819) 956-4744 to determine whether a CLCA may affect the overall procurement strategy. APPD will assist contracting officers in identifying these obligations and in developing methods of meeting them on a case-by-case basis.

NAFTA, WTO-AGP, CKTEA and AIT

5.030 (2004-12-10) With the introduction of trade agreements like North America Free Trade Agreement (NAFTA), World Trade Organization Agreement on Government Procurement (WTO-AGP), Canada-Korea Telecommunications Equipment Agreement (CKTEA) and Agreement on Internal Trade (AIT), the non-competitive approach to the procurement process is limited tendering. Limited tendering is a process which allows deviations from the competitive process including the ability to contact a sole or single supplier or a number of suppliers individually. This in fact means that it is possible to have a competitive procurement within a limited tendering procurement. This concept should be kept in mind when examining the following circumstances (limited tendering reasons) for NAFTA, WTO-AGP, CKTEA and AIT. (See 5.031, 5.032, 5.033, 5.036 and 5.037.) For procurements covered by the CKTEA, the limited tendering rules of the WTO-AGP are applied (see Annex 4.2, ARTICLE 3).

In procedures 5.031, 5.032, 5.033, 5.036 and 5.037 the applicable Contract Award Process (CAP) Code is included with each of the limited tendering reasons. This was done in order to ensure that the comparable limited tendering reason for each of the agreements (NAFTA, WTO-AGP, CKTEA and AIT) will be coded by contracting officers in a consistent manner. Annex 5.3 - Contract Award Process (CAP) Codes illustrates the permissible CAP Codes depending on the type of solicitation chosen for the particular procurement.

"...limited tendering procedures are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Parties or protection of domestic suppliers." (NAFTA Agreement, Article 1016.1.)

5.031 (2001-12-10) For procurements subject to either NAFTA, WTO-AGP, CKTEA and AIT, limited tendering procedures may only be used 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 tenders submitted come 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; (CAP Code 05)

(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; (CAP Code 71)

(c) where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures; (CAP Code 81)

(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 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; (CAP Code 74) and

* For procurements subject to AIT only, compatibility with existing equipment or services is acceptable and would be subject to a less stringent test than the interchangeability under NAFTA, WTO-AGP, and CKTEA.

(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. 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. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be competed, where applicable; (CAP Code 72)

(f) for goods purchased on a commodity market; (CAP Code 20)

(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; (CAP Code 21) and

(h) for a contract to be awarded to the winner of an (architectural) design** contest (CAP Code 22), on condition that 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; and

(ii) organized with a view to awarding the design contract to the winner; and

(iii) to be judged by an independent jury.***

** For procurements subject to NAFTA only, the design contest is specifically architectural.

*** For procurements subject to AIT only, conditions for an independent jury are not required.

5.032 (1996-01-01) In addition, for procurements subject to NAFTA and/or AIT, the use of limited tendering procedures may also be applied 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 (CAP Code 23).

5.033 (1996-06-03) In addition, for procurements subject to **WTO-AGP alone**, limited tendering procedures may be used under the following conditions:

(a) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become 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 percent of the amount of the main contract; (CAP Code 24) and

(b) 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 of the WTO-AGP 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 (CAP Code 25).

5.036 (1996-01-01) In addition, for procurements subject to AIT only (see Article 506), the following circumstances may be used to justify deviations from the competitive procurement procedures of the AIT, provided that it is not done so for the purpose of avoiding competition between suppliers or in order to discriminate against suppliers of any other Party:

(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 Five of the AIT; (CAP Code 87)

(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 for use in the construction or repair of roads; (CAP Code 87) and

(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. (CAP Code 90)

5.037 (1996-01-01) Where only one supplier is able to meet the requirements of a procurement, an entity may use procurement procedures that are different from those described in AIT Article 506 (paragraphs 1 through 10), in the following circumstances:

(a) for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly; (CAP Code 86)

(b) for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor; (CAP Code 87)

(c) 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; (CAP Code 87)

(d) for the procurement of subscriptions to newspapers, magazines or other periodicals; (CAP Code 87) and

(e) for the procurement of real property (CAP Code 87).

5.038 (1996-01-01) The client must provide the rationale for any exception to competitive procurement. It is up to the contracting officer to determine the acceptability of the rationale. If there is no or inadequate substantiation, the contracting officer must advise the client of alternative products or sources, and attempt to reach agreement with the client on the most appropriate procurement strategy. When differences cannot be resolved, the next level of management should be consulted.

If a sole source issue cannot be resolved up to the director general level, a recommendation is to be submitted to the Departmental Executive Committee, and possible involvement of the Minister considered.

Competitive Processes

5.040 (1997-03-31) It is the contracting officer's responsibility to select the most effective process for notifying suppliers of a bid opportunity by taking into consideration the requirements of the trade agreements and the policies set out in this chapter.

Procurements Subject to Trade Agreements

5.041 (2001-12-10) For procurements subject to NAFTA, WTO-AGP, CKTEA or AIT, or a combination of these, public advertisement/notification provisions specified within these trade agreements must be followed. The procedures to be followed are generally consistent for all of the agreements. When there are inconsistencies, the contracting officer must select the procedures that demonstrate the highest example of openness, e.g. the longer of two bidding periods.

Competitive procurements covered by NAFTA and/or the WTO-AGP must be advertised on the Government Electronic Tendering Service (GETS) and in the *Government Business Opportunities (GBO)* only. Procurements that are covered by the AIT and/or CKTEA must be advertised on GETS only. A procurement that is covered by the AIT and/or the CKTEA, and is also covered by NAFTA or the WTO-AGP must be advertised on both GETS and in the GBO. Additional notification processes (e.g. direct contact with suppliers), are not permitted.

Publication on the GETS, and, in the GBO for NAFTA or the WTO-AGP procurements is required when using:

(a) Open tendering; and,

(b) Selective tendering,

(i) Covered by NAFTA and WTO-AGP (or these agreements in combination with other agreements including the AIT and/or CKTEA):

- When using a one-time source list, notice must be published to invite suppliers to qualify for inclusion on the list. Notice must also be given to solicit bids. This would normally require the publishing of two separate notices.

- When using a permanent source list, a notice must be published annually identifying the existence of the source list and how to qualify and notice must also be published for each bid solicitation involving the use of the list; and,

(ii) Covered by AIT only when using a one-time or permanent source list a notice must be published annually identifying the existence of the source list and how to qualify.

For procurements subject to the Comprehensive Land Claims Agreements (CLCAs), contracting officers must check the particular CLCA to ensure that correct notification has been provided.

Procurements Not Subject to Trade Agreements

5.043 (2002-12-13) For procurements not subject to trade agreements, government policy requires that bids be solicited competitively before entering into a contract. Competition can be achieved by soliciting bids through public advertising (GETS or other public media) or by referring to source lists. Non-competitive procurement will only be used in specific circumstances. (See 5.002.)

This is consistent with the *Government Contracts Regulations*, Part 1, Section 7, as follows:

"7. A contracting authority shall solicit bids by:

(a) giving public notice, in a manner consistent with generally accepted trade practices, of a call for bids respecting a proposed contract; or

(b) inviting bids on a proposed contract from suppliers on the supplier's list."

Public Advertising

5.044 (1997-09-15) PWGSC's preferred process for notifying potential suppliers is to publicly advertise requirements on the GETS. (See 7B.160.)

When advertising through the GETS may not achieve the necessary results, the use of other public media (e.g. newspapers, trade journals, etc.), in addition or instead, can be considered on a case-by-case basis. (See 5.048.)

When public advertising (GETS or other public media) is used, potential suppliers may be notified directly about the opportunity.

When public advertising other than the GETS is used, the procurement officer is responsible for preparing the Notice of Proposed Procurement and for distributing bid documents directly to suppliers. Ensure that the name and telephone number of the contracting officer is included in the notice. Any associated costs will be at the department's expense.

The Treasury Board Open Bidding Contracting Authorities can only be used when a procurement has been advertised on the GETS and/or in the GBO. When the GETS and/or GBO are not used, the traditional competitive authorities must be used. (See 6A.020.)

Source Lists

5.046 (2002-12-13) When public advertising is not considered the most effective means to notify potential suppliers of a bid opportunity, source lists must be used. Advertising on the GETS in order to generate a source list is an option which can be considered.

Source lists can be developed and maintained by individual sectors or regions for specific commodities. Suppliers may apply to be listed at any time, and all qualified suppliers are to be included on the list within a reasonably short time.

When using source lists, it is essential that the selection of potential suppliers is fair and ensures equity of opportunity.

Normally, where source lists are used, other than rotational source lists:

(a) any other supplier making a request may be provided with a bid solicitation and be considered for evaluation; and

(b) these lists may be supplemented by a contracting officer's knowledge of potential sources and recommendations made by the client.

Automated Source Lists, i.e. AVRS and SELECT, provide a systematic rotation of vendors in order to ensure equity of opportunity for suppliers, and must be used where they apply. For SELECT, only those firms identified in the rotation are entitled to be invited and to bid.

Selecting the Notification Process

5.047 (2002-12-13) Except for those procurements covered under NAFTA, WTO-AGP, CKTEA or AIT, public advertising (GETS or other public media) is not required for the following:

(a) Procurements for the protection of Canada's essential security interests; this can only be exercised when:

(i) the Department of National Defence (DND) certifies that the requirement meets national security requirements, or

(ii) the bid documentation from any client is classified "TOP SECRET", "SECRET" or "CONFIDENTIAL" or designated "PROTECTED";

(b) procurements from government rehabilitation institutions (e.g. CORCAN);

(c) local procurements made by Public Works and Government Services Canada (PWGSC) offices abroad;

(d) Major Crown Projects;

(e) procurements for bulk foods and fertilizer made in furtherance of "tied aid" to developing countries;

(f) procurements subject to direction by Cabinet, legislation or regulations such as the Small Arms Replacement Project, Munitions Supply Program, Foreign Military Sales, and Shipbuilding;

(g) procurements subject to the Canada/U.S. Defence Production Sharing Program, or the European Research, Development and Production agreements;

(h) procurements for the Canadian Commercial Corporation (CCC).

For these requirements, source lists may be appropriate.

5.048 (1997-09-15) When choosing a notification process other than the preferred GETS, contracting officers must have a clear rationale. Issues to be considered include the following:

(a) what are the reasons for not using the GETS?
(b) what are the expected benefits of using another process?
(c) how will an alternate sourcing strategy compare to the GETS:
- in achieving openness, fairness, transparency, and access?
- in achieving competitiveness, value for money, efficiency/economy, and client service?
(d) will the use of source lists or other public media withstand public scrutiny?

Combinations of notification processes may resolve any deficiencies in using one process alone.

The Treasury Board Open Bidding Contracting Authorities can only be used when a procurement has been advertised on the GETS and/or in the GBO. When the GETS and/or GBO are not used, the traditional competitive authorities must be used. (See 6A.020.)

NAFTA, WTO-AGP, CKTEA and AIT Tendering Approaches

5.050 (2001-12-10) For procurements under NAFTA, WTO-AGP, CKTEA or AIT, there are three tendering approaches.

(a) Open Tendering - where a Notice of Proposed Procurement (NPP) is advertised, any individual, firm or other eligible supplier is free to submit a bid.

Open Tendering is the preferred approach.

(b) Selective Tendering -

(i) Selective Tendering not involving the use of a permanent list of suppliers* - a two stage procurement where potential bidders express an interest in participating and meet predetermined qualifications for participation publicized in the NPP at the first stage. Bid documentation is issued to those bidders meeting the qualifications at the second stage. For NAFTA, WTO-AGP and CKTEA, an NPP must be published at both stages of the procurement (it is also acceptable to amend the original NPP once the bid closing date has been determined). Any supplier who wishes to bid at the second stage may do so, as long as there is sufficient time to carry out the qualification process.

(ii) Selective Tendering involving the use of a permanent list of suppliers - where a source list is developed and maintained and qualified suppliers for the product or service in question are issued the bid documentation. Any other potential supplier who requests bid documentation must be considered. For NAFTA, WTO-AGP, CKTEA and AIT, an annual notice of the existence of the source list must be published (use the NPP form). For AIT, when using a source list, all qualified suppliers in a given category on a source list must be invited to bid for all procurement in that category.

(c) Limited Tendering - a process which allows for deviations from the above procurement practices. In situations, where a specific limited tendering justification can be applied, limiting the number of suppliers, to one or more suppliers, is allowed (see 5.030).

*A permanent list of suppliers is a source list.

5.051 (2003-05-30) In addition to the above, specific government enterprises (Crown corporations) subject to NAFTA, Annex 1001.1a-2), may use a notice of planned procurement to advertise potential procurements. This notice is normally published at the start of a fiscal year and lists potential procurements for the enterprise in the upcoming fiscal year.

A response from potential suppliers to a notice of planned procurement is not required.

The notice of planned procurement may also be used as a notice regarding a qualification system. When used in this manner, a response from suppliers would be required; bid documentation is issued to those bidders meeting the qualifications.

Determining Eligible Bidders

5.060 (1995-07-01) Normally, any individual, firm or other entity may submit a bid.

5.061 (2004-12-10) A government department, agency, or Crown corporation (or a company owned, in whole or in part, by any of these), whether federal, provincial or municipal, or from another country, may be sourced if it:

(a) is the sole source for the good or service; or

(b) has established itself as competing with private industry. The organization must have proven, to the satisfaction of PWGSC, that it is indeed competing with private industry in the normal course of business. It must not have an unfair competitive advantage over other potential bidders, either through subsidization or through the absence of any liability to pay corporate income taxes; or

(c) is a federal service delivery unit which has been designated a Special Operating Agency (SOA) and is competing with private sector suppliers to provide goods or services to the federal government. See Treasury Board Secretariat (TBS) Population Affiliation Report, Section 6, for a list of SOAs.

Under the Common Services Policy, TBS confirmed that the following common service organization "is authorized to engage in the competitive process to serve departments."

Training and Development Canada (TDC) for the provision of training consulting services.

The Policy also allows departments and agencies to purchase services from Consulting and Audit Canada and TDC, as internal suppliers, on a negotiated, sole source basis.

Arrangements between government entities are not considered contracts within the meaning of the Government Contracts Regulations, the TBS Contracting Policy, and Canada's international agreements. An appropriate form of documentation for the procurement must be prepared with the assistance of Legal Services.

5.062 (1995-07-01) PWGSC, on behalf of the federal government, has entered into agreements in the form of Memoranda of Understanding (MOU) with all the provinces and territories. These agreements, which apply only to the ministries or departments specified in the MOUs, allow the federal and provincial/territorial governments to provide goods and services to each other by means of Supply Transfer Orders.

5.063 (1995-07-01) Universities and not-for-profit organizations may be sourced for knowledge-oriented requirements when private industry is not able or willing to undertake the work, or when the university or organization is a recognized centre of excellence in the particular field involved. In sourcing from universities or not-for-profit organizations, competition shall be used whenever possible.

5.065 (2004-05-14) Whenever possible, Public Works and Government Services Canada provides CORCAN (Special Operating Agency of Correctional Services of Canada) with adequate, stable and continuing market outlets for items or product lines identified in Supply Arrangement number E60PQ-000008/001/PQ.

If a procurement is to be sourced through CORCAN, the special procedures in Section 9A apply. Direct enquiries, by telephone, to the coordinator in Furniture Division, Commercial and Consumer Products Directorate, Acquisitions Branch, at (819) 956-3816.

Set-Aside Program for Aboriginal Business

5.066 (1997-03-31) In accordance with the Procurement Strategy for Aboriginal Business and the Set-Aside Program for Aboriginal Business announced on March 27, 1996, requirements designated by client departments as set aside will be restricted to qualified Aboriginal businesses. Detailed

procedures for conducting set aside procurements are set out in Section 9L - Set-Aside Program for Aboriginal Business - Conducting Set-Aside Procurements.

CKTEA

5.067 (2004-12-10) The Canada-Korea Telecommunications Equipment Agreement (CKTEA) is an international trade agreement signed by the Government of the Republic of Korea and the Government of Canada covering the procurement of telecommunications equipment (see 4.011). Any questions on application of the CKTEA should be directed to the Acquisition Strategy and Relations Directorate, at telephone number (819) 956-6497.

5.068 (2001-12-10) Under the CKTEA, a Covered Good is defined as:

(a) telecommunications (wireline and wireless) equipment and materials originating in the territories of Canada and Korea that are components of telecommunications networks, including switching, transmission, access and terminal equipment, or that are used in the development, configuration, installation, operation, maintenance, repair and management of telecommunications networks; and

(b) research and development equipment, testing and measurement equipment and training equipment that are included in a tender for the procurement of telecommunications equipment and materials covered by the CKTEA.

For procurements involving the following Federal Supply Classification (FSC) 58 categories, the procedures detailed in this Manual must always be followed:

N5805 Telephone and Telegraph Equipment
N5815 Teletype and Facsimile Equipment
N5820020 to N5820700 Radio Transmitters, Receivers and Transceivers

Other categories of FSC 58 may also be covered by the CKTEA if the good could be considered a Covered Good as defined above.

With the exception of items listed under FSC 58, procurement which may be considered procurement of a Covered Good in accordance with the above definition is also covered by the WTO-AGP. Procurement covered by both Agreements should follow procedures set out for the WTO-AGP, as Canada has committed through the WTO-AGP to open these procurements to Korea and the other WTO-AGP members.

For procurement covered by the CKTEA, but not by the WTO-AGP, the following definitions are applicable:

(a) A good is considered a Canadian or Korean Good, if it is considered so under Canada's "Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations". Article 8 of these Regulations, which provides for a NAFTA tariff preference override, cannot be used to determine whether a good is Canadian.

(b) "Incidental Service" means any service that is included in a tender for the procurement of a Covered Good under this Agreement.

A service provided by an individual based in Canada or Korea is considered a Canadian or Korean service, respectively. Where a requirement consists of only one service, which is being provided by more than one individual, the service will be considered Canadian or Korean if a minimum of 60 percent of the total bid price for the service is provided by individuals based in Canada or Korea respectively.

(c) "Territory" means:

(i) with respect to Korea, the territory of Korea as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial areas over which Korea exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of natural resources of such areas.

(ii) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources.

5.069 (2002-05-24) The bidder will certify Canadian and/or Korean content by signing a statement that the products offered meet the definition of Canadian and/or Korean Goods and Services. The certification forms are contained in the *Standard Acquisition Clauses and Conditions* (SACC) Manual, under clause numbers K5001T, K5002T, K5003T, K5004T, K5005T, K5006T, K5011T, K5013T and K5014T.

Canadian Content Policy

5.070 (2005-06-10) The Canadian Content Policy is a Cabinet-mandated policy. The Policy encourages industrial development in Canada by limiting, in specific circumstances, competition for government procurement opportunities to suppliers of Canadian goods and services.

The Policy applies to procurement carried out by the former Supply and Services Canada (SSC), now a part of Public Works and Government Services Canada. Therefore, it would not normally apply to construction procurement unless this procurement had been previously carried out by SSC.

Note: The complete text of the Canadian Content Policy can be found in Annex 5.1.

5.071 (2001-12-10) The Canadian Content Policy applies to competitive procurements, publicly advertised, with an estimated value of $25,000 or more, **except** for the following:

(a) government procurements subject to the NAFTA, WTO-AGP or CKTEA;

(b) procurements made in furtherance of aid to developing countries, but does apply to purchases made by the Canadian International Development Agency (CIDA) on its own account;

(c) procurements made by Public Works and Government Services Canada (PWGSC) Supply Operations Offices located outside Canada; and

(d) Cabinet-mandated Sourcing, including Sourcing Relating to Shipbuilding, Ship Repair, Refit and Mid-Life Modernization.

5.072 (2004-12-10) A good wholly manufactured or originating in Canada is considered a Canadian good. A product containing imported components may also be considered Canadian for the purpose of this policy when it has undergone sufficient change in Canada, in a manner that satisfies the definition specified under the North American Free Trade Agreement (NAFTA) Rules of Origin (see Annex 5.5). For photocopiers, computers and office equipment within Federal Supply Classification (FSC) groups 36, 70 and 74, only the products of CIRCLE Canada and MERIT Partnership Program firms or companies in Priority Group 1 prior to April 1992 are considered Canadian (See 5.073).

A service provided by an individual based in Canada is considered a Canadian service. Where a requirement consists of only one service, which is being provided by more than one individual,

the service will be considered Canadian if a minimum of 80 percent of the total bid price for the service is provided by individuals based in Canada.

5.073 (2005-06-10) Other Canadian Goods and Services:

(a) CIRCLE Canada and MERIT Partnership Program: For photocopiers, computers and office equipment within FSC groups 36, 70 and 74, only the products of the following firms are considered Canadian goods:

(i) MERIT Partner under the MERIT Partnership Program (administered by Industry Canada [IC] and Public Works and Government Services Canada [PWGSC]);

(ii) Companies which, on March 31,1992, were allocated to Priority Group 1 under the Priority Groups Policy in effect at that time; or

(iii) CIRCLE Canada companies as agreed on by IC and PWGSC.

(b) **Textiles**: Textiles are considered to be Canadian goods according to a modified rule of origin, copies of which are available from the Clothing and Textiles Division, Logistics, Electrical, Fuel and Transportation Directorate.

5.074 (2003-12-12) The bidder will certify Canadian content by signing a statement that the products offered meet the definition of Canadian Goods and Services. The certification forms are contained in the *Standard Acquisition Clauses and Conditions* (SACC) Manual under clause numbers K4001T, K4002T, K4003T, K4004T, K4005T, K4006T, K4011T, K4013T, and K4014T.

Procurement Review for Socio-Economic Benefits

5.090 (2003-05-30) In accordance with government objectives, as described in Treasury Board (TB) Procurement Review Policy, procurement strategies for goods and services between $2M and $100M are considered for potential socio-economic benefits.

5.091 (2003-05-30) The review process is carried out through the interdepartmental Procurement Review Committee (PRC), which is responsible for providing linkages between the government's industrial and regional benefits policy and other national objectives to individual procurements.

5.092 (2001-10-12) PRC decisions should be consistent with other government objectives, e.g. the pre-eminence of operational requirements, competition, fairness and accessibility. Review decisions are binding on PWGSC and the client and are manifested primarily in the bid evaluation criteria.

5.093 (2002-05-24) Mandatory procurement review does not apply to:

(a) foreign aid by or on behalf of the Canadian International Development Agency;

(b) procurements by the Canadian Commercial Corporation on behalf of entities not subject to this policy, e.g. foreign governments;

(c) the acquisition, modification and routine maintenance of real property;

(d) security requirements by or on behalf of the Canadian Security Establishment of the Department of National Defence; the Canadian Security Intelligence Service; and the Royal Canadian Mounted Police for the purpose of pursuing criminal investigations; and

Notwithstanding this exemption, the above organizations must apply the principles of the policy where appropriate, consistent with the security requirements of their procurement.

In cases of emergency, as defined in the TB Contracting Policy, departments may enter into contract without submitting the procurement review pursuant to this policy. Such action should be noted in any subsequent submission or report to TB or TB Secretariat, and should also be reported to the PRC Secretariat within sixty (60) days.

5.094 (2001-12-10) The PRC divides procurements into the following categories:

A. NAFTA, WTO-AGP, and CKTEA requirements

G. All other including requirements subject to AIT with the following exceptions: Foreign Military Sales, Security Services, Temporary Help Services, procurements under the Munitions Supply Program and requirements subject to the Shipbuilding Policy.

5.095 (2001-12-10) The Advisory Council on Repair and Overhaul (ACRO) will carry out the review process for military repair and overhaul requirements, under the strategic direction of the PRC.

For Major Crown Projects (MCPs), or those requirements exceeding $100M, the Senior Project Advisory Committees (SPAC) will, in accordance with the TB Policy on Management of MCPs, continue to carry out associated procurement review functions. It is the responsibility of the client department to convene a SPAC.

5.096 (2005-06-10) For proposed procurements between $2M and $100M, the contracting officer must complete a "Detail Document" (see Annex 5.2), and forward it to the PRC Secretariat once it has been reviewed by their individual Sector approval processes.

The PRC Secretariat is part of the Risk, Integrity and Strategic Management Sector, and can be reached either by telephone: (819) 956-7424 or via e-mail at: mailto:PRC.Secretariat@pwgsc.gc.ca.

The following process is followed for review and approval of requirements:

(a) The Detail Document is forwarded to PRC Committee members by e-mail. Committee members are given five (5) working days to review each individual requirement. At any time within those five (5) days, members can request that the PRC Secretariat place a requirement on hold pending further discussions or clarifications.

(b) Queries on a particular requirement sent to the PRC Secretariat by Committee members will be forwarded directly to the responsible contracting officer for direct reply.

(c) If no queries or concerns have been received at the end of the fifth day, the PRC Secretariat will then issue a Record of Decision (see Annex 5.2.1).

(d) Copies of both the Detail Document and Record of Decision are provided to all PRC members and the responsible PWGSC contracting officer whose name has been indicated on the Detail Document.

(e) A requirement which has been placed on hold will only be released once direction to do so has been received by e-mail from the PRC member who has made such a request.

(f) Contracting requirements which are initially under $2M must be reviewed by the PRC if the contract value increases to $2M and above.

(g) Amendments to a requirement must be added to the Detail Document by the contracting officer and returned to the PRC Secretariat for forwarding to PRC members for further review. PRC members are given three (3) working days to review amendments. At the end of this time period, a Record of Decision will be issued.

When completing the Detail Document, the following should be taken into consideration:

(a) Socio-economic benefits, if any, must be clearly indicated in the Detail Document.

(b) The Project Value should clearly identify whether it is one contract or part of a project involving several requirements to be sent for individual PRC review and approval, or whether the PRC is being requested to approve the entire project. If this is the case, then this should be clearly stated in the detail document.

5.097 (2001-12-10) Copies of the PRC Detail Document and Record of Decision must be kept on the contracting file.

5.098 (2001-12-10) When a PRC review is required, the Secretariat will, as part of the background document, request that the contracting officer develop procurement strategies for consideration by the PRC. As a member of the PRC, the contracting officer plays a major role in these deliberations. The PRC's recommendations are recorded in a Record of Review which accompanies the contract submission to TB.

5.099 (1995-07-01) Recommendations that involve increased cost or risk must be supported by a cost-benefit analysis using the factors set out in the TB policy. This analysis is carried out by the department whose program will be supported by the benefits being sought.

5.100 (1995-07-01) The use of relative weightings for evaluating socio-economic benefits should be limited, except in special circumstances, to procurements exceeding $50 million.

When relative weightings are utilized for evaluating socio-economic benefits, TB approval of the procurement strategy is required before release of the bid solicitation regardless of delegated levels. TB approval will be sought by the department acting as proponent of the alternate strategies.

5.101 (1995-07-01) Where socio-economic benefits form part of the bid evaluation, the PRC may request that the contracting authority provide a briefing on the results of the bid evaluation.

The contracting authority may be required to provide the PRC with feedback relative to the results of the Committee's recommendations. However, monitoring the achievement of the benefits being sought is the responsibility of the department whose program was supported by the socio-economic benefits.

5.103 (1995-07-01) All procurements which contain a requirement for **any local content or regional economical benefit**, including those procurements for which the PRC has imposed local content or regional economic benefits, contracting officers must ensure that the NPP/solicitation documentation contains details of the restrictions or practices. When the value of the procurement is $2 million or below and local content or regional economic benefits have been sought, these procurements must be reported as "exceptional circumstances." In order to prepare the report, it will be necessary for contracting officers to include the details of the restrictions in the Contract Award Notice also.

Shipbuilding, Repair, Refit and Modernization

5.104 (2003-12-12) The PWGSC procedures for sourcing suppliers for work on Canadian government vessels derive from the government's Shipbuilding, Repair Refit and Modernization Policy. The objective of the policy is to encourage competition amongst Canadian shipyards. For all competitive shipbuilding requirements as defined in the above-mentioned Policy, subject to AIT, contracting officers must ensure that the details of the restrictions or practices are highlighted in the Notice of Proposed Procurement (NPP)/solicitation documentation.

The **NPP/solicitation documentation** must contain the following statement:

> "The sourcing strategy relating to this procurement will be limited to suppliers in the (as applicable) Province or Territory of Origin or the (as applicable) Area of Origin in accordance with the Shipbuilding, Repair Refit and Modernization Policy."

For procurements below $2 million subject to the Shipbuilding, Repair Refit and Modernization Policy, the Contract Award Notice (CAN) must also contain these details.

The following procedures (5.105 to 5.111) apply only when the procurement is not subject to NAFTA, WTO-AGP, or CKTEA. NAFTA, Chapter 10, Annex 1001.2b, paragraph 1.(a) and WTO-AGP, Annex 4, exempts "shipbuilding and repair". The CKTEA covers telecommunications equipment.

5.105 (2003-12-12) Definitions specific to the sourcing strategy of shipbuilding, ship repair, refit and mid-life modernization procurements are as follows:

(a) Origin of the vessel - the operational home port of the vessel.

(b) Area of Origin - the following Areas of Origin are recognized:

Eastern Canada: Atlantic Canada (Newfoundland and Labrador, Prince Edward Island, Nova Scotia and New Brunswick), Quebec and Ontario.

Western Canada: All shipyards west of Ontario and those in the Yukon, Nunavut and Northwest Territories.

(c) Province or Territory of Origin - The following Provinces or Territories of Origin are recognized:

Newfoundland and Labrador
Nova Scotia
New Brunswick
Prince Edward Island
Quebec
Ontario
Manitoba
Saskatchewan
Alberta
British Columbia
Nunavut Territory
Northwest Territories
Yukon

5.106 (2003-12-12) For procurements $25,000 and below, competitions may be limited to the Province or Territory of Origin of the vessel.

5.107 (2003-12-12) For new construction requirements over $25,000, competitions are to be conducted on a nation-wide basis when the following conditions are present:

(a) The statement of requirement is sufficiently defined to permit assessment of competing bids by common standards.

(b) Available shipyards, both in Eastern Canada and in Western Canada, have the technical capability to perform the work.

(c) The vessel being procured is of a type that can be transferred and for which contingency

costs (see 5.110) are not unrealistic in relation to the total price.

5.108 (2003-12-12) For new construction requirements over $25,000, competitions are to be conducted within the Area of Origin when all conditions, except 5.107, are present.

5.109 (2003-12-12) For ship repair, refit and mid-life modernization requirements over $25,000, competitions are to be conducted within the Region of Origin of the vessel, provided adequate competition exists.

If adequate competition (two or more bidders) does not exist, the requirement may still remain in the Area of Origin provided a satisfactory contractual agreement can be reached with the one available capable shipyard. If a satisfactory contractual agreement cannot be reached, the competition is to be extended on a nation-wide basis.

5.110 (2003-12-12) Contingency costs for ship repair, refit and modernization requirements shall be only those costs which are directly related with the transfer of the vessel as defined below:

(a) **For vessels that can be transported unmanned**: Solicitation documents will specify the pick-up point and the delivery point. Bidders will be required to provide a cost to transport the vessel from the pick-up point and once the work is completed, a cost to transport the vessel to the delivery point. In cases where the Government will retain responsibility for delivery of the vessel to and from the shipyard/ship repair facility and the vessel's home port, using commercial towing, railway, highway transportation or other suitable means, solicitation documents will identify the cost of such transportation as the vessel transfer cost that will be added to the evaluation price. (See SACC Manual clause A0240T.)

(b) **For vessels that are manned for transport**: Solicitation documents will identify the contingency cost that will be added to the evaluation price for the transfer of the vessel and its minimum delivery crew based on the geographical distance to and from the vessel's home port location and the shipyard/ship repair facility where the work will be undertaken, and:

(i) The fuel cost based on the current market price for fuel and the vessel's fuel consumption at its most economical speed.

(ii) For unmanned refits, transportation costs for the minimum delivery crew base on the latest Treasury Board directives. (See SACC Manual clause A0240T.)

(iii) For manned refits, contingency costs shall only include the fuel costs for transferring the vessel and shall not include any costs for transporting the crew. (See SACC Manual clause A0240T.)

5.111 (2003-12-12) Procurements by direct allocation of contracts to specific shipyards are to be made only in cases where the conditions permitting nation-wide, area and Province or Territory competitions are not present. Such cases will arise when one or more of the following conditions exist:

(a) Only one shipyard is capable of performing the work.

(b) Performance of the work necessitates access to particular facilities that are adjacent to one shipyard.

(c) The statement of requirement is not sufficiently defined to permit assessment of competitive bids by common standards.

(d) Emergency requirements necessitate use of the nearest yard capable of performing the

work.

(e) Special operational considerations of the client limit movement of the vessel beyond a specified location.

Supplier Qualifications

5.116 (2001-12-10) Suppliers to the Canadian government must demonstrate to the satisfaction of the Canadian government that they have the legal, technical, financial and management competence to discharge the contract. The eligibility of suppliers to bid may be restricted by requiring bidders to meet pre-established qualification criteria. (See Section 6B.)

For procurements subject to NAFTA, WTO-AGP, CKTEA or any combinations of these agreements, interested potential bidders who do not meet such a specified standard must be able to apply for the qualification after the notice of procurement is advertised, and the process of qualification must be started promptly. No discrimination between foreign suppliers or between domestic or foreign suppliers shall be made when establishing qualification criteria.

A particular area for attention is personnel security screening and/or organization's security clearance, where, due to the time it can take to process such requirements, it may be necessary to stipulate appropriate security screening requirements as a mandatory element of bids. (See 6C.270 and 6C.275.)

Requirements below $25,000

5.117 (2004-05-14) Requirements below $25,000 (including all applicable taxes) are considered to be low dollar value (LDV) procurements. When identifying an LDV requirement based on the estimated value of the final contract, contracting officers must not split or artificially divide requirements to meet the LDV threshold. (See 6A.001.)

Contracting officers are to procure LDV requirements below $25,000 (including all applicable taxes) using the most efficient and cost effective approach to select a contractor either by soliciting bids or by directing the requirement to a single supplier when it is not cost effective to call for bids.

Contracting officers will determine the most appropriate procurement strategy for each LDV requirement in order to obtain best value and ensure the timeliness and cost effectiveness of each contract, while respecting Public Works and Government Services Canada (PWGSC's) Guiding Principles which include client service, competition, accountability and equal treatment (See Chapter 1).

Contracting officers are to use the electronic tools available to them to identify and select a supplier on a competitive or directed basis. Examples of tools include the Supplier Registration Information (SRI) service, Automated Vendor Rotation System (AVRS), SELECT, Government Electronic Tendering Service (GETS), telephone and online trade directories, or any other electronic tool available to identify and select a supplier.

Contracting officers are to use the appropriate tools in the following order of precedence to select a supplier:

(a) Departmental electronic tools such as e-Purchasing;
(b) Existing standing offers or supply arrangements;
(c) Request for Quotation (via letter, e-mail or facsimile) or a Telephone Buy;
(d) GETS.

Contracting officers must document the procurement file with the rationale to support the procurement strategy. Contracting officers must also document the basis on which the

estimated value of the contract (i.e. below $25,000) was established.

Procurement Business Number

5.123 (2004-05-14) Firms interested in receiving a contract from Public Works and Government Services Canada (PWGSC) are encouraged to register in the Supplier Registration Information (SRI) system. An important feature of the SRI is the Procurement Business Number (PBN), created using the Canada Revenue Agency Business Number, to uniquely identify a company and its branches, divisions, or offices, where appropriate. The Government of Canada provides notice on GETS as well as on the Contracts Canada Website.

All Canadian companies are required to have a PBN prior to contract award in order to receive a PWGSC contract (see 7D.415). In exceptional circumstances, PWGSC may decide to award, at its own discretion, a contract to a company without a PBN. In these cases, the Director General's approval is required. At this moment, non-Canadian firms are strongly encouraged to obtain a PBN but do not require one. The requirement for a PBN (see SACC Manual clause A9109T) must be included in all solicitation documents.

A PBN can be obtained by registering in the SRI system, a database of registered suppliers interested in doing business with the federal government. This can be done either on-line, at the Contracts Canada Website or through a Supplier Registration Agent. For non-Internet registration, suppliers can contact the Contracts Canada InfoLine at 1-800-811-1148 or (819) 956-3440, in the National Capital Area, to obtain the telephone number of the nearest Supplier Registration Agent.

Controlled Goods

5.124 (2003-05-30) Bill S-25 amended the *Defence Production Act* (DPA) and established a new regime for regulating access to certain controlled military and military related goods, technical data and technology, referred to as controlled goods (see 6B.192). The amended DPA and the *Controlled Goods Regulations* came into force on 30 April 2001. It requires all "persons" in Canada examining, possessing, or transferring controlled goods, to another person in Canada to be registered, exempt or excluded from registration under the Controlled Goods Program (CGP). (See Chapter 12 for a definition of controlled goods.)

To meet this requirement, the CGP, a federal government program, was established under the DPA and the *Controlled Goods Regulations*. The CGP is administered by Public Works and Government Services Canada.

Contracting officers are invited to visit the CGP Website for more information.

Geographic Factors

5.126 (2004-05-14) Regional offices are to source requirements below $25,000 (including all applicable taxes) within their geographic area provided the area has adequate sources of supply (which may include suppliers of foreign goods or services) and offers the required level of service to clients and fair value for the taxpayer's dollar.

Federal Contractors Program for Employment Equity

5.128 (2003-12-12) The Federal Contractors Program for Employment Equity (FCP-EE) procedures apply, with exceptions listed in 5.129 below, to suppliers of goods and services who employ 100 people or more, and bid on requirements of $200,000 or more (including all applicable taxes).

The $200,000 threshold should include the amount of option years, when included in contracts and standing offers.

Any joint venture partner with 100 or more employees is required to certify its commitment to implement employment equity when bidding on solicitations valued at $200,000 or more (including all applicable taxes).

Requests for Standing Offers and supply arrangements are also subject to the FCP-EE procedures, whenever the total procurement requirements are estimated at $200,000 or more (including all applicable taxes).

The employment equity requirements of the FCP-EE apply to foreign suppliers only if they have a resident workforce in Canada of 100 or more permanent full or permanent part-time employees .

Exclusions from the FCP-EE

5.129 (2003-12-12) The FCP-EE policy does not apply to:

(a) contractors having a combined work force of less than 100 employees in Canada;

(b) offshore suppliers who will conduct and perform the work outside Canada;

(c) federally regulated companies, i.e. those companies regulated under the Canada Labour Code and Crown corporations, as they have to comply with the provisions of the *Employment Equity Act*;

(d) Canadian Commercial Corporation (CCC) contracts where CCC, as the prime contractor, purchases goods and services from Canadian sources and sells the products to foreign governments or international agencies through back-to-back contracts;

(e) contracts with or on behalf of provincial governments;

(f) construction contracts and contracts for the acquisition or lease of real property (Architecture & Engineering [A&E] Services requirements are not excluded);

(g) subcontractors.

Requirements estimated at $200,000 or more

5.130 (2004-12-10) Contracts *(including standing offers and supply arrangements)* for goods and services requirements *(including A&E services)* valued at $200,000 or more *(*including all applicable taxes*)* may be awarded only to vendors who:

(a) have signed and submitted a Certificate of Commitment (LAB 116B) and have not been declared ineligible by Human Resources and Skills Development Canada (HRSDC) to receive government contracts over the *Government Contracts Regulations* (GCRs) threshold for solicitation of bids (currently $25,000) as a result of a finding of non-compliance, or as a result of having voluntarily withdrawn from the Program for a reason other than a reduction in their workforce; or

(b) have provided a valid certification number, **prior to contract award**; or

(c) are exempted from the employment equity policy (see 5.129).

When the bid is accompanied by an original certificate, the contracting officer will forward that original to the:

Manager, Workplace Equity Program

Human Resources and Skills Development Canada
Portage II, 10th Floor
165 Hotel de Ville Street
Gatineau, Québec K1A 0J2

OR fax at (819) 953-8768.

Contracts valued above $25,000 to under $200,000

5.131 (2004-05-14) Contracts (*including standing offers and supply arrangements*) valued above $25,000 (including all applicable taxes) to under $200,000 must be awarded only to vendors who, if subject to FCP-EE in the past, have not been declared "ineligible" by HRSDC to receive government contracts over the GCR threshold for solicitation of bids (currently $25,000) as a result of a finding of non-compliance, or as a result of having voluntarily withdrawn from the Program for a reason other than a reduction in their workforce.

Compliance Reviews

5.132 (2004-05-14) Once a certified contractor receives a contract of $200,000 or more, the organization is required to honour its commitment of implementing employment equity as an ongoing obligation, and not simply during the life of the contract. HRSDC provides assistance to contractors throughout this process. It also monitors the contractor's performance in relation to employment equity criteria, and conducts compliance reviews. The findings and recommendations of HRSDC are forwarded to the contractor involved, who is expected to initiate remedial action should the findings be unfavourable. Contractors have the right to appeal to the Minister of HRSDC, and an independent assessor will study the findings.

Sanctions for non-compliance or withdrawal from FCP-EE

5.133 (2003-12-12) Findings of non-compliance will be communicated to Public Works and Government Services Canada which will be advised that the contractor, due to its failure to live up to the commitment to implement employment equity, will be declared ineligible to do business or receive federal contracts valued over the threshold for solicitation of bids, as set out in the GCRs (currently at $25,000).

Contractors who voluntarily withdraw from the FCP-EE for any reason other than the decrease of their workforce are subject to the same sanction as those who are found non-compliant as a result of a compliance review.

In either case, the contractor's Certificate of Commitment number will be cancelled and the contractor in question will not be eligible to receive government contracts over the threshold for solicitation of bids as set out in the GCRs (currently at $25,000).

Reinstatement

5.134 (2004-12-10) To be reinstated, ineligible contractors must contact HRSDC and demonstrate compliance with the requirements of the FCP-EE prior to bidding on contract opportunities.

The List of Certified Employers with their certificate numbers, as well as the List of Ineligible Contractors (withdrawn) can be verified on Publiservice site. ***(NOTE: Only federal government employees can access this site****).*

For policy advice and guidance, contact the Workplace Equity Program Advisor directly at (819) 953-7495, or the PWGSC policy advisor at (819) 956-4744.

Solicitation Methods

5.135 (2004-05-14) Before deciding on the type of solicitation to be used, the contracting officer should ensure that the good or service is not available through a current Standing Offer (SO) or Supply Arrangement (SA). If the requirement is available using an SO or an SA and demonstrates good value for that procurement, the contracting officer should advise the client of the option.

The list of National Master Standing Offers (NMSOs), Regional Master Standing Offers (RMSOs) and Departmental Individual Standing Offers (DISOs) is available from the Standing Offer Coordination Office (SOCO), Electronic Processes Directorate, telephone (819) 956-3382. SOCO provides information associated with the administrative aspects of SOs, including:

(a) facilitating the exchange of information on SOs between PWGSC and clients;

(b) preparing, updating and coordinating the distribution of indices of all NMSOs, DISOs, and RMSOs; and,

(c) coordinating the distribution of NMSOs, DISOs and RMSOs originating from PWGSC headquarters.

Invitation to Tender

5.137 (1995-07-01) An Invitation to Tender (ITT) should be used when all of the following criteria apply:

(a) two or more sources are considered capable of supplying the requirement; and

(b) the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria; and

(c) the market conditions are such that tenders can be submitted on a common pricing basis; and

(d) it is intended to accept the lowest-priced responsive tender without negotiations; and

(e) the evaluation of tenders will exclude any Product, Resource, Operating and Contingency (PROC) costs or socio-economic considerations, other than the employment equity provisions.

5.139 (1995-07-01) Of the possible solicitation methods, tenders are unique in that they can be opened publicly. Public opening should be considered for all ITTs estimated to exceed $25,000, except for those that are classified. ITTs for requirements less than $25,000 may be opened publicly if circumstances warrant.

Public opening should be considered for any tender where the contract award will have a high degree of public visibility.

Request for Proposal

5.142 (1995-07-01) A Request for Proposal (RFP) should be used when one or more of the criteria for issuing an ITT cannot be met, such as:

(a) only one source is being solicited; or

(b) it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirement; or

(c) owing to the nature of the requirement, suppliers are invited to propose a solution to a

problem, requirement or objective and the selection of the contractor is based on the effectiveness of the proposed solution rather than on price alone.

5.143 (1995-07-01) Proposals shall be evaluated in accordance with specific criteria set out in the RFP.

5.144 (2001-10-12) The preparation of proposals is often costly to industry. To keep the total cost to industry down while ensuring freedom of access to potential suppliers, consideration should be given to soliciting proposals in two steps.

During the first step of this process, suppliers are requested to provide letters of interest and qualifications, from which a short list is developed. During the second step, suppliers on the short list are requested to submit detailed proposals.

Suppliers not included on the short list can request the RFP and submit proposals.

Such a process might be appropriate where many potential suppliers are known. Contracting officers should note, however, the special procedures required under NAFTA, WTO-AGP and CKTEA for selective tendering.

Request for Quotation

5.148 (2004-05-14) A Request for Quotation (RFQ) can be used to solicit bids for low dollar value (LDV) requirements below $25,000 (including all applicable taxes) from one or more suppliers. An RFQ solicitation may not include all of the terms and conditions required to form a contract and the response or quotation provided by the bidder may be used to form the applicable contract document, along with the terms and conditions and final pricing. (See 7E.500.)

There may be instances for requirements below $25,000 (including all applicable taxes) when it will be more appropriate to solicit bids using an Invitation to Tender or a Request for Proposal (RFP). For example, an RFP may be more appropriate for a requirement which may be used to establish specifications for a future contract.

Telephone Buys

5.150 (2004-05-14) A Telephone Buy is a form of an RFQ that can be used to solicit bids by telephone for requirements below $25,000 (including all applicable taxes). Written confirmation from the bidder is not required for bids received by telephone but the contracting officer must record the details of the telephone bid on the procurement file. A verbal contract may be entered into by telephone but must be confirmed in writing by issuing the applicable contract document. (See 7E.500.)

Standing Offer

5.153 (2002-13-12) A Standing Offer (SO) is not a contract. It is an offer made by an offeror (a supplier or a provider) for the provision of certain goods and/or services to clients at prearranged prices or a prearranged pricing basis, under set terms and conditions, that is open for acceptance by one or more authorized user(s) on behalf of Canada during a specified period of time. A separate contract is formed each time a call-up for the provision of goods and/or services is made against a Standing Offer. When a call-up is made, it constitutes an unconditional acceptance by Canada of the supplier's offer for the provision, to the extent specified, of the goods and/or services described in the SO. Canada's liability shall be limited to the actual value of the call-ups made by the duly authorized user(s) representing Canada within the period specified in the Standing Offer.

Prior to commencing any procurement action, the contracting officer must determine if a procurement instrument such as a standing offer exists to procure the requisitioned goods

and/or services. In the affirmative, the contracting officer should advise the client of the availability and suitability of that procurement instrument. If it can be used, the client should be encouraged to use it.

Methods of Supply

5.154 (2002-12-13) The SO method of supply **is** usually considered when:

(a) one or more clients repetitively order(s) the same range of goods, services, or both and the actual demand (e.g. quantity, delivery date, delivery point) is not known in advance; and

(b) some of the following conditions are present:

(i) the goods, services, or both are well defined;

(ii) prearranged prices or a prearranged pricing basis can be established at the outset and there is no need nor any intention to negotiate them at the time of the call-up;

(iii) the goods, services, or both are readily available and are to be ordered (called-up) as-and-when the requirement arises;

(iv) at the time of the call-up, there is no need nor any intention to further negotiate the terms and conditions.

5.155 (2002-12-13) The SO method of supply **cannot** be used when:

(a) prices, pricing basis or terms and conditions are not stated or are subject to change at any time at the discretion of the supplier; or

(b) the authorized users of the standing offers intend to negotiate further the prearranged prices, pricing basis, or set terms and conditions of the SO; or

(c) it is intended to solicit bids each time goods and/or services are required.

In these cases, another method of supply such as a Supply Arrangement (SA) should be considered. (See 5.190 and Section 9J.)

Approximation Given in Good Faith

5.157 (2002-12-13) The quantity of goods and / or level of services specified in the Request for Standing Offer (RFSO) and the resulting SO(s) are only an approximation of the requirements given in good faith by Canada to the offerors.

Government Policies, Regulations and Procedures including Trade Agreements

5.159 (2002-12-13) All government policies, regulations and procedures related to contracting, including those required under the trade agreements, apply to the standing offer method of supply.

The total estimated expenditure of the requirement (the whole project /program) proposed to be satisfied by the standing offer method of supply, GST/HST included, is to be used to determine the applicability of any procedures required by any trade agreement to which the Government of Canada is signatory.

When procedural requirements of any trade agreement apply to a standing offer method of

supply, the complete procurement process, including all standing offers authorized for use and their ensuing call-ups, falls within the purview of the Canadian International Trade Tribunal (CITT).

Approval and Signing Authority

5.162 (2002-12-13) Approval, signing and amendment authorities are set out in annexes 6.1 through 6.2 of this manual.

The Contract Planning and Advanced Approval (CPAA) or formal procurement plan issued to seek advance approval to use of the SO method of supply is to be approved based on the total estimated value, GST/HST included, of the requirement (the whole project / program) that is proposed to be satisfied by this method of supply. Therefore, if it is intended to issue more than one SO pursuant to an RFSO, it is the sum of the total estimated value, GST/HST included, of all resultant standing offers that is to be used to obtain CPAA or formal procurement plan approval.

When more than one SO will be authorized for use, the signing authority level is to be determined based on the total estimated value of each individual SO, not the total estimated value of the requirement.

Treasury Board Contracting Limits

5.164 (2003-05-30) A call-up issued against an SO constitutes an individual contract and normal Treasury Board contracting limits apply. The call-up limits for PWGSC on behalf of clients are set out in Section 6A. For most clients, their individual call-up limits (inclusive of GST/HST) are usually the normal Treasury Board contracting limits as follows:

	Competitive	Non-Competitive
Goods/Construction	$400,000	$40,000
Services Excluding A&E	$400,000	$100,000
A&E Services	$40,000	$40,000
Transport Canada Services	$2 million	$100,000

NOTE: *For a detailed breakdown of Treasury Board contracting limits, refer to Treasury Board Contracting Policy, Appendix C, Treasury Board Contracts Directive, Part I, Basic Contracting Limits and Part II, Exceptional Contracting Limits.*

PWGSC Call-up Limitation

5.166 (2002-12-13) PWGSC has the authority to further limit the value of individual call-ups.

Treasury Board Approval

5.168 (2002-12-13) TB approval is required when individual call-ups will exceed the contracting limits specified in the TB Contracting Policy.

Limitation of Expenditure

5.170 (2002-12-13) The inclusion of a Limitation of Expenditure in standing offers is optional. The contracting officer will determine the need for inclusion of a limit on the basis of the type of SO (Master or Individual), the degree of control over total expenditures and the needs of the client.

SACC clause M4506D, Financial Limitation, may apply.

Coding in the Automated Buyer Environment (ABE) System

5.172 (2002-12-13) While the limitation of expenditure in standing offers is optional, the contracting officer must enter the estimated expenditure/value of all standing offers in the Procurement Summary in ABE. The use of $0 or $1 as a document value in the Procurement Summary in ABE, is not acceptable.

The above coding requirement does not apply to Departmental Individual Standing Offers (DISOs) because the financial information for DISOs is captured at the time of call-ups. Contracting officers are therefore required to enter $0 as the estimated expenditure/value of the DISO and the actual value of the call-up against a DISO.

Types of Standing Offers

5.174 (2002-12-13) There are five types of standing offers:

(a) National Master Standing Offer (NMSO) - for use by several authorized users identified in the NMSO for delivery throughout Canada.

(b) Regional Master Standing Offer (RMSO) - for use by several authorized users identified in the RMSO for delivery within a specific geographic area.

(c) National Individual Standing Offer (NISO) - for use by a specific authorized user identified in the NISO for delivery throughout Canada.

(d) Regional Individual Standing Offer (RISO) - for use by a specific authorized user identified in the RISO for delivery within a specified geographic area.

(e) Departmental Individual Standing Offer (DISO) - for use by PWGSC only on behalf of one or more client(s) identified in the DISO.

Authorized Users

5.176 (2003-05-30) Authorized users of standing offers could include any departments and agencies listed in Schedule I, Schedule II and Schedule III of the *Financial Administration Act*.

5.177 (2002-12-13) A Request for Standing Offer (RFSO) shall include the following information, as a minimum:

(a) a clear definition of the requirement and the period for making call-ups;
(b) information on the number of standing offers intended to be authorized for use;
(c) clear evaluation criteria;
(d) clear offeror selection methodology;
(e) clear ranking methodology where applicable;
(f) clear call-up procedure(s);
(g) a notice to bidders regarding disclosure of their unit prices (see SACC clause M0090T);
(h) instructions, information, terms and conditions applicable to the RFSO;
(i) offer preparation instructions;
(j) terms and conditions applicable to the ensuing call-ups.

Whenever practical, the Request for Standing Offer should include an estimated utilization.

Competitive and Non-competitive Call-ups

5.180 (2002-12-13) Competitive call-ups:

The Best Standing Offer:
In many instances, only one SO will be authorized for use. For some requirements, only the offer that meets all the requirements of the RFSO and provides best value (highest ranked) will be retained. In such instances, the resulting call-ups are considered competitive and the competitive call-up authorities can be used.

Multiple Standing Offers:
In other instances, more than one SO will be authorized for use based on a reasonable expectation of business activity such that a single offeror would lack the capacity to meet the demands. In such cases, clear ranking methodologies and call-up procedures must be described in the RFSO, so that potential offerors are aware of these when preparing their submissions, and in the standing offers, to guide the authorized call-up authority(ies) when making call-ups. Two models of multiple standing offers are described below:

(a) **Right of first refusal basis:**
The call-up procedures require that when a requirement is identified, the authorized call-up authority shall approach the offeror of the highest ranked standing offer to determine if the requirement can be satisfied by that offeror. If the highest ranked offeror is able to meet the requirement, the call-up is made against its standing offer. If that offeror is unable to meet the requirement, the authorized call-up authority will approach the offeror of the next ranked SO. The authorized call-up authority will continue and proceed as above until one offeror indicates that it can meet the requirement of the call-up. In other words, call-ups are made based on the “right of first refusal” basis. Where the highest ranked offeror is unable to fulfil the need, the authorized call-up authority is required to document his/her file appropriately. The resulting call-ups are nonetheless considered competitive and the competitive call-up authorities can be used.

(b) **Proportional basis:**
The call-up procedures require that call-ups be issued on a proportional basis such that the offeror of the highest ranked standing offer receives the largest predetermined amount of the work, the offeror of the second highest ranked standing offer receives the second largest predetermined amount of the work, etc. (e.g. 50 percent to highest ranked offer, 30 percent to next highest ranked offer and 20 percent to third highest ranked offer). This predetermined distribution of the resulting work is to be described in the RFSO so that potential offerors are aware of these when preparing their submissions. It is also known as “collective best value”. The highest ranked standing offer represents the best value for Canada and its offeror receives the greatest portion of the work. A clear advantage in terms of distribution of expected business volume should be given to the offeror of the highest ranked standing offer (e.g. 20 percent or more than the next offer) and the same for the others. The determination of what constitutes a clear advantage is the responsibility of the contracting officer and may vary by commodity, service or by business case. The resultant call-ups are considered competitive and the competitive call-up authorities can be used.

Master standing offers are not suitable for the proportional basis approach. Where individual standing offers are to be authorized based on the proportional basis approach, the contracting officer should inform the authorized user of his/her obligation to monitor call-up activities to ensure work is allocated in accordance with predetermined work distribution.

In both cases (a) and (b) above, contracting officers should clearly state in the RFSO the expected number of standing offers that are intended to be authorized for use. If the intention is that multiple standing offers will be authorized for use, the RFSO should state the basis upon which call-ups will be issued; right of first refusal or proportional. If call-ups are to be issued against standing offers issued under the proportional basis approach, the breakdown should be stated (e.g. 50 percent, 30 percent and 20 percent) in the RFSO.

In addition to the above, when the intention is that multiple standing offers will be authorized for use, contracting officers should include a condition that only those standing offers who are within, for example, 10 percent of the best priced offer, will be considered.

Furthermore, a system must be in place to monitor call-up activity and ensure that call-ups are allocated in accordance with the predetermined work distribution, resulting ranking and call-up procedures specified in the standing offers.

5.181 (2002-12-13) Non-competitive call-ups:

In other instances, more than one SO will be authorized for use but no ranking is established. This would occur, for example, when prices are sought for a full range of items contained in a catalogue items and ranking of offers is impossible. The authorized call-up authority may choose whichever SO to use. For some requirements, the contracting officers may set parameters to guide the authorized users in the selection of one of the standing offers. Call-ups made against these standing offers are non-competitive and only the non-competitive call-up authorities can be used.

An SO may be directed on a non-competitive basis to one offeror for its full range of catalogue products or services. The resulting call-ups are non-competitive and only the non-competitive call-up authorities can be used.

Duplication of Standing Offers

5.182 (2004-05-14) Contracting officers should not authorize a second SO if one already exists for the same commodity, client, and geographical area. For example, a request for a RISO or RMSO should not be issued if an NMSO already exists. Conversely, an NMSO should not be established without consultation with the Regions. (Refer to **Standing Offer Index)**

In their role of commodity managers, Acquisitions Branch is responsible to coordinate the issuance of standing offers. Where a contracting officer proposes to put in place an SO similar to one already in existence, the commodity manager responsible for the commodity and/or service must first approve it. If deemed appropriate, the commodity manager will approve the issuance of that similar or duplicate SO. The contracting officer who proposed this similar or duplicate standing offer remains responsible to develop the procurement strategy and implement it, like any other procurement. In the approval document (CPAA or procurement plan), contracting officers will indicate that this is for the issuance of an SO similar to an existing one, explain why it is required and indicate that the responsible commodity manager has approved its release.

Standing Offer Forms

5.184 (2005-06-10) The following forms are used for call-ups against an SO: (forms are available in ELF and on-line).

Forms Number	Forms Title
PWGSC-TPSGC 942	Call-up Against a Standing Offer
PWGSC-TPGSC 942-2	Call-up Against a Standing Offer - Multiple Delivery
PWGSC-TPSGC 944	Call-up Against Multiple Standing Offers *(English version only - French version is PWGSC-TPSGC 945*.)
PWGSC-TPSGC 8251	Call-up Against a Standing Offer for Temporary Help
PWGSC-TPSGC 2829	Call up Against a Standing Offer - Real Property Sector

PWGSC-TPSGC 7169	Call-up Against a Standing Offer for Commissionaire Services
PWGSC-TPSGC 7169-1	Call-up Against a Standing Offer for Security Guard Services
PWGSC-TPSGC 191	Acquisition Card Application (MasterCard) [1] may also be used at the time of the call-up against Standing Offers, as an alternative to other payment methods identified in the Standing Offers. [2]

Industrial Security

5.186 (2002-12-13) The contracting officer, in conjunction with the client must determine:

(a) the minimum level of security required by potential offerors to participate in the Standing Offer Method of Supply.

Security requirements must be stipulated in both the RFSO and the Standing Offer and Call-up Authority. Call-ups must identify, when applicable, security requirements that are in accordance with the terms and conditions of the SO. A Security Requirements Check List (SRCL), must be attached to any such call-up, and a copy must be forwarded to PWGSC Industrial Security for action, when the call-up is made.

OR

(b) if the SO is NOT to be used with call-ups where any level of security is required.

Withdrawal of a Standing Offer

5.188 (2002-12-13) If an offeror wishes to withdraw its SO after it has been authorized for use, unless otherwise indicated in the SO it must provide no less than thirty (30) days written notification to the contracting authority of its intent to withdraw. A “Revision to the Standing Offer and Call-up Authority” would then be issued by the contracting authority notifying all the authorized users and the offeror of the effective date of the withdrawal. Call-ups received by the offeror prior to the effective withdrawal date are legally binding and must be honored.

Supply Arrangements (SA)

5.190 (2002-12-13) An SA is a method of supply where clients, under the framework of the Arrangement, may solicit bids from a pool of prescreened vendors.

5.192 (2002-12-13) An SA may be used when:

(a) a commodity is procured on a regular basis (goods or services), and

(b) an SO is not suitable, due to variables in resulting call-ups (e.g. varying methods/basis of payment, or the statement of work or commodity cannot be adequately defined in advance), and

(c) the commodity or service value is best expressed as a ceiling price, and

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1 Because use of a credit card results in immediate payment to the vendor, the normal payment period and interest on overdue accounts provisions do not apply. (See SACC Manual clauses M3503T and M3503C.)

2 Contracting officers should verify if the client(s) need such a service and include appropriate details in the standing offers. In such cases a call-up form may, or may not, be warranted.

(d) if clients are intended to be able to negotiate price reductions from the ceiling price, and

(e) it is more efficient for PWGSC to operate as the provider of the framework and not as the contractual authority.

See Section 9J for SA procedures.

Annex 5.1: Canadian Content Policy
(2005-06-10)

Note: *The following is a compilation, for information purposes, of all Supply Manual material related to Canadian Content Policy. For more information on Canadian Content Policy, contact the Acquisitions Strategy and Relations Directorate.*

Section 5: Sourcing Strategy

Determining Eligible Bidders

5.070 (2005-06-10) The Canadian Content Policy is a Cabinet-mandated policy. The Policy encourages industrial development in Canada by limiting, in specific circumstances, competition for government procurement opportunities to suppliers of Canadian goods and services.

The Policy applies to procurement carried out by the former Supply and Services Canada (SSC), now a part of Public Works and Government Services Canada. Therefore, it would not normally apply to construction procurement unless this procurement had been previously carried out by SSC.

5.071 (2001-12-10) The Canadian Content Policy applies to competitive procurements, publicly advertised, with an estimated value of $25,000 or more, **except** for the following:

(a) government procurements subject to the NAFTA, WTO-AGP or CKTEA;

(b) procurements made in furtherance of aid to developing countries, but does apply to purchases made by the Canadian International Development Agency (CIDA) on its own account;

(c) procurements made by Public Works and Government Services Canada (PWGSC) Supply Operations Offices located outside Canada; and

(d) Cabinet-mandated Sourcing, including Sourcing Relating to Shipbuilding, Ship Repair, Refit and Mid-Life Modernization.

5.072 (2004-12-10) A good wholly manufactured or originating in Canada is considered a Canadian good. A product containing imported components may also be considered Canadian for the purpose of this policy when it has undergone sufficient change in Canada, in a manner that satisfies the definition specified under the North American Free Trade Agreement (NAFTA) Rules of Origin (see Annex 5.5). For photocopiers, computers and office equipment within Federal Supply Classification (FSC) groups 36, 70 and 74, only the products of CIRCLE Canada and MERIT Partnership Program firms or companies in Priority Group 1 prior to April 1992 are considered Canadian (see 5.073).

A service provided by an individual based in Canada is considered a Canadian service. Where a requirement consists of only one service, which is being provided by more than one individual, the service will be considered Canadian if a minimum of 80 percent of the total bid price for the service is provided by individuals based in Canada.

5.073 (2005-06-10) Other Canadian Goods and Services:

(a) CIRCLE Canada and MERIT Partnership Program: For photocopiers, computers and office equipment within FSC groups 36, 70 and 74, only the products of the following firms are considered Canadian goods:

(i) MERIT Partner under the MERIT Partnership Program (administered by Industry

Canada [IC] and Public Works and Government Services Canada [PWGSC]);

(ii) Companies which, on March 31,1992, were allocated to Priority Group 1 under the Priority Groups Policy in effect at that time; or

(iii) CIRCLE Canada companies as agreed on by IC and PWGSC.

(b) **Textiles**: Textiles are considered to be Canadian goods according to a modified rule of origin, copies of which are available from the Clothing and Textiles Division, Logistics, Electrical, Fuel and Transportation Directorate.

5.074 (2003-12-12) The bidder will certify Canadian content by signing a statement that the products offered meet the definition of Canadian Goods and Services. The certification forms are contained in the *Standard Acquisition Clauses and Conditions* (SACC) Manual under clause numbers K4001T, K4002T, K4003T, K4004T, K4005T, K4006T, K4011T, K4013T, and K4014T.

Section 7A: Preparing a Bid Solicitation

Canadian Content

7A.010 (1995-07-01) When requirements consist of more than one good, the Canadian content certification can be done in the following ways:

(a) Aggregate. Multi-item requirements will be certified on an aggregate basis; or,

(b) Item by Item. Multi-item requirements will be certified on an item-by-item basis. In these cases, suppliers will be asked to identify separately, each item that meets the definition of Canadian goods in 5.072 or 5.073.

7A.011 (2003-12-12) For procurement to which the Canadian Content Policy applies, the contracting officer shall decide, at the procurement planning stage, whether a competition will be:

(a) **Solely Limited**: the solicitation will be solely limited to suppliers who could offer Canadian goods and/or services when the contracting officer believes there exists, in the marketplace, three or more such suppliers (solely limited certifications are provided in the SACC Manual, under clause numbers K4001T, K4003T, K4004T, K4011T, K4013T or K4014T). Except for bids that will be publicly opened, the contracting officer will determine whether:

(i) the bidder will be required to submit the certification of content with bid (K4001T, K4003T or K4004T), or

(ii) the bidder will be asked for the certification if it is not submitted with bid (K4011T, K4013T or K4014T). The contracting officer must indicate in the clause the number of days that the bidder will have to submit the certification upon request. Bidders will normally be given no more than three (3) working days to provide signed Canadian Content certifications. The specified time period should be dependent upon the urgency of the requirement.

For publicly opened bids, the bidder must be required to submit signed certification with bid (K4001T, K4003T or K4004T).

The contracting officer will normally not require bidders to submit certifications with bid unless the requirement is urgently needed by the client; or

(b) **Conditionally Limited**: the solicitation will be conditionally limited when the contracting

officer is uncertain whether three or more suppliers of Canadian goods and/or services exist (conditionally limited certifications are provided in the SACC Manual, under clause numbers K4002T, K4005T or K4006T). The bidder will be required to submit certification of content with bid; or

(c) **Open**: when the contracting officer is of the opinion that three or more suppliers of Canadian goods and/or services do not exist, the solicitation shall be open to all suppliers. Bidders are not required to provide a certification.

7A.013 (2003-12-12) Once the sourcing strategy is determined, the contracting officer will prepare a Notice of Proposed Procurement (NPP). The procurement opportunity will be coded on GETS as:

Solely Limited, per procedure 7A.011 a): Code O-5;
Conditionally Limited, per procedure 7A.011 b): Code O-4; or,
Open, per procedure 7A.011 c): Code O-1.

Section 7D - Bid Handling

Canadian Content

Certification of the Bid

7D.366 (2003-12-12) When requirements consist of more than one good, the evaluation of Canadian content certification can be done the following ways:

(a) Aggregate: a minimum of 80 percent of the total bid price must consist of Canadian goods (see Annex 7.8); or,

(b) Item by Item: The bid certification is conducted on an item-by-item basis.

For requirements consisting of more than one service, a minimum of 80 percent of the total bid price must be provided by personnel based in Canada (see Annex 7.8).

When requirements consist of a mix of goods and services, 80 percent of the total bid price must consist of Canadian goods and Canadian services (see Annex 7.8).

A bid can be accepted in part without resubmission of a certification.

Application of the Policy

7D.367 (2002-05-24) Bids to which the special procedures under the Canadian Content Policy applies will be evaluated as follows:

(a) For **Solely Limited solicitations:**

(i) If the bidder was **required** to submit the certification with bid (K4001T, K4003T or K4004T), only bids with valid certifications will be evaluated. The bid evaluation process can proceed where there is at least one bid with a valid certification, otherwise the procurement must be retendered.

(ii) If the bidder was **not required** to submit the certification with bid (K4011T, K4013T or K4014T), the contracting officer will contact all bidders who did not submit a signed certification with bid and request the signed certification. If signed certifications are not received within the time period specified in the Canadian Content clause, bids are to be considered non-responsive. A bid will

only be provided to the client for evaluation once a signed certification is received. The bid evaluation process can continue as long as there is at least one bid with a valid certification, otherwise the procurement must be retendered.

(b) For **Conditionally Limited solicitations**, the contracting officer will, prior to the further evaluation of the bids, determine whether there are three or more bids with a valid certification. In this event, the evaluation will be limited to the bids with certification, otherwise all bids will be considered. If the bids with a valid certification are later determined to be non-responsive or withdrawn, and less than three responsive bids of Canadian goods and/or services remain, evaluation will continue among those bids which contain a valid certification. If **all** bids with a valid certification are subsequently found to be non-responsive or if their bids are withdrawn, then **all** other bids received should be evaluated.

7D.368 (2002-05-24) The onus is on the supplier to demonstrate that its bid meets the definition of Canadian goods and/or services. The supplier must execute and submit the certification form (see 5.074). When the *Standard Acquisition Clauses and Conditions* (SACC) Manual clauses K4003T, K4004T, K4005T, K4006T, K4013T or K4014T are used, the supplier must clearly identify the status of each individual product.

7D.369 (1995-07-01) PWGSC may verify the validity of the certification. If the certification is found to be invalid, then the offered goods or services are deemed not to meet the definition of Canadian Content. Verification of the certification shall in no way alter the price quoted or any substantive element of the bid.

Section 7E: Contract Award

7E.503 (2001-12-10) Contracts awarded on the basis of the bid having met the definition of Canadian content under the Canadian Content Policy will include SACC Manual clause K4100C.

Section 9L: Set-aside Program for Aboriginal Business - Conducting Set-aside Procurements

Set-Asides and Canadian Content

9L.070 (1997-03-31) Set-aside procurements and the Canadian Content Policy may be applied simultaneously.

9L.080 (1997-03-31) In applying the Canadian Content Policy under a set aside procurement, it must be recognized that there are two levels of certification. The first level of certification will be to qualify the bidder(s) as eligible for consideration, i.e. bidders must provide a certification that they are an Aboriginal business.

9L.090 (1997-03-31) Having established that the procurement will be conducted as a set-aside, contracting officers must then apply the Canadian Content Policy, in the same manner as any other procurement, in the context of the supplier community which is eligible to respond: the Aboriginal business community. Contracting officers must determine, on the basis of their knowledge of this community, whether there are sufficient eligible firms to carry out the procurement as Solely Limited (three or more Aboriginal firms exist which are able to provide Canadian goods or services), Conditionally Limited (there may be three or more Aboriginal suppliers of Canadian goods or services), or Open (there is an insufficient number of Aboriginal businesses able to provide Canadian goods or services; the procurement is open to all Aboriginal businesses regardless of the origin of the good and services supplied). (See 5.070.)

9L.100 (1997-03-31) Bids for set aside procurements which include the Canadian Content provision must be reviewed initially to determine that the bidder has provided the necessary certificate that they are an Aboriginal business. Bids meeting this basic certification are then assessed according to the stated Canadian Content criteria.

Section 11: Contract Management

Audits

11.081 (2005-06-10) The authority for discretionary audits results from either the contractual terms, or statute (*Defence Production Act*, section 19). If a contracting officer determines that a discretionary audit is required, a request is to be made to the Contract Audit Group (CAG). The cost of discretionary audits will be borne by CAG.

Contracting officers may refer any supplier certification of Canadian and/or Korean content to CAG for audit of compliance to the policy.

Annex 5.5: The Rules of Origin Calculation

The Canadian Rules of Origin for Goods (Chapter 4 of the North American Free Trade Agreement) and Canadian Customs Tariff Harmonized System are used to determine if imported components that go into the production of an item for resale to the government are sufficiently altered or converted in Canada to be considered "Canadian."

The Harmonized Commodity Description and Coding System is a structured classification system for goods that has been adopted by Canada and most of the world's trading nations, for customs purposes.

For the purposes of this determination, the reference in the Rules of Origin to "territory", is to be replaced with "Canada".

Products containing imported components may be considered Canadian when they have undergone sufficient change in Canada in a manner that satisfies this amended definition. There are three basic steps to determine if any good that is partially or wholly constructed from imported components meets the Rules of Origin definition:

(a) Locate the heading number in the Harmonized System that best reflects the final product for sale.

(b) Find the appropriate heading number in the Harmonized System that identifies imported components used to construct the final product.

(c) Look up the section in the Rules of Origin that defines whether the conversion that took place in Canada allows the goods to be defined as Canadian.

Example

For example, hats manufactured in Canada that use imported calves leather, would reflect the following calculation:

(a) Look up hats in the index of the Canadian Customs Tariff Harmonized System (HS) and find the type that matches the kinds of hats to be sold: Hats and other headgear, plaited or made by assembling strips of any material, whether or not lined or trimmed. The HS number is 6504.00.00. The first two numbers indicate the good is listed in Chapter 65.

(b) Look up leather, bovine in the index. Leather, bovine falls under HS heading 4104.

(c) Finally, refer to the Rules of Origin which lists the conditions for transforming goods listed in the HS into Canadian goods (Chapter 65 is for Headgear and Parts Thereof and is listed in Section XII of the rules). The second rule for Chapter 65 applies: A change from 65.03 to 65.07 from any heading outside that group. As the leather is classified outside 65.03 to 65.07, the final product (the hats) for sale are considered to be sufficiently transformed and therefore the hats are deemed to be Canadian for the purposes of this policy.

Annex 7.8: Determination of Canadian Content for a Mix of Goods and/or Services

(2001-05-25)

There is a Public Works Government Services Canada (PWGSC) solicitation for: 100 wooden office desks; 100 electric space heaters with maintenance and repair included; 100 telephone sets with maintenance and repair included; and, 100 metal swivel chairs.

The bidder will provide:

- unfinished wooden office desks which are imported into Canada and finished in Canada;
- electric space heaters which were constructed using domestic labour/materials and imported parts. The maintenance/repair of the electric space heaters is being done by Canadian-based personnel.;
- telephone sets which were constructed using domestic labour/materials and some imported parts. The maintenance/repair of the telephones is being done by U.S.-based personnel;
- metal swivel chairs which were constructed using domestic labour/materials and some imported parts.

Below are the prices for the goods and services offered in the bid:

100 Wooden Office Desks @ $150 each	$15,000
100 Electric Space Heaters @ $200 each	$20,000
Maintenance/Repair for Heaters	$5,000
100 Telephone Sets @ $50 each	$5,000
Maintenance/Repair for Telephone Sets	$1,000
100 Metal Swivel Chairs @ $25 each	$2,500
Total Bid Price	$48,500

Determination whether individual goods and services are Canadian (using NAFTA Chapter 4 - Rules of Origin)

(You may wish to refer to Annex 5.5 for The Rules of Origin Determination.)

Wooden Office Desks:

Unfinished wooden office desks (HS 9403.30) were imported and finished in Canada. The final good (finished wooden office desks) falls in same the subheading (HS 9403.30) as the unfinished good.

The NAFTA rules of origin covering HS 9403.30 (wooden office desks) require a change from another

chapter, or a change from parts heading 9403.90, provided there is sufficient regional value content. These rules are not satisfied.

Therefore, the wooden office desks are **not** considered Canadian goods.

Electric Space Heaters:

Electric space heaters (HS 8516.21) were constructed using domestic labour/materials and imported parts (HS 8516.90).

The NAFTA rules of origin covering HS 8516.21 (electric space heaters) allow a change from subheading 8516.90, provided there is a regional value content of not less than 60% where the transaction value method is used or 50% where the net cost method is used..

After calculations are done, the regional value content is found to be 65% using the transaction value method.

Therefore, the electric space heaters are considered Canadian goods.

Telephone Sets:

Telephone sets (HS 8517.11) were constructed using domestic labour/materials and some imported plastic tubes (HS 3917).

The NAFTA rules of origin covering HS 8517.11 (telephone sets) require a change to subheading 8517.11 from any other subheading, except 8517.90.11, 8517.90.12, 8517.90.13, 8517.90.14 or 8517.90.41.

Therefore, the telephone sets are considered Canadian goods.

Metal Swivel Chairs:

Metal swivel chairs (HS 9401.30) were constructed using domestic labour/materials and some imported parts (HS 9401.90).

The NAFTA rules of origin covering HS 9401.30 (metal swivel chairs) allow a change from subheading 9401.90, provided there is a regional value content of not less than 60% where the transaction value method is used or 50% where the net cost method is used.

After calculations are done, the regional value content is found to be 37% using the transaction value method.

Therefore, the metal swivel chairs are **not** considered Canadian goods.

Maintenance/Repair of Telephones:

The maintenance/repair of telephones is being done by U.S.-based personnel. Therefore, this service is **not** considered a Canadian service.

Maintenance/Repair of Electric Space Heaters:

The maintenance/repair of electric space heaters is being done by Canadian-based personnel. Therefore, this service is considered a Canadian service.

Calculation of Percent of Bid Price Considered Canadian

Canadian Goods and Services

100 Electric Space Heaters		$20,000
100 Telephone sets		$5,000
Maintenance/Repair of Heaters		$5,000
	Total Canadian Goods and Services	$30,000

Non-Canadian Goods and Services

100 Wooden Office Desks		$15,000	
100 Metal Swivel Chairs		$2,500	
Maintenance/Repair of Telephone		$1,000	
	Total non-Canadian Goods and Services	$18,500	
		Total Bid Price	$48,500

Percent of the Bid Price that is composed of Canadian goods and services = $30,000/$48,500 = 62%

Conclusion

The Supplier has **not** met the Canadian Content requirement that "no less than 80 percent of the bid price consists of Canadian goods and Canadian services".

Annex 5.2: Detail Document - Procurement Review Committee
(2005-06-10)

In accordance with the Treasury Board Procurement Review Policy (TB Manual Chapter 3-02), the following information on a procurement requirement is submitted for your consideration. If there is no request for additional time to consider the socio-economic potential of this requirement by the date below you will be notified by e-mail that no further review is required. If you determine that further review is required, you are requested to provide the reason(s) for your interest and a statement of the benefits being sought.

(Date to be determined by the Procurement Review Committee Secretariat) / Date à être déterminée par le Secrétariat du Comité d'examen des acquisitions)

Procurement Review Committee (PRC) - Detail Document
Comité d'examen des acquisitions (CE) - Description détaillée

PRC Nº / Nº CEA : *(To be determined by the PRC Secretariat / À être déterminé par le Secrétariat du CEA)*

Project Title / Titre du projet :

Operating Department / Ministère opérationnel :

Project Ref. Nº / Nº du projet :

Project Value / Valeur du projet : $_____M / _____M$

Estimated Contract Value / Valeur estimative du contrat : $_____M / _____M$

Commodity Description / Description des biens ou services :

Project Status / État du projet :

Procurement Strategy and Other Related Information /
Stratégie d'achat et autres renseignements pertinents :

Competitive / Concurrentiel ( ) MERX ( ) Directed / Source unique ( )

ACAN / PAC ( )

Source(s) of supply / Source(s) d'approvisionnement :

Justification for Sole Sourcing (*if applicable*) /
Justification du recours à un fournisseur exclusif (*le cas échéant*) :

Procurement Category Code / Code de catégorie d'achat : (See procedure 5.094) / Voir la procédure 5.094.)

Specifications / Spécifications :

Military / Militaires ( ) Commercial / Commercial ( )

Developmental Procurement

(*If applicable) /*
Acquisition pour fins de développement (*le cas échéant)* :

Estimated Contract Award Date / Date prévue d'adjudication du contrat :

Contact Points / Points de contact:

PWGSC Contracting Authority / Autorité contractante de TPSGC:

Telephone / Téléphone : ( ) _____
Fax / Télécopieur : ( ) _____
E-mail / Courriel : _____

Operating Department Project Authority /
Responsable du projet au ministère opérationnel : _____

Telephone / Téléphone : ( ) _____
Fax / Télécopieur : ( ) _____
E-mail / Courriel : _____

PRC Secretariat / Secrétariat du CEA
(819) 956-7424

Annex 5.2.1 Record of Decision - Procurement Review Committee (*to be used by PRC Secretariat***)**

(2004-05-14)

Record of Decision - Procurement Review Committee
Compte rendu de décision - Comité d'examen des acquisitions

PRC / CEA:

Project Title / Titre du projet :

Operating Department / Ministère opérationnel :

Project Ref. Nº / Nº du projet :

Project Value / Valeur du projet :

Estimated Contract Value / Valeur estimative du contrat :

Commodity Description / Description des biens ou services :

PRC Secretariat/Secrétariat du CEA
(819) 956-7424

Annex 5.3: Contract Award Process (CAP) Codes
(2001-12-10)

Listed below are the Solicitation Types, the permissible Contract Award Process (CAP) Codes and the reason for using a particular CAP Code.

Solicitation Types

N	=	North American Free Trade Agreement (NAFTA)
W	=	World Trade Organization - Agreement on Government Procurement (WTO-AGP)
CK	=	Canada - Korea Agreement on the Procurement of Telecommunications Equipment
I	=	Agreement on Internal Trade (AIT)
S	=	Science and Technology
O	=	Open Bidding
L	=	Comprehensive Land Claims Agreements

CAP Code: 01
Solicitation Types: N, W, CK, I, S, O, L

Lowest/lower Bid

CAP Code: 04
Solicitation Types: N, W, CK, I, S, O, L

Best Overall Proposal

CAP Code: 05
Solicitation Types: N, W, CK, I, S, O, L

In the absence of tenders in response to a competitive bid solicitation or when bids submitted have been either collusive or assessed as non-responsive or received from non-qualified suppliers.

CAP Code: 06
Solicitation Types: N, W, CK, I, S, O, L

Only One Response to Bid Solicitation

CAP Code: 10
Solicitation Types: S, O, L

Rotational Sourcing

CAP Code: 11
Solicitation Types: S, O, L

Subsequent/Follow-on Contracts

CAP Code: 20
Solicitation Types: N, W, CK, I, S, O, L

For goods purchased on a commodity market.

CAP Code: 21
Solicitation Types: N, W, CK, I, S, O, L

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.

CAP Code: 22
Solicitation Types: N, W, CK, I, S, O, L

To be awarded to the winner of a design contest.

CAP Code: 23
Solicitation Types: N, I, S, O, L

For consulting services regarding matters of a confidential nature.

CAP Code: 24
Solicitation Type: W, CK

When additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation.

CAP Code: 25
Solicitation Type: W, CK

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.

CAP Code: 71
Solicitation Types: N, W, CK, I, S, O, L

For reasons connected with protection of exclusive rights, such as patents and copyrights, and no reasonable alternative or substitute existed.

CAP Code: 72
Solicitation Types: N, W, CK, I, S, O, L

For reasons involving the procurement of prototypes or a first product which is developed under a contract for research, experiment, study or original development.

CAP Code: 74
Solicitation Types: N, W, CK, I, S, O, L

For logistic reasons (i.e. where additional deliveries by the original supplier are intended either as replacement parts for existing supplies, or installations, or for continuing services, or as the extension of existing supplies, services or installations, where a change of supplier would compel the client to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services).

CAP Code: 81
Solicitation Types: N, W, CK, I, S, O, L

For reasons connected with extreme urgency, brought about by events unforeseeable by the client, where time did not permit competitive solicitation.

CAP Code: 85
Solicitation Types: S, O, L

Low Dollar Value

CAP Code: 86
Solicitation Types: I, S, O, L

Prices and/or sources fixed by Government regulations

CAP Code: 87
Solicitation Types: I, S, O, L

Government objectives representing best interests/value to Government.

CAP Code: 88
Solicitation Types: I, S, O, L

National Security Consideration

CAP Code: 89
Solicitation Type: I

Exceptional circumstances under AIT Article 508(l)

CAP CODE: 90
Solicitation Type: I

Protection of human, animal, or plant life or health under AIT Article 506.11 (e)

Chapter 6 - Developing the Procurement Strategy

Section 6A: Approval and Signing Limits

Contract Splitting

6A.001 (2002-12-13) "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."

TB Contracting Policy,
Subsection 11.2.7

Furthermore, contracts must not be split to avoid our obligations under national or international trade agreements, or the application of our procurement policies.

Contracting officers must obtain approval and signing authorities in accordance with the levels established by Treasury Board (TB) and the internal levels established by the department.

Treasury Board Approval

6A.005 (1994-06-23) TB approval is required for any contract or contract amendment exceeding the limits outlined in 6A.020 below.

6A.006 (1998-02-16) TB approval is required for competitive service contracts with former public servants in receipt of a pension, if the total amount payable under the contract for any individual, including any amendments, exceeds $100,000 and non-competitive contracts if the total amount payable under the contract, including any amendments, exceeds $25,000. (See 6D.477.)

6A.007 (1998-02-16) Proposed contracts or contract amendments which require TB approval must be approved by TB before they are entered into and before any work is begun. TB ministers will entertain submissions requesting retroactive approval of a contract or contract amendment only under exceptional circumstances - e.g., urgent cases involving public safety or security. In such cases, TB requires certification that the minister concerned agreed to the commencement of the work before receiving TB approval.

6A.008 (1994-06-23) Public Works and Government Services Canada (PWGSC) cannot enter into a contract, or make any contractual commitment (e.g. Letter of Intent), which constitutes the first step of a project that may subsequently require TB consideration and approval.

6A.009 (1994-06-23) When PWGSC has entered into a contract, the contract may be amended without TB approval if the cumulative value of the amendments does not exceed the amendment levels set out below. (See 6A.020.)

6A.010 (1994-06-23) When TB has approved an amendment, PWGSC may further amend the contract without TB approval if the cumulative value of the amendments after each issuance of an amendment pursuant to a TB approval does not exceed the non-competitive amendment level set out below. (See 6A.020.)

6A.011 (1994-06-23) TB approval is also required for a number of areas described in the TB manuals and in current TB circulars, as well as for the following actions:

(a) the making of any "extra payment," i.e. a payment where a legal liability does not exist or has not been accepted by the Crown, or where there is uncertainty that a legal liability exists under the contract;

(b) every Electronic Data Processing buy for lease transaction exceeding $1 million. Each submission to TB must include a cost benefit analysis. (See Section 9G.)

Treasury Board Basic Contracting Limits

6A.020 (1998-02-16) PWGSC may enter into or amend a contract to the following limits.

Goods Contracts:

Electronic Bidding*	Entry Amendment	$40,000,000 $20,000,000
Competitive	Entry Amendment	$10,000,000 $5,000,000
Non-competitive	Entry Amendment	$2,000,000 $1,000,000

Contracts for Services:

Electronic Bidding*	Entry Amendment	$20,000,000 $10,000,000
Competitive	Entry Amendment	$10,000,000 $5,000,000
Non-competitive	Entry Amendment	$3,000,000 $1,500,000

Construction Contracts:

Electronic Bidding*	Entry Amendment	$20,000,000 $10,000,000
Competitive	Entry Amendment	$10,000,000 $5,000,000
Non-competitive	Entry Amendment	$500,000 $500,000

Architectural and Engineering Services:

Electronic Bidding	Entry Amendment	$2,000,000 Greater of $1,000,000 or 25% of original - $2M max.
Competitive	Entry Amendment	$1,000,000 Greater of $250,000 or 25% of original - $1M max.
Non-competitive	Entry Amendment	$100,000 $100,000

***** When the Government Electronic Tendering Service (GETS) was used to provide notice to suppliers either through publication of a Notice of Proposed Procurement, an Advance Contract Award Notice or a Letter of Interest.

NOTES:

1. *The authorities, as described herein, shall be exercised in accordance with the Minister's internal delegation to specific organizations within PWGSC.*

2. *Contracting officers must not divide any procurement in order to circumvent these limits (contract splitting).*

3. *The Treasury Board Open Bidding Contracting Authorities can only be used when a procurement has been advertised on the GETS and/or in the GBO. When the GETS and/or the GBO are not used, the traditional competitive authorities must be used.*

Treasury Board Exceptional Contracting Limits

6A.030 (1994-06-23) PWGSC may enter into any form of agreement used by a railway company for permission to construct or maintain a private crossing or a pipe or cable crossing over, across or under the property of the company at a rate or in an amount no greater than those normally charged for each permission.

6A.031 (1994-06-23) PWGSC may enter into any agreement with a railway, telegraph, telephone or power company for permission to attach wire to poles belonging to the company at a rate or in an amount no greater than those normally charged for each permission.

6A.032 (1994-06-23) PWGSC may enter into a good or a service contract, regardless of the amount, if the contract derives from a standing offer already approved by TB.

6A.033 (1994-06-23) PWGSC may enter into and amend 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 TB Contracts Directive.

6A.035 (1994-06-23) Contracts for the performance of legal services may be entered into only by or under the authority of the Minister of Justice.

6A.036 (1998-02-16) The following special authorities granted to the Minister, PWGSC, are described in detail in the Internal Approval and Signing Authorities (in support of clients' programs only):

(a) Repair and overhaul of military equipment

(b) Procurement of ammunition

(c) Procurement under the U.S. Foreign Military Sales Program

(d) Bulk fuels

(e) Advertising services

(f) Transportation and utilities (all contracting authorities)

(g) Energy supply, energy efficiency improvements, energy management services and energy management monitoring and training (all contracting authorities)

(h) Former Public Servants in receipt of a pension (all contracting authorities)

(i) Telecommunications Services

Internal Approval and Signing Authority (in support of clients' programs only)

6A.040 (2005-06-10) Contract approval and signing authorities in support of clients' programs must be

exercised in accordance with the applicable legislation and regulations, and within departmental policies and guidelines.

These authorities and guidelines are detailed in the following annexes, which can be found at the end of this chapter.

Annex 6.1 Conditions Imposed on the Approval Authority Limits for Departmental Personnel;

- Annex 6.1.1 Contract Approval and Signing Authorities in Support of Clients' Programs Only - Other than for Canadian Commercial Corporation;
- Annex 6.1.2 Approval Authority Limits for Goods, Services, Construction, Telecommunications and A&E Services;
- Annex 6.1.4 Approval and Signing Authority Limits for Defence Construction;
- Annex 6.1.5 Contract Amendment Approval Instructions;
- Annex 6.1.6 Definition of a Competitive Contract;
- Annex 6.1.7 Guidelines for the Determination of a Qualified Firm or Individual;
- Annex 6.1.8 Procurement Information to the Minister;
- Annex 6.1.9 Contract Amendment Approval Process (CAAP);
- Annex 6.1.10 Just in Time Approval Process (JITAP);

Annex 6.2 Certification and Signing Authorities - Canadian Commercial Corporation (CCC) Contracting Documents;

6A.041 (2005-06-10) The contract approval and signing authorities, in support of clients' programs, apply to all contractual documents and arrangements, including the following:

(a) purchase orders;
(b) contracts;
(c) formal agreements and arrangements (e.g. interdepartmental);
(d) standing offers and supply arrangements;
(e) letters of intent;
(f) go-ahead letters and go-ahead messages;
(g) Stores Transfer Orders;
(h) Supply Transfer Orders;
(i) written direction to the Agency of Record;
(j) assignments;
(k) consents to subcontract;
(l) termination notices; and
(m) amendments to any of the above.

Notes:

1. *Limits set out in annexes 6.1 through 6.2 will apply to the approval and signing of all contractual documents and arrangements including those arrangements that are not subject to the GCR and TB Contracts Directive, unless approval and signing limits are set out within an existing Memorandum of Understanding. When the value of transfer agreements between departments (e.g. Transfer Orders with CORCAN) exceeds the approval amounts set out in annexes 6.1 through 6.2, the Deputy Minister's approval is required. When the value of contractual*

arrangements with provincial or municipal governments, or provincial or federal Crown Corporations exceeds the approval amounts set out in annexes 6.1 through 6.2, TB approval is required.

2. *The inclusion of a Limitation of Expenditure in standing offers is optional (see 7A.083). Approval and signing authorities for Standing Offers which do not contain a Limitation of Expenditure will be as set out in annexes 6.1 through 6.2 using the requisition value to determine the appropriate approval and signing authority for the Standing Offer.*

3. *Approval of contracts that include options shall be sought in accordance with the total estimated cost including any options for which funds are available or expected to be provided in the future (see Annex 6.1.5, paragraph 7).*

4. *The Assistant Deputy Minister, Acquisitions Branch, has unlimited authority to approve and revise standing offers and supply arrangements (see Section 9.1.7), when individual call-ups will not exceed the limits prescribed by Treasury Board.*

6A.042 (1994-06-23) More than one contractual document shall not be issued, under any circumstance, in order to circumvent the necessity of obtaining the proper approval authority.

Incumbents' Authority

6A.050 (1998-23-11) The authorities granted by the Deputy Minister to incumbents of designated positions are set out in annexes 6.1.2 to 6.1.4, and 6.2. These are maximum limits which may be reduced at the discretion of the appropriate managers.

A person is normally designated the incumbent of a position following staffing action. Administrative superiors at the level of section chief and above shall inform new incumbents, in writing, of the levels of contract approval and signing authority to be exercised.

Contracting personnel who have previously exercised contract approval and signing authorities in another position may exercise, upon promotion, the authorities delegated to incumbents at the new level.

6A.051 (1994-06-23) Directors general must withhold full signing and contract approval authority from anyone who has had no PWGSC purchasing/contracting experience until competence has been shown at a lower level of authority for at least six months.

Acting Incumbent

6A.060 (1994-06-23) Designation of an alternate or acting incumbent, for a position to which a level of authority has been granted, shall be made by an authority level no less than that of the incumbent's administrative superior.

If an employee is to perform the duties of a position in an acting capacity for an indeterminate period (e.g. pending permanent appointment), then the employee's administrative superior shall state, in writing, the levels at which the employee may approve and sign contracts, and the dates these authorities are to be in effect.

Similarly, if the incumbent of a position is absent for a short period, then the administrative superior of that position may designate another officer to be the acting incumbent of that position. The acting incumbent should normally be given the full contract approval and signing authorities of the position. However, the acting incumbent must not exercise these authorities on a procurement file for which he/she was responsible in his/her normal position.

6A.061 (1994-06-23) To facilitate audit requirements, copies of all acting incumbent designations shall be filed and retained in the office of the appropriate director or director general. In addition, a

copy must be placed on the file of any contractual document signed by the officer while exercising the acting incumbent authority.

Forgiveness of Debts

6A.065 (2003-05-30) No employee of the Department is authorized to forgive debts arising out of contractual actions and which are owed to the Crown. For authorities, refer to the *Debt Write-off Regulations*, 1994.

Trade-ins

6A.070 (2004-05-14) Contracts for which trade-ins have been approved through disposal operations procedures are subject to approval and signing authorities as detailed in annexe 6.1.2. (All trade-ins are disposal operations and, as such, are subject to disposal operations procedures.) The trade-in value will not be considered in determining the required level of authority.

Per Diem Rates

6A.075 (1994-06-23) Directors General may establish, at their discretion, internal authority limits for the approval of non-competitive service contracts containing per diem rates. Where such limits do not exist within a sector/region, contract approval will be in accordance with the delegated authorities in Annex 6.1.2.

No-cost Amendment

6A.080 (1994-06-23) No-cost amendments involving a simple administrative change are the responsibility of each procurement sector/region. For no-cost amendments where risk or liability will be transferred to the Crown refer to Annex 6.1.5, paragraph 5.

Royalty Payments and Licenses

6A.085 (1994-06-23) The Deputy Minister is responsible for the approval of contracts for defence material and services that will bind the Crown to the following:

(a) royalty payments by a contractor or its subcontractors that exceeds 5 percent of the selling price of the patented item; and

(b) license agreements of intellectual property where either the Crown is to be a licensee or where, in order to carry out certain defence contracts, a contractor is required to obtain a license from the third party.

Section 6B: Defining the Requirement

6B.090 (2004-12-10) A bid solicitation should not specify a product with no substitute. The salient physical, functional or other characteristics essential to the client's needs should be stated. Products known to be equivalent to a "brand name" can also be cited, but caution must be exercised to ensure that there is no conflict between the brand names specified and the description provided.

For procurement subject to either the North American Free Trade Agreement (NAFTA), World Trade Organization Agreement on Government Procurement (WTO-AGP) or the Canada-Korea Telecommunications Equipment Agreement (CKTEA), technical specifications shall not require or refer to a particular trademark or name, patent, design or type, specific origin or producer or supplier, unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the bid documentation.

Standards, Specifications and Purchase Descriptions

6B.096 (1994-06-23) Recognized Canadian standards or specifications should be used in the procurement of goods and services, except when not warranted by the volume or specific nature of the procurement.

6B.097 (1994-06-23) When Canadian national standards are not available, Canadian specifications produced by a recognized standards-writing organization should be used wherever possible. Where no such specification is available, directly relevant United States (U.S.)/foreign or international standards or specifications should be used when suitable.

6B.098 (1994-06-23) In judging the suitability of U.S./foreign or international standards or specifications, the contracting officer should consult with the client, and may call on the assistance of the Canadian General Standards Board (CGSB). The judgement should also reflect the extent to which:

(a) Canadian views have been reflected in the standard or specification;
(b) products available in Canada are likely to conform to the standard or specification;
(c) the standard or specification is likely to discriminate against products.

6B.099 (1994-06-23) Contracting officers must assess the adequacy and applicability of any standards, specifications (including client-developed specifications), or purchase descriptions included by a client in the requisition.

6B.100 (1994-06-23) When a requisition does not include an existing standard, specification or purchase description which the contracting officer considers appropriate, the contracting officer should recommend to the client that the requisition be amended to include it.

6B.101 (1994-06-23) Contracting officers are also responsible for identifying the need for a new standard, specification or purchase description, if a suitable one is not available for a particular product or service.

Listing Programs

6B.105 (1996-01-01) Listing programs are designed to expedite procurement by establishing, in advance and independent of any specific purchase, a listing of those products or services which comply with recognized performance standards or specifications.

Listing/Qualification Programs are normally established in situations where:

(a) test requirements would adversely affect delivery;
(b) costs of acceptance inspection would be excessive;
(c) prior assurance of product conformance and/or supplier capability is necessary;
(d) complex test equipment and procedures are required; and,
(e) for products purchased on a regular basis and in large quantities.

Prior to contracting, officers should verify with the standards (listing) organization, that the product or service offered has been approved. (See 6B.108.)

6B.106 (1996-01-01) The inclusion of a product or service on a list implies only that the product or service complies with recognized performance standards or specifications. Listing does not relieve the supplier of contractual obligations to deliver items or services meeting all specified requirements, nor does it guarantee acceptance under a contract.

6B.107 (1994-06-23) The CGSB and the Department of National Defence (DND) both develop and maintain lists. Those currently in effect are in annexes 6.4 and 6.5.

Qualification may be discontinued and the product deleted from an existing listing by the responsible qualifying authority under the following conditions:

(a) **Formula change**. A change in the supplier's formulation of the product which impairs product quality.

(b) **Process change**. A change in the supplier's production process which impairs product quality.

(c) **Field failure**. Authenticated failure in use which is attributable to non-conformance of the product to the relevant standard or specification. Authentication of field failure generally requires extensive investigation and supporting laboratory tests. Perceived field failures should be reported by users to the qualifying authority.

(d) **Verification failure**. Failure to meet requirements in a verification test of the product and/or system, or failure to submit samples for testing where requested or to submit data for qualification maintenance when requested.

(e) **Withdrawal for cause**. Supplier has ceased operation, changed location, or has consistently failed to respond to requests for quotation.

(f) **Changes to standard or specification**. Listings may be cancelled by the responsible qualifying authority when the governing standards or specifications are cancelled, superseded or amended in such a manner as to affect existing qualification.

(g) **Appeals**. Discontinuance may be appealed by the supplier in accordance with appeal procedures established by the qualifying authority.

When there are indications of non-conformance, and if Public Works and Government Services Canada (PWGSC) and a client determine that a qualified supplier does not conform to the applicable standard, the contracting officer must notify the qualifying authority.

6B.108 (1994-06-23) When a listing program is used for a procurement, contracting officers must state in the Notice of Proposed Procurement (NPP), bid solicitation and contract documents that the supplier and its product must be listed on the appropriate listing.

New Standards, Specifications or Listings

6B.112 (1994-06-23) When the need for a new standard, specification or listing program is identified, and no suitable document or listing is under development, the contracting officer should contact

CGSB, or, since clients are responsible for defining technical requirements, suggest that the client do so.

6B.113 (1994-06-23) In cases of urgent need for a new standard or specification, CGSB may be requested to develop and publish a provisional CGSB standard to use while a formal consensus standard is being developed. Provisional standards must be withdrawn from use as soon as the formal standard becomes available.

6B.114 (1999-12-13) If the need for a standard is limited to a single client or sector/region, a client/sector/region qualification program may be instituted. Procedures which do not limit competition and equity of opportunity for all suppliers should be established by the client/sector/region concerned, and distribution of listings should be restricted if criteria other than technical performance are applied. Where client/sector/region lists are distributed, the qualification criteria should be stated.

Canadian General Standards Board

6B.118 (2002-05-24) Canadian General Standards Board (CGSB) is accredited by the Standards Council of Canada (SCC) as a standards-development, certification and quality and environmental management systems registration organization. It is PWGSC's independent, third party qualifying authority.

There are other accredited standards organizations in Canada, and contracting officers should contact CGSB for further information.

6B.119 (2002-05-24) CGSB administers the development of consensus standards and specifications and develops and maintains qualification, certification and quality and environmental management systems registration listing programs to support procurement, good business practice and trade.

CGSB also provides expertise, liaison and information on standardization, both nationally and internationally; the assessment of the suitability of standards and specifications; quality and environmental management systems registration; and qualification/certification listing programs for products and services.

The CGSB Catalogue contains a listing of approximately 1,500 standards and specifications for products and services; listing programs for a selected number of these products and services; and other services offered by CGSB.

6B.120 (1998-06-15) Government organizations, suppliers and the general public can obtain CGSB publications, information on the listing program or documentation required to apply for a listing by contacting:

Canadian General Standards Board
Portage III, 6B1
11 Laurier Street
Gatineau, Quebec K1A 0S5

Phone: (819) 956-0425 **or**
1-800-665-2472

Department of National Defence

6B.124 (1999-12-13) The Department of National Defence (DND) acts as a qualifying authority for certain commodity groups and items having direct military application. The Technical Authority is the qualifying agent and may request assistance through the Directorate of Quality Assurance, who is the recognized military quality assurance authority.

6B.125 (1999-12-13) PWGSC and suppliers may obtain information on the DND Qualified Products or application forms from the applicable Technical Authority at:

National Defence Headquarters
MGen George R. Pearkes Building
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Attention: _____ [***Insert Name of Technical Authority***]

Technical Data

6B.130 (2002-12-13) If technical data are to be sent to potential bidders from a source other than PWGSC, the contracting officer must ensure that PWGSC has the right to use the data.

For DND requirements, form PWGSC-TPSGC 1065, Request for Distribution of Technical Data, is used. The contracting officer must send the form to National Defence headquarters, attention DTICS 5, in sufficient time to ensure that the data will be available when the bid solicitation is issued.

PWGSC will not provide data available to potential bidders through normal business channels.

Examples of such material are specifications of Canadian Standards Association (CSA), Society of Automotive Engineers (SAE), National Electrical Maintenance Association (NEMA), Underwriters' Laboratories of Canada (ULC) Standards and the Canadian General Standards Board (CGSB).

Canada/United States Joint Certification Program

6B.136 (2003-12-12) A Memorandum of Understanding (MOU) between the Minister of National Defence and the U.S. Secretary of Defense established a Joint Certification Program which allows certified contractors of each country access, on an equally favourable basis, to unclassified technical data of both countries. It also ensures that effective and appropriate controls and enforcement mechanisms are in place in each country to protect such technical data. The "Technical Data Control Regulations" are the authority for implementing this program.

The Joint Certification Program consists of a Joint Certification Office, jointly staffed by the U.S. Department of Defense and PWGSC, which manages and administers the certification process. The necessary facilities and administrative support are provided by the U.S. Defense Logistics Information Service. The address is as follows:

United States - Canada Joint Certification Office
Defense Logistics Information Service
Federal Center
74 Washington Avenue N, STE 7
Battle Creek, Michigan 49017-3084

Phone: (616) 961-7431
Fax: (616) 961-5303

Bid Evaluation Criteria

6B.142 (1994-06-23) Criteria to evaluate and differentiate between proposals must be developed, in order to ensure the complete and fair consideration of bids. The contracting officer and the client must establish the criteria before issuing the bid solicitation.

6B.143 (1994-06-23) The number of criteria must be adequate for comparative judgement. They should measure both the competence of the bidder and the worth of the bidder's particular technical approach.

Competence measures include such factors as managerial structure, key personnel, prior industrial experience, facilities and financial strength. Technical factors include the proposed work breakdown structure, identification of key technical problems and outlines of solutions, proposed schedule of milestones, and quality and time control systems to be employed.

6B.144 (2001-12-10) Where there is no alternative to specifying a product with no substitute, the solicitation should whenever possible include provision for equivalent products, and the criteria that will be used to determine equivalency.

For procurements subject to NAFTA, WTO-AGP, CKTEA or AIT, provision for equivalent products must be made.

6B.145 (1994-06-23) A team may be established to evaluate proposals. The team should include the client and may involve third parties, as appropriate (e.g., when the technical authority is not provided by the client).

The evaluation team may develop the evaluation criteria and plan.

6B.146 (1994-06-23) The basis upon which a contractor will be selected from the firms that submit responsive proposals should be indicated in the Request for Proposal (RFP). If the intent is to award the contract on the basis of best value, the criteria and the methods that will be used to determine the best value must be developed.

If a service contract is to be awarded based on best value, in addition to assessing the technical aspects of a bid, a supplier's qualifications, over and above the mandatory qualifications, must be a factor in the bid evaluation and specified in the RFP.

Supplier qualification factors may include skills, capabilities, knowledge or previous experience.

6B.147 (1994-06-23) Where education, knowledge or previous experience are essential conditions in selecting a contractor (either as mandatory requirements or as criteria to be point-rated for evaluation purposes) include clause A9001T, Education/Experience Certification, from the *Standard Acquisition Clauses and Conditions* (SACC) Manual, in the RFP.

6B.148 (1994-06-23) The relative importance of the criteria must be clearly identified. When assigning weights to each criterion, the contracting officer should ensure that a high aggregate of points for minor criteria does not overcompensate for a low aggregate of points for major criteria.

6B.149 (1995-07-01) Socio-economic factors may not be included in the evaluation criteria unless recommended by the Procurement Review Committee (PRC) or specifically required by government decisions and obligations (e.g. aboriginal land claim agreements). (See 5.090.)

6B.150 (1998-06-15) Several Comprehensive Land Claims Agreements (CLCAs) contain socio-economic evaluation criteria that must be included in the solicitation document, whenever it is practical and consistent with sound procurement management, to provide claimant groups with a fair opportunity for any spin-offs associated with socio-economic development.

The procurement requirements/obligations of the CLCAs must be included in sole source negotiations in order to maximize socio-economic opportunities for claimant group members.

These evaluation criteria can be used as part of the assessment along with price, best value, delivery etc. Several agreements include:

(a) Increase level of participation by claimant groups for business opportunities within the economy of their Comprehensive Land Claims Settlement Area;

(b) Increase employment opportunities for claimant group members;

(c) Increase economic development opportunities through federal contracting processes.

In order to comply with the requirements of the Nunavut Land Claims Agreement (NLCA), contracting officers are to employ the following bid evaluation criteria whenever it is practicable and consistent with sound procurement management. Should contracting officers decide not to use the following criteria, they should be prepared to document the supporting factors leading to their decision.

In order to comply with the requirements of the NLCA, tenderers shall provide proof of effort and/or commitments made to:

(a) having head offices, administrative offices or other facilities in the Nunavut Settlement Area;

(b) employing Inuit labour, engagement of Inuit professional services, or use of suppliers that are Inuit or Inuit firms in carrying out the contracts; or

(c) undertaking commitments, under the contract, with respect to on-the-job training or skills development for Inuit.

Proof of efforts and/or commitments made by tenderers shall include, but not be limited to, the names of persons or companies contacted and the nature of the undertakings as at the time of the tender submission and as applicable.

For those CLCAs that do not provide for mandatory inclusion of socio-economic evaluation criteria, it is recommended that these criteria be considered.

6B.151 (1996-01-01) For guidance in the development of socio-economic evaluation criteria, contracting officers should consult their manager in conjunction with their appropriate subject matter expert.

To ensure consistency in the departmental application of socio-economic evaluation criteria, contracting officers are requested to give a copy of the final release of their evaluation criteria to their subject matter expert so that a data bank of reference information may be established.

Life Cycle Costing

6B.153 (1994-06-23) The application of Total Life Cycle Costing means the sum of the Product, Resource, Operating, and Contingent (PROC) costs relating to a procurement. This can be a useful element in the evaluation of proposals. The PROC technique should be used for major Crown projects (MCPs) and in procurement in which operating costs are a major part of the total cost of the product, e.g. major construction projects or motor vehicle purchases.

Royalty Payments and License Agreements

6B.159 (1994-06-23) In order to carry out certain contracts, primarily for defence, contractors may have to obtain technical assistance and/or manufacturing licenses from third parties.

6B.160 (1994-06-23) The usual commercial practice is for the contractor to enter into a technical assistance and/or license agreement. However, there are cases where it may be more advantageous for the Crown, in its own name, to enter into the license agreement with respect to

inventions, patents, copyrights, trade secrets, trademarks, technical data, know-how and industrial designs.

6B.161 (1994-06-23) In order to avoid paying for rights that the government already has, contracting officers should check that no license agreement in the name of the Crown exists which could remove the need for royalty payments.

6B.162 (2000-12-01) Contracting officers should minimize the use of patented products, by calling up performance specifications rather than product specifications. When there is no alternative, market-based processes for the supply of patented products through licensed production arrangements, royalties, etc., must be exhausted before using section 19 of the *Patent Act* or section 22 of the *Defence Production Act*.

These Acts provide that:

Patent Act:

"19.1:

(4) Whereas the use of the patented invention is authorized, the authorized user shall pay to the patentee such amount as the Commissioner considers to be adequate remuneration in the circumstances, taking into account the economic value of the authorization.

19.2 Any decision made by the Commissioner under section 19 or 19.1 is subject to appeal to the Federal Court.

" *Defence Production Act*, section 22:

(1) The Minister may, on behalf of Her Majesty, contract with any person that Her Majesty will relieve that person from any claims, actions or proceedings for the payment of royalties for the use or infringement of any patent, registered industrial design or registered topography by that person in, or for the furnishing of any engineering or technical assistance or services to that person for, the performance of a defence contract.

(2) A person with whom the Minister has contracted under subsection (1) is not liable to pay royalties under any contract, statute or otherwise by reason of the use or infringement of a patent, registered industrial design or registered topography in, or in respect of engineering or technical assistance or services furnished for, the performance of a defence contract and to which the contract under subsection (1) applies.

(3) A person who, but for subsection (2), would be entitled to a royalty from another person for the infringement or use or a patent, registered industrial design or registered topography or in respect of engineering or technical assistance or services is entitled to reasonable compensation from Her Majesty for the infringement, use or services and, if the Minister and that person cannot agree as to the amount of the compensation, it shall be fixed by the Commissioner of Patents.

(4) Any decision of the Commissioner of Patents under subsection (3) is subject to appeal to the Federal Court under the *Patent Act*."

6B.163 (1994-06-23) Royalty payments of 5 percent or less of the selling price of the patented item require director approval. A royalty that exceeds 5 percent requires Deputy Minister approval prior to entry into a contract.

If there is an increase in the amount of the royalty to be paid or if further items become subject to

royalty payments during the life of a contract, the same guidelines for approval apply.

To obtain the approval of the Deputy Minister for royalties exceeding 5 percent, the following information is to be provided on Part 2 of the Contract Request:

(a) details of the royalties;

(b) a forecast of anticipated future purchases beyond the requirement in the present submission;

(c) the comments of Legal Services.

6B.164 (1994-06-23) In consultation with Legal Services, the contracting officer shall consider the advantages and disadvantages before deciding that a license should be obtained in the name of the Crown or contractor.

These advantages and disadvantages are to be considered in relation to the nature of the supplies to be manufactured, the expenditure by the Crown, potential Crown purchases and the relationship of the perspective contractor to the licensor (e.g. the contractor may be a subsidiary of the licensor).

Advantages - if the license agreement is in the name of the Crown, the Crown can:

(a) negotiate terms and ensure that no restrictions are placed on the use, sale, lease or exchange of supplies. Such restrictions, if imposed, might interfere with Canada's obligations under international defence arrangements;

(b) have unfettered choice of contractors; and

(c) control the manner in which required technical assistance is to be furnished and used.

Disadvantages - if the license agreement is in the name of the Crown, the Crown may:

(a) become involved in contractual negotiations apart from the contract it is presently interested in;

(b) have to assume onerous burdens dealing with secrecy, non-disclosure and informing the licensor of improvements and developments;

(c) be bound by all terms of the agreement and be required to pay royalties at a set rate and assume other burdens for a long period.

6B.165 (1994-06-23) Royalties required to be paid by contractors and their subcontractors to third parties, in the performance of a defence contract, will be paid if they are valid and the amounts being charged are acceptable to the Crown.

6B.166 (1994-06-23) Where the license agreement is to be in the name of the contractor, approval to enter such an agreement may be obtained as part of the authority obtained for the purchase of the materiel and/or service.

6B.167 (1994-06-23) Where the license is to be in the name of the Crown, the contracting officer, when negotiating the license agreement and the amount of the royalty payment, should take into consideration the following:

(a) manufacturing rights, including use of licensor's patents and designs;

(b) technical assistance, including:

(i) supply of plans, drawings, specifications, etc.;

(ii) engineering person-days provided by the licensor both at its own plant and the plant of the manufacturer selected by the Crown;

(iii) travelling and living expenses of the licensor's representatives;

(c) obtaining for the Crown the right to modify or have modified the plans, drawings, etc., and, if required, the right to build or have built or to repair or have repaired the articles in question by a party other than the licensor.

6B.168 (1994-06-23) Approval of the Deputy Minister is required before entry into any contractual agreement that exercises the rights of the Crown under section 22 of the *Defence Production Act* or section 19 of the *Patent Act*. Exercising the rights granted the Crown under these Acts shall only be carried out in exceptional circumstances as warranted by consideration of the public interest, and after market-based processes have been exhausted.

Examples of these circumstances would include refusal by a patent holder to produce or license others to produce a product vital to the defence of Canada, or where monopoly power conferred by the patent is being abused to impose unconscionably high prices upon the Crown. It would be very unusual to find these rights exercised for other than defence supplies.

Intellectual Property

Policy - Objectives and Underlying Principles

6B.174 (2003-05-30) "10. Like the 1991 policy, the revised policy aims to increase commercialization of IP. It recognizes that commercial exploitation of IP can contribute to economic growth and job creation by having contractors own the IP they create in the course of their work under Crown procurement contracts, and it also recognizes that there will be instances where the Crown will need to retain the IP in order to act in the broader public interest.

"11. It further recognizes that the objective of commercializing IP from government contracts takes place within the framework of the government's *Contracting Policy* and its provisions with respect to socio-economic objectives."

"12. Most importantly, the revised policy recognizes that the primary objective of Crown procurement contracts is for the Crown to receive the deliverables contracted for, and to be able to use those deliverables and any arising IP for Government of Canada activities."

Excerpt from TBS Contracting Policy Notice 2000-2

Intellectual property (IP) is anything resulting from a contract which can be copyrighted, trademarked, patented, licensed, etc. Potentially, IP can result from any contract. The likelihood for IP is much greater where the goal of the contract is something new, or might incorporate new processes. IP considerations are most relevant to research and development contracts, software development, or where the production of new written material occurs.

The government policy of allowing the contractor to retain the rights to IP generated under a Crown contract is designed to promote the development of new ideas, under the belief that the private sector has a greater capacity to commercialize and benefit from the IP. The Crown will not arbitrarily refuse to allow a contractor to retain the rights to IP.

The client department must decide to what extent IP rights are to be retained by the Crown, and PWGSC plays no part in this determination. However, the contracting officer must consult with the client department in the case of research and development or software development

procurements, to determine the client department's position. Contracting officers may wish to discuss their needs with client departments to ensure that client departments are aware of the extent to which we can obtain for them the rights they need to use the IP created under their contract whether the Crown or Contractor owns the IP. Subject to market conditions (which will also affect the ownership terms that may be achieved) PWGSC contract terms are designed with the goal of ensuring that even where the contractor owns the IP this does not affect the client department's ability to use the IP, with the exception of commercialization of the IP by the Crown.

Client department may deal with IP rights in several ways:

Research and Development (R&D) contracts
- Contractor to retain ownership of IP
- Crown to retain ownership of IP

Goods contract with associated R&D
- Contractor to retain ownership of IP
- Crown to retain ownership of IP

Goods contract with no R&D expected
- Crown to retain copyright
- Contractor to retain all IP, including copyright

Services contract with no R&D expected
- Crown to retain copyright
- Contractor to retain all IP, including copyright.

Electrical Equipment

6B.180 (1994-06-23) The client is responsible for determining whether or not a requirement is subject to the Canadian Electrical Code, Part I, and for identifying circumstances where certification or approval in accordance with the Code is required.

Suppliers are responsible for complying with applicable building codes and standards, including the Canadian Electrical Code, Part 1.

6B.181 (2002-05-24) If the required electrical equipment must be either certified or approved, bid solicitation documents must contain the appropriate clause specifying the applicable organization accredited by the Standards Council of Canada. The clauses are listed in the *Standard Acquisition Clauses and Conditions* Manual, subsection 5-B.

The equipment may be specially inspected by an organization acceptable to Chief Electrical Inspector in the province, territory or city where the electrical equipment is to be installed and operated.

Special Production Tooling, Special Test Equipment and DND Materiel

6B.187 (2003-05-30) In order to carry out certain contracts, unique Special Production Tooling (SPT) and Special Test Equipment (STE) and/or Department of National Defence (DND) materiel are required by contractors in the manufacturing or in the repair and overhaul of defence supplies or other equipment. This does not apply when SPT/STE is the end product ordered under a contract, and is not for use by the contractor.

SPT/STE is normally acquired at the time of the initial manufacturing or the establishment of a repair and overhaul line or, occasionally, during the manufacturing or repair and overhaul process. SPT/STE is available for use in the manufacturing of additional units or parts or in their repair and overhaul.

6B.188 (2003-05-30) The management and control of all production assets, including SPT/STE generated under defence contracts, and DND-loaned materiel, is the responsibility of DND/Director Disposal, Sales, Artifacts and Loans (DDSAL). DND/DDSAL may be contacted at (819) 994-8692. DND/DDSAL responsibilities include the return and disposition of these production assets. (See 11.240 and 11.241.)

The management and control of production assets generated under contracts with the Canadian Commercial Corporation are the responsibility of PWGSC/Production and Assets Management Services (PAMS). PWGSC/PAMS may be reached at (819) 956-0057.

When there is a requirement for SPT/STE, contracting officers must first check with DND/DDSAL to determine if it is available from current inventories. When available, DND/DDSAL shall arrange for the loan of the SPT/STE to the contractor. When the SPT/STE is not available from the DND inventories, the PWGSC contracting officer shall ensure sufficient funding is available and shall authorize the purchase or manufacture of the required SPT/STE.

Since the cost of SPT/STE represents part of the cost of the end product being acquired by the client, payment is made out of the client's funds appropriated for the purchase of the end product. The cost of SPT/STE is to be included in the contract price for approval purposes.

6B.190 (1994-06-23) When planning for the use of SPT/STE, contracting officers should consider the degree of mobility of the equipment.

Contracting officers should also consider whether a separate contract should be entered into for such tooling.

Controlled Goods

6B.192 (2004-12-10) Controlled goods are listed in the Schedule to the *Defence Production Act* and are identified in the following groups on the Control Goods Program Website. The complete Export Control List is published on the International Trade Canada (ITCan) Website.

- Group 2: goods listed in item 2001 that are prohibited firearms, as defined in paragraph (c) of the definition of "prohibited firearms" in subsection 84(1) of the *Criminal Code*;
- Group 2: goods listed in item 2003 that are ammunition with a calibre greater than 12.7mm;
- Group 2: goods listed in items 2002, 2004 to 2022;
- Group 5: goods listed in item 5504; and
- Group 6: all goods listed.

It is the client department's responsibility to identify within any requisition that there are controlled goods aspects. For example, requisitions coming to Public Works and Government Services Canada from the Department of National Defence shall identify on the first line "this requisition involves controlled goods" or "this requisition does not involve controlled goods". In case of doubt, the ultimate authority for making this determination is the Export Controls Division of ITCan (613-996-2387).

U.S. Defense Priorities and Allocations System

6B.195 (1994-12-16) The United States (U.S.) Department of Defense allows Canadian inclusions to its Master Urgency List (MUL) which is a listing of programs designated as extremely important by the U.S. Armed Forces, the U.S. Joint Chiefs of Staff and the U.S. President. This ranking

establishes where limited resources ought to be allocated. It is important that Canadian defence programs be included in the MUL to allow our NORAD (North American Air Defence) and NATO (North Atlantic Treaty Organization) commitments to be honoured, should any portion of the contract work require imports from the United States.

6B.196 (2004-05-14) The acquisition of defence material in the United States is controlled by the U.S. Defense Priorities and Allocations System (DPAS). In relation to Canadian defence requirements and also to U.S. defence requirements resulting in contracts placed with Canadian suppliers, Canada is given access to the system, equal to any other U.S. participant.

The Central Allocations and Defence Priorities Section Officer, Business Management Directorate (BMD), is responsible for coordinating Canada's participation in the U.S. DPAS. This includes coordinating the allocation of priority ratings, coordinating Public Works and Government Services Canada action regarding modifications to the U.S. Defense MUL, and notifying U.S. and Canadian suppliers of the priority rating.

The U.S. DPAS may be used whenever one of the following types of contracts is placed: (See 7A.140)

(a) Canadian defence contracts placed by PWGSC with U.S. suppliers;
(b) Canadian defence contracts placed by PWGSC with Canadian suppliers who may obtain material from U.S. suppliers;
(c) U.S. defence contracts placed with Canadian suppliers through the Canadian Commercial Corporation (CCC);
(d) U.S. defence contracts or subcontracts awarded to Canadian suppliers, who, in turn, are subcontracting for material to U.S. suppliers;
(e) Canadian contracts with Canadian or U.S. suppliers for atomic energy needs; or,
(f) Canadian contracts involving the acquisition of outer space requirements from U.S. sources, in joint Canada/U.S. undertakings.

Priority ratings received by a Canadian firm may not be extended to other firms in Canada unless authorization is sought and obtained from the U.S. Government, through the Central Allocations and Defence Priorities Section, BMD.

Minimum rated order dollar amount: The U.S. conducts their acquisitions under Federal Acquisition Regulations, including a Simplified Acquisition Threshold, which is currently set at US$50,000. If the dollar value of the contract is for less than one half of this threshold, use of a priority rating is optional, provided that delivery of the needed items can be obtained in a timely fashion without the use of a priority rating. In the case of these low dollar value purchases, the procurement officer should ensure that there is an important reason to request the priority rating clause.

The contracting officer should ensure that there is at least ninety (90) days between the contract date and the delivery date to provide sufficient time to have the rating in place.

The DPAS is not to be used to support procurement of end item(s):

- commonly available in commercial markets for general consumption;
- not requiring major modification when purchased for approved program use;
- readily available in sufficient quantity so as to cause no delay in meeting approved program requirements.

The following forms, which are available from the Central Allocations and Defence Priorities Section Officer, BMD, are to be used in making application for U.S. priority ratings:

PWGSC-TPSGC 1451-1, "Application for U.S. Priority Rating Covering Importation of Quarterly Requirements of Materials from the United States" (english only) - Used by manufacturers to obtain, on a calendar quarterly basis, components to be incorporated in

defence assemblies from U.S. suppliers for Canadian and U.S. defence purposes.

PWGSC-TPSGC 1451-2, "Application for U.S. Priority Rating Covering Special Materials" (english only) - Used by all distributors and some manufacturers to obtain specific items for Canadian and U.S. Defence purposes.

PWGSC-TPSGC 1451-4, "Application for Special Priorities Assistance for Purchase Order Placed on a U.S. Supplier" (english only). Used when the normal Priorities and Allocations System is insufficient to obtain required delivery promises.

Section 6C: Risk Management

Protection of Government Property, Employees and Interests

6C.215 (2002-12-13) The objective of Treasury Board (TB) Risk Management Policy is to safeguard the government's property and interests, and the interests of its employees as they do government work, by effectively managing the risks to government property, interests and employees. (See TB Risk Management Policy.) Public Works and Government Services Canada (PWGSC) manages the risks to government interests arising from the procurement process by identifying and analyzing these risks, and structuring contracts to reduce or eliminate the costs and consequences of harmful or damaging incidents resulting from them. The Crown self-underwrites only those risks to which the government alone is exposed and over which we and our clients generally have control. PWGSC does not indemnify other entities for risks not under government control, ensuring instead that our contractors make prudent use of risk management and insurance policies.

6C.216 (1994-06-23) There are four basic elements of a risk:

(a) Threats: they are the sources of risk that may have an adverse result, e.g. acts of God, acts or omissions by a person.

(b) Resources: these are the government's property or personnel which could be adversely affected by the threats.

(c) Modifying factors: these are either internal or external to the above resources and tend to increase or decrease the probability or severity of any adverse and accidental events; e.g. installing sprinklers at government warehouses, storage of chemicals on premises.

(d) Consequences: these are the adverse results of situations when the above three factors are combined.

6C.217 (2004-12-10) In order to effectively manage risks, the risk management process outlined in Annex 6.6 should be applied. Risk control and risk financing alternatives form the skeleton of risk management.

Advice from the PWGSC Advisor, Acquisition Program Integrity Secretariat, telephone number (819) 956-0912, should be sought concerning exceptional and unusual risks which may require modifications, amendments and changes to risk management requirements, including insurance.

Contractor's Risks

6C.221 (1994-06-23) For risks under the control of the contractor, e.g. the contractor's own risks or government property under the care, custody or control of the contractor, it is government policy to be indemnified by the contractor, and to not indemnify the contractor against the risks to which the contractor is exposed.

The contractor must provide the contracting officer with evidence of insurance that is determined to be required by the contracting officer, after consideration of the risks in a contract.

Contractors may carry, at their cost, any additional insurance protection they consider necessary.

Insurance

6C.225 (1994-06-23) Risk financing alternatives, especially insurance, should be considered after implementing all necessary risk control alternatives. Insurance is the most commonly used risk

financing technique. Annex 6.7 identifies which insurance clauses are applicable to the identified risks (government risks or risks arising from the contractor's performance of the contract).

6C.226 (1994-06-23) The government normally self-underwrites those risks to which it alone is exposed and over which it generally has control, and, when relevant, establishes the appropriate method of underwriting these risks.

Where the self-underwriting option is to be applied, clients are responsible for obtaining Treasury Board (TB) approval if they decide to purchase commercial insurance. Clients are required to explain why the purchase of commercial insurance is necessary (e.g. cost-effective or practical reasons).

Commercial insurance may be purchased by any government department, as an alternative to the self-underwriting option, if there is an indistinguishable commingling among the liability risks of the contractor and the government.

6C.227 (1994-06-23) There are two main options available to the department or contractor when buying insurance:

(a) in normal contracting situations, the contractor is responsible for the arrangement and control of the insurance. The role of the PWGSC contracting officer is to obtain, review and approve a certified copy of the insurance policy or certificate to ensure that the appropriate clauses are incorporated in the contractor's existing policies;

(b) where risks involved are of a special or extra-hazardous nature, the types of insurance coverage required are to be specified by clients.

Government Property

6C.231 (1994-06-23) The contracting officer must determine the extent of government property under the contractor's care, custody or control, relating to a specific contract. The contractor is to be held responsible for any loss or damage resulting from the contractor's failure to take reasonable and proper care of such property, excluding loss or damage resulting from ordinary wear and tear.

The contractor is responsible for monitoring, investigating and documenting any losses of or damage to government property, to ensure that claims are properly made and paid to the government.

6C.232 (1994-06-23) TB Risk Management Policy concerning insurance of government owned or leased vehicles and equipment is summarized in annexes 6.8 and 6.9.

6C.233 (1994-06-23) Insurance requirements for ship building and repair generally follow the requirements below:

(a) PWGSC requires the contractor, whenever feasible, to be responsible for managing the risks arising from the performance of the contract, including providing the contracting officer with a reasonably comprehensive and updated risk management program, including insurance.

(b) An insurance program should be tailor-made to the specific risks of the ship building and repair contract, and should permit a cost-effective trade-off of the risks arising from the contractor's performance versus the potential insurance costs.

6C.234 (1994-06-23) To minimize risks to the government, all the risks associated with the delivery of goods (including the risk of loss or damage to the goods supplied, and any material supplied by

the government, or to third parties) should rest with the contractor until the supplies are delivered to the point specified in the contract.

Claims

6C.238 (2002-12-13) Government departments are responsible for adequate and timely compensation, restoration, and recovery of losses in the event of harmful or damaging incidents arising from the risks involved in their departments.

Government departments must comply with the following Treasury Board policies: Policy on the Indemnification of and Legal Assistance for Crown Servants; and Policy on Claims and Ex Gratia Payments.

Government Quality Assurance

6C.244 (1994-06-23) Clients are responsible for stating their requirement for Government Quality Assurance (GQA), which includes quality assurance, quality control and quality inspection, on their requisition or attached technical documentation.

The client statement should clearly and completely describe the technical requirements and the requirement for GQA, and must designate the inspection authority and the point of inspection.

The extent of GQA required will vary, depending on contract technical requirements and supplier performance history.

6C.245 (1994-06-23) The GQA requirement may be specified in terms of:

(a) the degree of quality assurance expected and the quality standard against which verification will be conducted;

(b) the requirement for the supplier to establish and maintain systems to assure quality;

(c) the requirement for the supplier to demonstrate conformance;

(d) what quality verification activity will be done by the government;

(e) consignee inspection;

(f) the requirement for the supplier to provide proof of compliance in accordance with an acceptable quality assurance standard or specification;

(g) the requirement for the supplier to submit samples for approval, such as pre-award samples, first-off units, pre-production, qualification or sealed samples;

(h) the requirement for the supplier to submit an inspection plan;

(i) the requirement for the inspection authority to verify that the product supplied:

  (i) is equal in all respects to the product qualified during the Qualified Products/Qualification Program List (QPL)/Certification Program List (CPL) process;

  (ii) is manufactured under the same conditions as the product qualified during the QPL/CPL process;

(j) the details of acceptance inspection, tests and trials.

As an alternative to items (g) through (j) above, and where available, the supplier may be required to be listed in an acceptable qualifying program which provides for adequate audit and controls.

Contracting officers should inform clients of the availability of Canadian General Standards Board (CGSB) or other listing programs which, if used for a procurement, would reduce the need for GQA. For example, CGSB listing programs are operated on a cost recovery basis with no direct expense or use of resources to the client.

6C.246 (1994-06-23) If a requisition does not specify a GQA requirement, or includes an insufficient level, given the nature of the procurement, the contracting officer must work with the client to develop an appropriate GQA framework. Contracting officers should also advise the client of the financial and operational implications of appropriate GQA, for the client, the supplier and PWGSC.

6C.247 (1994-06-23) If a requisition does not specify a supplier quality system, the client should be requested to consider specifying such a stipulation if:

(a) non-conformance would produce significant effects relating to product safety, reliability or operational consequence, e.g., arctic clothing, fire extinguishers and security equipment or services;

(b) the requirement is for a newly designed product being produced to government-generated specifications;

(c) the requirement is for a product or service where current suppliers have a history of not conforming to specifications and/or previous similar requirements have resulted in chronic client complaints;

(d) the requirement is for a product of high technical complexity; a product that has stringent interchangeability requirement; or a "critical" product whose non-conformance would result in the failure of a system of which that product is a component;

(e) the requirement is for a product or service which is being purchased for the first time and no history of performance is available; or

(f) at least one potential supplier has a weak quality system.

This is required to provide adequate protection for both the client and PWGSC.

Contracting officers may also consider a supplier quality system if a requirement has significant dollar value. However, issues relating to the nature of the requirement are usually more important than the dollar value.

Government Quality Assurance at Source

6C.251 (1994-06-23) GQA at source should be used when any of the following conditions apply:

(a) the requisitioning authority has designated an inspection authority other than the consignee;

(b) the costs of performing inspection at source are justified by the benefits received;

(c) conformance cannot be adequately determined on receipt because:

(i) the product contains critical characteristics not visible in the end item;
(ii) the product has special safety or security characteristics;

(iii) special packing and packaging would be destroyed;
(iv) delivery is to multiple destinations; or
(v) conditions or capabilities are not adequate at destination;

(d) the supplier has a record of marginal performance or unsatisfactory quality history and conditions preclude procurement from other sources.

6C.252 (1994-06-23) GQA at source may be performed by a client-designated inspection authority or by an inspection authority commissioned by PWGSC on behalf of the client. As part of the inspection, supplier performance data respecting quality must be documented and copies of all inspection reports provided to the sector/region.

6C.253 (1994-06-23) PWGSC has the authority to provide additional quality tasking for civilian marine services, e.g. inspection and arranging for technical support.

This authority is provided through TB Document No. 749386, May 5, 1977, Section VI, Recommendation 2.

Facility and Systems Evaluations

6C.257 (1994-06-23) Facility and Systems Evaluations are conducted primarily to determine the suitability of sources of supply (facility evaluations) and the extent to which a supplier has established adequate product quality control (systems evaluations).

These evaluations may be carried out for any of the following reasons:

(a) when assessing a new supplier;

(b) when a supplier's compliance with a quality system standard or specification is considered a prerequisite to contract award;

(c) when reliance on a supplier's quality system is used as a basis for determining what GQA is to be performed;

(d) as a method of periodic GQA during a contract (sometimes referred to as quality audit or quality survey);

(e) when it is impossible or uneconomical to verify or test the product (e.g. when internal components are inaccessible, inspection would be destructive or the cost of duplicating inspection would be prohibitive);

(f) where the supplier's history or past performance indicates the need to determine if problems have been corrected;

(g) when investigating the cause of recurrent product quality complaints, in order to determine the required corrective action;

(h) to verify a supplier's quality control of a product qualified prior to and independent of contracting.

6C.258 (1994-06-23) Facility evaluations usually include an on-site investigation and a summary report of a supplier's suitability and potential to provide goods and services. They may involve a complete evaluation of a supplier's organization, management, production scope, facilities and capacity, and performance record, or a partial evaluation limited to the specific area of interest.

6C.259 (1994-06-23) Evaluations may also be performed by a review of:

(a) a response to a questionnaire;
(b) supplier quality history;
(c) a report resulting from a plant visit;
(d) a previous evaluation report.

6C.260 (1994-06-23) Contracting officers may conduct these evaluations, or request that they be carried out by CGSB on a cost-recovery basis. When it may be advantageous in terms of client service or expense to the Crown, contracting officers should consider requesting qualified personnel from other sectors/regions to conduct facility evaluations or other surveys on their behalf.

6C.261 (1994-06-23) Pre-award surveys/meetings are used to assist the contracting officer to confirm the capability of suppliers submitting bids and to determine whether the suppliers' systems will be suitable for the contractual requirements.

6C.262 (1994-06-23) Post-award surveys/meetings ensure that successful contractors clearly understand all contractual requirements and that their facilities and operating procedures are adequate to provide the specified goods and/or services.

6C.263 (1994-06-23) Special investigations may be conducted to address any problems which arise before, during or after production and which fall outside the scope of routine contract administration and production monitoring.

6C.264 (2004-12-10) A copy of all evaluations or surveys (form PWGSC-TPSGC 9041 - Facility Evaluation Survey Report) must be forwarded to the Acquisition Program Integrity Secretariat (APIS), for circulation and reference. Any other reports prepared, including a record of the action taken as a result of the evaluation, or a note indicating where such information can be obtained, must also be forwarded to APIS.

Industrial Security Requirements (Personnel or Organization)

6C.270 (2004-12-10) When a requisition/amendment contains a requirement for security measures, planning of the procurement must take into account that the organization screening and personnel security screening process may take a considerable length of time.

The approximate time frames for completing personnel security screening are as follows:

(a) Simple Reliability Status: 2 working days;
(b) Complex Reliability Status: 52 days (100 days if out of country check is required);
(c) Confidential/Secret Clearance: 62 days (an additional 100 days if out of country check is required);
(d) Top Secret Clearance: 100 days (an additional 100 days if out of country check is required);
(e) NATO Clearance: 100 - 200 days (non-Canadian citizen)

For international contracts, the contracting officer must verify with Canadian and International Industrial Security Directorate (CIISD), telephone number (819) 948-1661, that there is an Industrial Security Memorandum of Understanding (MOU) in place with the relevant foreign country.

The contracting officer must provide as much lead time as possible to CIISD to process organization and/or personnel security screenings, and to the prospective supplier(s) to implement security recommendations prior to contract award.

6C.271 (2004-12-10) Protected/Classified information or assets for transmittal outside of Canada must **only** be forwarded to the Document Control Section (DCS) of CIISD. Onward transmission and receipt through approved security channels will be undertaken by DCS.

6C.272 (2005-06-10) Upon receipt of the Security Requirements Check List (SRCL) form TBS/SCT 350-103 (see 3.009 for step-by-step procedures on handling SRCLs), CIISD will:

(a) review the SRCL and attachments for completeness and clarity;

(b) obtain clarification from the client's Departmental security Officer, project officer or the Public Works and Government Services Canada (PWGSC) contracting officer, as applicable;

(c) ensure that the participating countries have the appropriate Industrial Security MOU's/Arrangements/Agreements with Canada;

(d) sign the SRCL form as the Contracting Security Authority and select the appropriate security requirements clause, with modifications as required, from the *Standard Acquisition Clauses and Conditions* (SACC) Manual;

(e) provide information to the contracting officer on the organization's security status of identified potential suppliers;

(f) provide information to Canadian suppliers on the preparation and transmission of Protected or Classified information/assets. Classified information/assets must be forwarded to DCS.

6C.273 (2004-12-10) Provided that it would not discriminate unfairly between potential suppliers, a solicitation may include an appropriate organization's security screening/clearance level as a mandatory technical requirement prior to bid evaluation. Alternatively, the required organization's security screening/clearance level may be obtained after selection of the potential contractor, **provided the solicitation does not contain Protected/Classified information**.

6C.274 (2004-12-10) Managing the risks associated with the destruction of Protected/Classified government waste requires additional measures. The Corporate Security Technical Standard (Annex 6.14) defines PWGSC Corporate policy and procedures relating to Classified waste destruction. Contracting officers should follow the Interim Standard and refer to Annex 6.15 regarding Classification Levels of Shredders, and to Annex 6.16 regarding Request for Non-Accessioned Disposal.

The Departmental threshold may be exceeded when administering destruction contracts on behalf of other government clients, based on the client's threat risk assessment. If such is the case, a Security Guide may be developed by the client as amplifying instructions, which are to be attached to the SRCL. (See SACC Manual clause F2037D.)

For foreign Classified information, consult with CIISD prior to undertaking destruction.

Foreign Ownership, Control or Influence (FOCI)

6C.275 (2003-05-30) Foreign Ownership, Control or Influence (FOCI) involves a situation whereby a third party individual, firm or government is assumed to possess dominance of, or authority over, a Canadian facility to such a degree that a third party individual, firm or government may gain unauthorized access to extremely sensitive INFOSEC information. A FOCI evaluation is an administrative determination of the nature and extent of foreign dominance over the contractor's management and/or operations.

6C.276 (2004-05-14) Procurement requirements involving the potential release of extremely sensitive INFOSEC, a special category of CLASSIFIED Communications Electronic Security (COMSEC) information, are subject to a FOCI review by the Policy Division, Canadian and International Industrial Security Directorate (CIISD). Recommendations regarding the use of FOCI will then

be submitted to the procurement directorate, and if appropriate, to the Procurement Review Committee Secretariat of the Acquisitions Branch.

6C.277 (2003-05-30) Suppliers must be informed of the requirement for a FOCI evaluation in the bid solicitation; however, completed packages should only be requested after the bid evaluation process has determined which bidder(s) will receive a contract award.

6C.278 (2003-05-30) Contracting officers are to provide two (2) copies of the FOCI Submission for the successful bidder(s) to the Policy Division, CIISD. Verification of the FOCI and the required Facility Security Clearance of the potential Canadian or U.S. supplier must be obtained from CIISD **prior to contract award**.

Any irregularity known to PWGSC employees regarding compliance with the INFOSEC access approval of the firm under contract involving extremely sensitive INFOSEC ***must be immediately reported*** *to the Director of CIISD.*

Bid/Contract Security (Financial)

6C.279 (1997-09-15) Financial security can be required from a bidder/contractor to:

(a) protect the Crown against loss should a winning bidder fail to enter into a contract (bid security);

(b) ensure that a contractor's obligations under a contract are carried out (contract security); or

(c) protect subcontractors and materiel suppliers (payment bond).

The financial security may be a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) or a surety bond. The bidder or contractor has the choice of which form of financial security will be used.

The decision to obtain financial security for competitive solicitations must be taken prior to issuing the bid solicitation.

Bidders and contractors have the right to determine which form of financial security they will provide. See SACC Manual clauses E0001T, E0004T and E0007T.

6C.280 (1994-06-23) Government bonds will be valued at face value.

6C.281 (2003-05-30) Treasury Board has an updated list of insurance companies whose bonds may be accepted as security by the government.

Bid Security

6C.285 (1994-06-23) The decision to obtain bid security should take into account the following:

(a) the extent of bidder prequalification possible;
(b) the type of work and custom of the trade;
(c) the likelihood of attempts to withdraw;
(d) the consequences of the failure or inability of the bidder to enter into a contract.

6C.286 (1994-06-23) The amount of bid security is to be the minimum required to ensure that the bidder enters into the contract. See SACC Manual clauses E0001T and E0004T.

If the estimated contract value is $250,000 or under, the security should normally not exceed 10 percent of the bid price. In the case of larger acquisition values, the percentage will be

determined by the contracting officer.

6C.287 (2003-05-30) Any letter of credit received by Canada must have an appropriate expiry date. The letter of credit should not have its expiry date 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. The expiry date should allow for a comfortable turn-around time from the estimated date of award of contract, to ensure that the contracting officer is satisfied that the bidder has discharged its obligations for which the letter of credit was provided. If the bidder has not met its obligations, the contracting officer must have sufficient time to prepare and present the required demand for payment under the letter of credit.

Contract Security

6C.290 (1997-09-15) For real property, goods and services contracts which have an anticipated value of over $100,000, the decision to obtain contract security, and the amount of security required, should take into account the following:

(a) the type of work and custom of the trade;

(b) the consequences of the failure or inability of the supplier base to fulfil contractual obligations;

(c) costs associated with the provision of security, compared with the degree of risk involved;

For real property, goods and services contracts which have an anticipated value of $100,000 or less, contract security is to be sought on an exceptions basis and only in cases where there is readily identifiable or demonstrable risk to Canada. A justification should be prepared for each case where security is required.

Decisions as to whether and how much financial security will be required should be based on the circumstances of the individual procurement. Some businesses may encounter difficulty in obtaining certain kinds of security, therefore, contracting officers should be sensitive to this and not require unreasonable contract security. In certain cases, perhaps an advance form of security may not be needed; holdbacks in contract payment may suffice. Treasury Board recommends that financial security not be considered until the anticipated cost of the contract exceeds $100,000. However, issues relating to the nature of the requirement are usually more important than the dollar value.

6C.291 (1997-09-15) When the decision to obtain contract financial security has been taken, contracting officers must stipulate in the bid solicitation documents that the provision of contract security will be required. SACC Manual clause E0007T shall be included.

6C.292 (2003-05-307) Any letter of credit received by the Crown must have an appropriate expiry date. The letter of credit should not have its expiry date 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 completion of the work. The expiry date should allow for a comfortable turn-around time from the estimated date of completion of work, to ensure that the contracting officer is satisfied that the contractor has discharged its obligations for which the letter of credit was provided. If the contractor has not met its obligations, the contracting officer must have sufficient time to prepare and present the required demand for payment under the letter of credit.

Controlled Goods

6C.295 (2002-05-24) As of April 30, 2001, no new controlled goods can be provided unless persons are

registered, exempt or excluded under the Controlled Goods Program.

Economic Price Adjustments in Firm Price Contracts

6C.297 (2004-12-10) Under unstable market conditions, one or more elements of the cost of a good or service may be subject to significant fluctuations in price so that neither the buyer nor the seller would have confidence in accepting a fixed or firm price over an extended period of time. Contracting officers should seek to reduce the risk of uncertainty.

Economic price adjustments should not normally be included in contracts with delivery schedules of less than twelve (12) months, or contracts valued under $100,000.

There are a number of possible actions:

- *postponing the procurement;*
- *using available substitute materiel;*
- *providing advance information on requirements to potential contractors so as to benefit from their improved ability to control costs by forward planning and to make full use of the commodity futures market in appropriate circumstances;*
- *reducing the period of term contracts or the quantities ordered on production contracts;*
- *increasing production rates to compress the duration of contracts;*
- *reducing administrative time allowances in the procurement process (solicitation, award decision, issuance of contract and authority to commence work) - but taking into account required time frames under the North American Free Trade Agreement, the World Trade Organization Agreement on Government Procurement and the Canada-Korea Telecommunications Equipment Agreement;*
- *procuring the unstable element separately (in the construction industry, this technique is known as pretendering);*
- *isolating the unstable element in pricing the work and providing for price adjustment, both upward and downward, on it alone, in accordance with a reliable predetermined formula such as an established economic index.*

6C.298 (1994-06-23) When a competitive bidding process is used, the proposed price adjustment provisions must be included in the evaluation of the bid. In all other situations, economic price adjustment provisions must be agreed upon during negotiation of the initial or base year contract price.

6C.299 (1994-06-23) When a provision for future wage or price adjustments, on one or more elements of the cost of a good or service, is necessary to protect the contractor and the government against significant economic fluctuations, economic price adjustment provisions may be used in firm price type contracts and in contracts which contain firm price elements within the basis of payment.
Adjustments to firm prices in a contract will be allowed only if provided for in the contract.

Types of Price Adjustment

6C.303 (1994-06-23) The price adjustment formula must provide for both upward and downward revision of the firm base price, and include a ceiling or limitation of expenditure. It must identify, if applicable, the economic wage or price index to be used, the firm base price element, and the base period for which adjustments are to be made.

6C.304 (1994-06-23) The calculation of any adjustment formula should remain consistent with the cost/price accounting treatment used to arrive at the firm base price. This will ensure accuracy in measuring the amount of variation from the firm base price.

6C.305 (1994-06-23) The various economic price adjustment clauses are in the SACC Manual, subsection 5-C. The price adjustment method selected should be the simplest, most suitable adjustment formula to provide the protection necessary to both parties with the least administrative effort. The requirements of materiality and practicality must be met.

The advice of a cost analyst is appropriate in the development of any significant or major economic price adjustment provisions or for the implementation of an economic price adjustment provision through the use of an accounting type formula.

6C.306 (1994-06-23) Adjustment provisions to prices for commercial goods and services should be based on increases or decreases from an agreed on posted, reference or firm base price. If the original contract or firm base price includes a discount factor, from the initial or then current established catalogue price, the same discount factor should be applied to the adjusted price, unless otherwise stated in the contract.

Statistics Canada publishes a variety of reports providing changes in price indices, material and labour costs. The Department of Labor performs this function in the United States. Private sector surveys may also be used.

6C.307 (1994-06-23) Adjustments based on actual rates for labour or actual costs for material are based on increases or decreases in firm base price elements experienced by the contractor.

The use of this adjustment method is limited to contingencies beyond the contractor's control and where the contractor's accounting system permits timely compilation of all necessary cost data relative to the economic price adjustment during contract performance.

A company's union agreement with its employees may be considered an acceptable economic labour rate index for that company provided that it reflects comparable labour rate movements within that industrial sector.

Exchange Rate Fluctuations

6C.313 (1994-06-23) The exchange rate risk on the purchase of materials, components or products from outside Canada is generally considered a normal business risk. However, PWGSC will not oblige suppliers to assume this risk when currency fluctuations are expected to be an issue. In such situations, the cost analyst should be consulted to determine which party should assume the currency risk in the contract.

An example of an extreme risk posed by an exchange rate fluctuation, as opposed to a normal business risk, would be a situation where the exchange rate fluctuates by five percent over a two-month period, in an unpredictable manner.

Factors to be considered include:

- *duration of the contract or delivery lead times;*
- *experience and knowledge of similar buys; and*
- *value and type of commodity.*

Exchange rate adjustment provisions may be applied to all procurements, except for:

(a) those in the European and Washington regions;
(b) Canadian Commercial Corporation contracts;

(c) telephone buys; and
(d) cost reimbursable contracts and cost reimbursable portions of a contract.

Subcontracting

6C.320 (1994-06-23) Prior to contract award, a bidder may propose any subcontracting arrangements. The contracting officer will determine whether or not to accept these proposed arrangements. The provisions in the General Terms and Conditions do not restrict the contracting officer from considering the subcontracting options proposed.

6C.321 (2002-12-13) No subcontract containing security requirements may be approved or let without the prior approval of the Canadian and International Industrial Security Directorate, PWGSC.

Warranty

6C.327 (2002-12-13) In a contract for the sale of goods, any affirmation of fact or any promise by the seller relating to the goods is an express warranty. The Warranty provisions in the General Conditions do not negate or limit in any way the operation of other relevant warranties that are, as a general rule, implied or imposed by law.

Examples of relevant warranties that are implied by law are:

(a) the fitness of the goods for the purpose intended, or
(b) the merchantable quality of the goods.

These warranties are implied in most contracts for the sale of goods through the Sale of Goods Act, a version of which exists in all Canadian provinces and territories except Quebec. In Quebec, the warranty under the Civil Code is a warranty of ownership and of quality, which includes latent defects.

6C.328 (1994-06-23) The contracting officer may negotiate an increase to the warranty time period in a contract, subject to client agreement to the proposed time period and related cost. This change in warranty time period should be addressed in the submission requesting approval.

6C.329 (1994-06-23) Any requests for lessening the Crown's full rights at law, a disclaimer, limitation of the contractor's liability, or decrease of the warranty time period, must be reviewed by Legal Services, be acceptable to the client, and form part of the submission requesting approval.

6C.330 (1994-06-23) It may be necessary to consider obtaining a broader warranty than that contemplated by the warranty provision appearing in the General Conditions to cover "symptomatic defects" or "epidemic failures."

These are cases where the same or similar defects have developed in several identical items of finished work, or components, and it is reasonable to assume that the same defects will be found in the total quantity of such items which have already been delivered, or remain to be delivered.

Where this type of warranty is requested by the client, or considered desirable by PWGSC, the contracting officer, in consultation with the client, must determine the extent and nature of the warranty required, and request Legal Services to prepare a suitable provision to cover the requirement. In the case of negotiated firm price contracts, the contracting officer must obtain the client's agreement to the estimated cost of this warranty.

6C.331 (2004-05-14) The general conditions provide that contractors must carry out warranty work at their own expense. The following interpretations apply:

(a) In the case of firm price contracts awarded as a result of a competitive bid solicitation, where the procurement process precludes any adjustment to the price quoted, costs

incurred as a consequence of warranty consideration shall be the responsibility of the contractor.

(b) In the case of negotiated firm price contracts where contingency for warranty work becomes a factor for consideration during the price negotiations, the amount included in the firm price is to be kept to reasonable levels, and must be specifically approved. Supporting details are to be part of the cost summary presented in the contract approval document.

In the case of negotiated firm price contracts governed by the *Defence Production Act*, the contractor must certify that the price is based on costs computed in accordance with Contract Cost Principles 1031-2 which do not permit any increase in reserves for guaranteed work. Therefore, costs for work and/or expenses to provide for product correction/adjustment/replacement under warranty requirements are not to be included in the contract price since provision for these expenses has already been included in the certified price.

(c) In cost reimbursable contracts, the contractor is not allowed to charge any contingency for warranty as an element of cost. If the contractor is required to make good under the warranty provisions, the contracting officer may allow recovery of the reasonable cost incurred for direct labour and direct material only. There is to be no allowance for overhead or profit.

If the contracting officer is of the opinion that reasonable warranty costs may be allowed, then an appropriate clause approved by Legal Services must be inserted in the contract to authorize such costs. The contract should contain a line item providing for the allowance of costs, with or without a maximum estimated expenditure.

Audit

6C.337 (1994-06-23) There are a number of circumstances where specific provision for audits must be made in contracts. This requirement is an integral part of the procurement planning process.

Cost Reimbursable Contracts

6C.341 (1994-06-23) Under Section 34 of the *Financial Administration Act* (FAA), no payment (other than a progress payment) may be made under a contract unless the deputy of the appropriate Minister, or other person authorized by that Minister certifies that the work has been performed, the goods supplied or the service rendered, as the case may be, and that the price charged is according to the contract, or if not specified in the contract, is reasonable.

In the case of cost reimbursable contracts, a price is not specified in the contract but is left to be ascertained after completion of the work. Therefore, in accordance with the above section of the FAA, it is necessary for the appropriate authority to certify that the price, based on actual costs incurred when these are known on completion of the work, is reasonable. The purpose of the reference, in all cost reimbursable contracts of more than $50,000, to the costs incurred being determined by audit of the Minister, is to provide a basis for such certification of the reasonableness of the price.

Firm Price Contracts

6C.345 (1994-06-23) All non-competitive firm price contracts valued over $50,000, whether for the acquisition of commercial or non-commercial products and services, require the submission of a price certification by the contractor. All such contracts shall also have a discretionary audit clause included in the contract.

This applies to all such contracts issued by PWGSC and those issued by CCC on behalf of the

United States Department of Defense (DoD) and National Aeronautics and Space Administration (NASA), except for contracts for which the price is based on tariffs fixed by public regulatory bodies and not subject to negotiation by PWGSC.

Fixed Time Rate Contracts

6C.349 (1999-12-13) Time charged and the accuracy of the Contractor's time recording system may be verified by Canada's representatives before or after payment is made to the Contractor under the terms and conditions of the contract, whether competitive or non-competitive and regardless of value. The extent of the verification carried out should, however, reflect the value of the contract. (see C0701D)

This applies to all such contracts except those for provision of temporary help services and rental of equipment.

Refunds of Excess Profits

6C.353 (1994-06-23) As the result of an audit, or for various other reasons, it may be determined that a contractor has realized unreasonably high profits from a contract. On occasion, a contractor may desire to return excess profits to the department. The special procedures for dealing with these situations are in Annex 11.2.

Differences of Opinion/Interpretation

6C.357 (2005-06-10) On occasion, there may arise differences of opinion and interpretation between the contracting officer and the auditor regarding the legitimacy of audit findings. These differences of opinion/interpretation must be resolved by the Director of Procurement, in concurrence with the Director of Acquisition Program Integrity Secretariat, before close out action will be taken by Contract Audit Group.

Section 6D: Rules and Constraints

Official Languages Act and Regulations

6D.378 (1997-03-31) "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."

Official Languages Obligations

6D.379 (1997-03-31) "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."

While Treasury Board Secretariat requires that contracts be available in the two official languages, our legal services advise that only one version should be signed, i.e. that selected by the Contractor.

6D.380 (1997-03-31) "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."

6D.381 (1997-03-31) "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

6D.382 (1997-03-31) "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."

6D.383 (1997-03-31) "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."

6D.384 (2002-12-13) "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."

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International Sanctions

6D.390 (2004-12-10) The International Trade Canada Website lists the current Canadian Economic Sanctions. PART A deals with Canadian Legislative Instruments: 1) the *United Nations Act;* 2) *the Special Economic Measures Act;* 3) some provisions of the *Export and Import Permits Act.* PART B deals with Countries or Groups Subject to Canadian Economic Sanctions. PART C deals with Procedures for Seeking Exemption Certificates and Permits.

To comply with the Canadian Economic Sanctions, *Standard Acquisitions Clauses and Conditions* (SACC) Manual clause K2105D or M2100D must be included in all contracts. Canada cannot procure any goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.

6D.391 (1996-06-03) When, in order to meet a client's operational requirements, it appears necessary to deviate from these sanctions, legal services must be consulted to determine the appropriate course of action, if any, for the particular situation.

The ability to deviate from sanctions is determined by the governing regulations. Clearly, however, Public Works and Government Services Canada (PWGSC) does not have the explicit authority to so decide.

Excise Taxes, Duties and GST/HST

6D.397 (2005-06-10) Federal government contract enquiries regarding excise taxes and duties, including those relating to rates, exemptions, refunds, other methods of valuation, prohibited items, and other applications of legislation concerning excise taxes and duties, must be referred to the nearest Canada Border Services Agency (CBSA) office.

The CBSA Business Enquiry and Registration toll free number is 1-800-461-9999.

Federal government contract enquiries related to the Goods and Services Tax (GST), Harmonized Sales Tax (HST), Defence Supplies Remission of Customs Duty and Federal/Provincial Reciprocal Tax Agreements must be referred to the Acquisition Policy and Process Directorate at (819) 956-5024.

Customs Duty

6D.401 (2004-05-14) Imported goods are charged with duties from the time of importation. The rates of duties on imported goods will be the rates applicable to the goods at the time when the documentation is presented to obtain release of the goods from CBSA.

6D.402 (2004-05-14) The primary basis for determining the value of duty on imported goods is the Transaction Value System of Valuation, which is generally the invoice price.

To determine whether an importation can be valued under this method, the following questions must be addressed:

(a) Were the goods sold for export to Canada and can the price be established?

(b) If there is a relationship between the purchaser and the vendor, can it be demonstrated that the price paid or payable for the goods was not influenced by that relationship?

(c) Are there any limitations on the sale? These include: restrictions respecting disposition or use of the goods; conditions affecting the sale; or when a portion of the proceeds of a subsequent resale accrues to the vendor.

(d) If the answer to questions (a) and (b) is "yes" and there are no limitations as outlined in (c), the transaction value method must be used, and is calculated in the following manner:

(i) Price paid or payable for the goods including all direct and indirect payments to the vendor or for the vendor's benefit.

(ii) Additions, if applicable (if not already included in (a) above):

- selling commissions incurred by the purchaser;
- packing costs (domestic and export packing);
- the value of assist: i.e. goods or services supplied to the vendor free or at a reduced cost by the purchaser;
- royalties and license fees directly related to the sale of the goods;
- proceeds of any subsequent resale to be remitted to the vendor;
- transportation, insurance and associated costs up to and at the point of direct shipment.

(iii) Deductions, if applicable (if included in (i) above):

- transportation, insurance and associated costs from the point of direct shipment;
- construction, erection, assembly, maintenance and technical assistance costs, after importation;
- import duties and taxes.

(e) If this method cannot be used, refer to the nearest CBSA office.

Drawbacks and Duties Relief

6D.406 (2003-12-12) Drawbacks and duties relief programs are intended to help exporters become and remain more competitive in foreign markets, by granting them relief from the duties and taxes paid in respect of:

(a) goods imported and then exported before any use is made of those goods;

(b) goods imported and used in the manufacture in Canada of goods that are exported; or

(c) materials imported and consumed or expended in the manufacture in Canada of goods that are exported.

The Duties Relief Program grants relief from duties on imported goods that are exported either in the same condition or after having been manufactured. Those goods qualify for relief from the customs duties, anti-dumping and countervailing duties, and excise duties and taxes other than the GST. Relief is granted at the time the goods are imported.

The Drawback Program has similar characteristics and advantages as the Duties Relief Program, with the exception that duties and taxes must be paid at the time of importation and are refunded after the goods have been exported.

Defence Supplies Remission of Customs Duty

6D.410 (2003-12-12) Remission of customs duty payable is granted under the Tariff Item No. 9982.00.00 when:

(a) the total contract value of the defence supplies is $250,000 or more. This reflects the import value of the goods plus the duty that would be applicable in the absence of the customs tariff; and

(b) the goods are certified by Public Works and Government Services Canada (PWGSC) to be defence supplies.

6D.411 (1998-06-15) Since duty rates vary, depending on the type of product, country of origin and mix of imported components, it may be difficult to decide whether the defence supply is subject to the tariff. Where there is uncertainty as to whether the total estimated expenditure will exceed the $250,000 threshold, contracting officers should request prices with customs duty identified as a separate item.

6D.412 (2004-05-14) When the party responsible for importation is other than the Department of National Defence (DND), a copy of the following certification must be attached to the contract.

"**CERTIFICATE FOR DEFENCE SUPPLIES**

I certify that the items purchased under contract number_____ are "defence supplies" as defined in the *Defence Production Act*, pursuant to Tariff Item No. 9982.00.00."

Approved by Authorized Officer:

_____ _____
Signature Date

_____
Title

The only proof acceptable to the Canada Border Services Agency (CBSA) from the contractor that the import is a defence supply is a copy of the certification.

6D.413 (2004-05-14) A copy of the certification may be requested by the DND Directorate of Business Logistics Management / Transportation Management, or by the investigating Regional Compliance Verification Division of the CBSA. These parties investigate claims for remission and may contact the contracting officer to verify the claim.

6D.414 (2004-05-14) When DND is the party responsible for importation, a copy of the contract for defence supplies is accepted by the CBSA as sufficient proof for remission. A copy of the certification for defence supplies does NOT need to be attached to the award document.

6D.416 (2003-12-12) When the total estimated value of a Standing Offer exceeds $250,000, each call-up is subject to the Tariff Item No. 9982.00.00.

Duty and the GST/HST on Tools, Equipment or Spare Parts in Contracts for Services by Non-residents

6D.420 (2004-05-14) Customs duty and the Goods and Services Tax or the Harmonized Sales Tax (GST/HST), as applicable, may be imposed on any tools, equipment or spare parts that are brought into Canada by non-resident personnel performing certain services under a PWGSC contract. When assessed, such duties and the GST/HST are payable to the CBSA.

The following interpretation of applicable regulations is intended as background information only. If necessary, specific questions relating to actual cases should be directed to the nearest regional CBSA Office. The application or relief of customs duty and the GST/HST is stated in each item below in italics.

"(A) A non-resident worker entering Canada with personal tools or other equipment to erect, install or repair machinery or other plant equipment, the said worker being sent here by the foreign manufacturer of the machinery or plant equipment, may import the tools or other equipment under authority of the Temporary Importation (Tariff Item no.9993.00.00) Regulations. See the CBSA Memorandum D8-1-1, Appendix C, for more information.
(Full relief of customs duty. The GST/HST is payable on 1/60th of the value of the tools and/or equipment for each month the goods remain in Canada.)

(B) A non-resident worker entering Canada with tools or other equipment supplied by the manufacturer of the machine to be erected, installed or repaired may bring the tools or other equipment into Canada on a 1/60th basis under the Temporary Importation (Tariff Item No. 9993.00.00) Regulations. See the CBSA Memorandum D8-1-1, Appendix C, for more information.
(Full relief of customs duty. The GST/HST is payable on 1/60th of the value of the tools and/or equipment for each month the goods remain in Canada.)

(C) A non-resident worker entering Canada with tools or other equipment to repair, erect or install machinery or other equipment, when the contract is with a foreign firm which is not the manufacturer of the machinery or other equipment.
(Full customs duty will apply. The GST/HST is also payable on full value where there is no relief available under any other provision (e.g. Canadian Goods Returned.)

(D) Duty and the GST/HST are levied on all spare parts at the time of entry. Following the export from Canada of the balance of the unused spare parts under CBSA supervision, a drawback claim may be filed for return of the customs duty applicable to the unused spare parts under authority of the Goods Imported and Exported Drawback Regulations.
(The GST is not refundable.)"

Duty and GST/HST on the Repair and Overhaul of Crown Property Abroad

6D.424 (2004-05-14) The treatment of Crown property (i.e. goods) returning to Canada having been repaired or overhauled abroad varies depending on the country where the repair or overhaul is done. Where the country is a free trade partner country, the goods return to Canada under the provisions of Tariff Item No. 9992.00.00 or in the case of vessels, Tariff Item No. 9971.00.00. The policy and procedures relating to the administration of these tariff items are outlined in CBSA D8-2-26 and D8-2-25 respectively. Where the country is not a free trade partner country, the goods may be entitled to the provisions of the Canadian Goods Abroad Program contained in sections 101-105 of the *Customs Tariff*. Under certain conditions, subsection 101(1) of the *Customs Tariff* provides full customs duties and GST/HST relief on the Canadian export value of goods when the goods are returned to Canada. The policy and procedures relating to the administration of this program are outlined in CBSA D8-2-1.

Goods imported under Tariff Item Nos. 9992.00.00 and 9971.00.00 are customs duty free. Under the Canadian Goods Abroad Program customs duties are owed on the value of the repair or overhaul. Whichever provision is used to account for the customs duties, GST is owed on the value of the repair or overhaul unless it is done under a warranty arrangement.

The goods qualify for Tariff Item Nos. 9992.00.00 and 9971.00.00 if the following conditions are met:

(a) The required documents are submitted according to the Tariff Item Nos. 9992.00.00 and 9971.00.00 Accounting Regulations (see CBSA memoranda D8-2-25 and D8-2-26), including an invoice and proof of export.

(b) The invoice or written statement from the foreign processor must include the value of the repair or alteration.

(c) Proof of export can be a customs or transportation document, an exporter declaration, or other documents set out in the Regulations that describe the goods sufficiently to establish that the re-imported goods are the same goods that were exported. Records of the make, model, and serial numbers help identify the goods.

The goods qualify under the Canadian Goods Abroad Program where:

(a) the goods are documented in a manner acceptable to the CBSA;

(b) the CBSA is satisfied that the repair or overhaul could not have done in Canada, and

(c) the goods are returned to Canada within twelve (12) months from the day on which they are exported.

Contracting officers should verify:

(a) that no claim for drawback has been paid in respect of the goods temporarily exported, and

(b) in the case of the Canadian Goods Abroad Program, that repair facilities are not available within a reasonable distance in Canada.

6D.425 (2004-05-14) The CBSA imposes different requirements depending upon the type of work carried out abroad, and may accept a verbal declaration from the consignee, or PWGSC, that proper facilities are not available to do the repairs or overhaul within a reasonable distance in Canada.

In addition, Canadian and U.S. government agencies establish lists of approved repair firms for

certain articles for use at defence establishments that are manufactured to rigid specifications. In such cases, if no Canadian firm is approved to perform the repairs, this will be accepted as satisfactory evidence that the repairs could not be made in Canada.

6D.426 (2003-12-12) When calculating duty and the GST/HST on the service performed abroad, the pricing factors to be taken into consideration are: the cost of the material used; the cost of labour; factory overhead; and a normal profit markup. The value for duty remains the same, even where the repair is done under a warranty arrangement and there is no charge made for the repair or overhaul.

6D.427 (2003-12-12) Where it is not possible to repair the goods and they are replaced under a warranty arrangement, the replacement goods are subject to full customs duties but under Section 5 of Schedule VII to the *Excise Tax Act* are non-taxable for GST purposes.

6D.428 (2003-12-12) There is no GST/HST payable on goods imported after having been exported for warranty repair work. This is provided for under paragraph 3.(j) of the *Non-Taxable Imported Goods (GST/HST) Regulations.*

Duty and GST/HST on Canadian Goods Returned

6D.429 (2004-05-14) The following paragraphs discuss the application of duty and GST/HST for goods that are re-imported into Canada after having been exported for reasons other than for repairs, equipment additions, or work done abroad.

(a) Customs duty does not apply to Crown property returned from abroad without having been advanced in value or improved in condition by any process of manufacture or other means, or combined with any other article abroad. Refer to the CBSA Memorandum D10-14-11 for more information.

For the application of the GST/HST, refer to CBSA Customs Notice N-118 for more information.

(b) Articles to be tested only and not adjusted, altered or enhanced in value in any way in conjunction with, or as a result of, a test regardless of whether a charge is made for the test; and

(c) Customs duty and the GST/HST do not apply to Canadian government-owned munitions and supplies of war, on their return from abroad to a department or agency of the government. This is not intended for the remission of the duty and the GST/HST on goods which have been purchased by government departments and agencies specifically for import into Canada. It applies only to munitions and military stores being shipped to departments or agencies of the government from a Canadian Armed Forces establishment abroad, refer to Section 27 of the CBSA Memorandum D10-14-11 for more information.

Withholding of 15 percent on Service Contracts with Non-residents

6D.430 (2005-06-10) The *Income Tax Act* and the *Income Tax Regulations* require clients, on whose behalf a contract for services rendered in Canada has been awarded by PWGSC to a non-resident contractor, to withhold 15 percent from the payment of fees, commissions or other amounts paid to non-resident individuals, partnerships or corporations other than in the course of regular and continuous employment. (See 7A.103 and 11.022.)

Withholding of the 15 percent of the payment does not represent a definite tax, but rather a payment on account of the non-resident contractor's overall tax liability to Canada.

6D.431 (1994-06-23) Payments for continuous employment in Canada, made to non-resident individuals, are not subject to the 15 percent withholding, but are subject to tax deductions on a

basis similar to that applicable to residents.

Goods and Services Tax/Harmonized Sales Tax

6D.435 (2004-05-14) The GST/HST applies to supplies made in Canada of real property, tangible personal property (i.e. goods), intangible personal property (such as intellectual property) and services. Supply means provision of property or service in any manner.

A grant, contribution or subsidy is not a supply. However, it may be payment for a supply and subject to GST/HST if the property or service provided is taxable. It is only when a grant, contribution or subsidy is strictly a transfer of money for which no property or service is provided to either the government or a specified third party that it will not be payment for a supply and therefore not subject to GST/HST.

The GST/HST on a supply made in Canada is payable by the recipient of the supply to a supplier who is registered for GST/HST. It is the supplier who is responsible to remit the tax to CRA.

A supply is deemed to be made in Canada if:

(a) for a supply of goods, the goods are made available or delivered in Canada to the recipient of the supply. This means the goods are in Canada when they are sold and transferred from the vendor to the purchaser or they are imported into Canada for the delivery to the purchaser;

(b) for a supply of intangible personal property, the property may be used in Canada or relates to real property situated in Canada, to tangible personal property situated in Canada or to a service to be performed in Canada;

(c) for a supply of real property or a service in respect of real property when the property is situated in Canada;

(d) for a supply of other services, the service is performed in whole, or in part, in Canada;

(e) for a supply of a telecommunications service consisting of making available telecommunication facilities, when the facilities, or any part thereof, are located in Canada.

6D.436 (2004-05-14) The GST/HST applies also to goods imported into Canada. The GST/HST on the importation of goods is payable on the duty paid value of the goods (determined under the *Customs Act*) and is payable by the importer of the goods directly to Canada Border Services Agency. It is payable at the time of importation or when the goods are taken out of bond for use.

Goods imported into Canada for supply are subject to GST at the time of importation and are subject to GST/HST when supplied in Canada by a supplier who is registered for GST/HST.

6D.437 (2004-05-14) The GST/HST also applies to supplies of services and intangible personal properties made outside Canada (generally by a non-resident supplier) to a person who is resident in Canada, if the person acquires the supply for use in Canada, but not exclusively in the course of commercial activities. These supplies are referred to as “imported taxable supplies”. The GST/HST on imported taxable supplies is determined by the Canadian recipient of the supply (self-assessment) and remitted directly to Canada Revenue Agency.

6D.438 (2003-12-12) Lease payments on tangible goods under a lease entered into before August 8, 1989, are not subject to GST. If a lease for tangible goods is amended to alter its term, or the property is leased on or after August 8, 1989, then the payments become subject to GST/HST, as applicable.

6D.439 (2003-12-12) The trade-in of a used good on the purchase of a new good constitutes two separate transactions for the purposes of the GST/HST. The GST/HST applies to the full sale price of the new good, regardless of the allowance for the trade-in. Each party must collect GST/HST on the fair market value of the supply to the other, and both pay the GST/HST. This treatment applies where the person trading in the used goods on the purchase of new goods is a GST/HST registrant.

If the person trading in the used goods is not required to charge tax on the supply (e.g. non-registrant supplier, or goods not used in commercial activities), then the supplier of the new goods deducts the value of the old goods accepted as a trade-in from the value of the new goods when determining the GST/HST on the supply.

6D.440 (2004-05-14) The GST/HST does not apply to: exempt supplies; zero-rated supplies; or certain imports. Also it generally does not apply to Indians, Indian Bands and Band-empowered Entities (BEEs). These areas are covered in Annex 6.1D.

The GST/HST does not apply to transactions between parts of the same organization. As the federal government has registered its departments (those entities listed in Schedule I, I.I and II of the *Financial Administration Act*), as a single person, the GST/HST does not apply to transactions between departments. However, the GST/HST will apply to taxable transactions between departments and Crown corporations.

Government-Supplied Materiel (GSM) is not subject to additional GST/HST charges as the owner/end-user has already paid it. Contractors should not charge GST/HST against the value of GSM used in the performance of a contract. Foreign contractors shall identify the GST separately on Canada Border Services Agency form CI1, Canada Customs Invoice, by describing them as Canadian Goods Returned and providing a value. Should GSM be provided from one foreign contractor directly to another, this value should be included in the value of the item for customs clearance purposes as this GSM would not have had GST paid yet.

Application of GST/HST to the federal government

6D.441 (2003-12-12) The federal government does not pay GST/HST on imported taxable supplies, as the federal government is not required to self-assess tax. Imported taxable supplies include services performed wholly outside Canada for use in Canada or services performed in Canada and supplied by a non-resident supplier who is not registered for GST/HST purposes. They also include intangible personal property supplied by a non-resident supplier who is not registered for GST/HST purposes.

6D.442 (2003-12-12) The federal government is required to pay tax on importation of goods if it is the importer of record, unless the goods qualify as non-taxable importations.

Excise Taxes

6D.444 (2003-12-12) Excise taxes are payable on certain goods (see Annex 6.1I).

When goods are manufactured or produced and sold in Canada, the excise tax is payable by the manufacturer or producer, at the time of delivery of such goods.

When goods are imported, the excise tax is payable by the importer or transferee, who takes the goods out of bond, at the time of importation or when taken out of bond for consumption.

Reciprocal Taxation Agreements and Comprehensive Integrated Tax Coordination Agreements

6D.448 (2003-05-30) The federal government has agreed to pay, directly or indirectly, most provincial and territorial taxes on the goods and services it purchases as set out in the standard

instructions and conditions 9403, 9403-5 and 9403-6 of the *Standard Acquisition Clauses and Conditions* (SACC) Manual. The federal government does not pay the general Provincial Sales Tax (PST).

In addition, when the department or agency is a vendor, it must collect and remit PST to the province.

6D.449 (2003-05-30) The Policy on the Collection and Remittance of Provincial Sales Taxes includes all the information that may be required by contracting officers to comply with the Reciprocal Taxation Agreements (RTAs) and Comprehensive Integrated Tax Coordination Agreements (CITCAs). Appendix C, of the same policy, also provides details of the RTA and CITCA by province and territory. Contracting officers should also refer to the Policy on the Application of the Goods and Services Tax and Harmonized Sales Tax in the Departments and Agencies of the Government of Canada.

Provinces and territories are grouped as follows:

(a) The provinces that have not entered into a RTA are considered "non-partaking" and at the present time, the only non-partaking provinces are Alberta and New Brunswick.

(b) A non-participating province is a province that did not enter into a CITCA and at the present time, the non-participating provinces include all provinces and territories except New Brunswick, Nova Scotia and Newfoundland and Labrador (the participating provinces).

(c) The PST is paid in non-participating provinces by Crown corporations, except in Alberta, Northwest Territories, Yukon and Nunavut, where there is no PST.

(d) Federal departments pay the Harmonized Sales Tax (HST), ancillary taxes and reimburse tax on third party purchases in the participating provinces.

(e) When federal departments and Crown corporations are vendors, they shall charge, collect and remit HST when the goods or services are delivered or rendered in a participating province.

6D.450 (2003-05-30) Crown corporations are not covered by the RTAs, and are required to pay PST on their purchases, for delivery to or consumption in the partaking provinces, on the same basis as companies in the private sector. Crown corporations may not use the licence numbers or certificates in the RTAs. HST is paid in the participating provinces.

Some Crown corporations hold their own special PST licences, which enable them to purchase goods and services, for their own use, free of PST at the time of purchase.

6D.451 (2002-05-24) Persons selling to federal departments may not quote the federal government's licence numbers to their own suppliers.

6D.452 (2003-05-30) Contracting officers should take special care when dealing with the following:

(a) **ancillary taxes**: the federal government has agreed to pay certain ancillary provincial taxes. These taxes apply to specific goods and services, and their applicability varies from province to province.

In addition, departments will reimburse third parties for PST paid for goods or services purchased on behalf of a department or during work-related travel (see Annex 6.12 - Application of Provincial Taxes to the Government of Canada).

(b) **fuel taxes**: liquid fuels may be taxed in certain provinces under the provincial fuel tax or

under provincial retail sales tax depending on the end use. Under certain circumstances, liquid fuel may be exempt from provincial tax.

(c) **construction contracts**: in all contracts for the construction or repair of a building or structure, the contractor is deemed to be the consumer of any materials used. The contractor usually is not registered as a vendor, and must pay tax on purchases of materials. PST is an element of cost to the contractor, and as such is included in the price to PWGSC. No further PST is imposed on the transaction between the contractor and PWGSC.

Construction contracts should not contain a mix of "real property" and "tangible personal property." If unavoidable, the use of the licence numbers applies only to the acquisition of the "tangible personal property" component of the requirement.

In contracts for the supply and installation of equipment that remains free standing and is affixed to a building or structure for purposes other than providing a direct service to such building or structure, the PST is not to be included in the contract price and the licence number or certificate is to be quoted in the contract. In New Brunswick such contracts are treated as real property contracts and, therefore, are subject to the procedure outlined in the preceding paragraph.

State Sales, Use and Personal Property Taxes (United States)

6D.456 (1994-06-23) Items exported from the United States of America (U.S.A.) by the purchaser, are entitled to exemption from state Sales and Use Taxes. Care must be taken to ensure that such procurements are not taxed in error. (See 7E.617.)

6D.457 (1994-06-23) Particular care is required in dealing with the State of California, which has Sales, Use and Personal Property taxes that may affect PWGSC procurement. (See 7E.621.)

In these procedures, the State of California is highlighted because of its stringent tax requirements. Similar precautions should be taken to deal with requirements in the other states.

6D.458 (1994-06-23) California Sales and Use taxes (Cal Tax) are collected by the seller from the purchaser and, if applicable, will require the contract to provide for payment of the tax. The Use tax is not payable on items for which Sales tax is payable.

6D.459 (2003-12-12) Items exported outside the State by the purchaser are exempt from Cal Tax but, as California law is very precise about what constitutes an export, contracting officers should ensure that a procurement in California is considered an export by the state.

For example, goods may not be subject to Cal Tax if:

(a) they are delivered California FCA Free Carrier (...named place)with title passing upon such delivery, and are shipped to a point outside California; or

(b) title passes at time of delivery and the goods are delivered by the seller to a conveyance furnished by the purchaser (e.g. where they are picked up by the Canadian Armed Forces) and are shipped to a point outside the U.S.A.

6D.460 (1994-06-23) California Personal Property tax is assessed against work-in-process, finished work and baled items, title to which is vested in either PWGSC or the contractor, which are located in California at 12:00 o'clock noon on the first Monday in March each year. It is immaterial whether such items relate to a fixed price or cost reimbursable type of contract.

6D.461 (1994-06-23) Contracting officers shall confirm the manner in which California contractors charge the Personal Property Tax on PWGSC contracts. If the tax is charged as a direct charge

to the PWGSC contract, there must not also be an indirect charge, and overhead must not be applied to the direct charge.

6D.462 (1994-06-23) Another area for particular attention is the use of advance or progress payments. California taxes may be payable when title transfers to the purchaser - and this title transfer may be deemed by the State to take place when the advance or progress payment is made. Contracts should provide, therefore, that title will not transfer until the goods are delivered.

Employer-Employee Relationships

6D.468 (2003-12-12) When contracting for the services of individuals, including temporary help, contracting officers should carefully review the circumstances in order to avoid establishing an employer-employee relationship which would be contrary to or in conflict with the *Public Service Employment Act* and common law principles dealing with master-servant relationships.

Contracting for the services of former public servants and for temporary help services is subject to special procedures. *Refer to procedure 6D.477 for former public servants and Section 9H for temporary help.*

6D.469 (2003-12-12) Contracting officers must ensure that service contracts and contracts with a service component will not result in the establishment of an employer-employee relationship between the contractor's personnel and the Crown. The conduct of the parties during contract performance must also be considered.

6D.470 (2004-05-14) Criteria for assessing an employer-employee relationship have been established by the Canada Revenue Agency (CRA) and pertinent court rulings. For guidance, either seek legal advice or consult the CRA publication RC 4110 Employee or Self-Employed?. 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.

Legal advice should be sought where it is not feasible for contracting officers to determine whether a contract is a contract for services or a contract of employment (i.e. employment status is not easily identifiable). It is ultimately the responsibility of the contracting authority to ensure that contracts do not create employer-employee relationships.

6D.471 (1994-06-23) The client is responsible for ensuring that an employer-employee relationship does not develop during the performance of the contract.

Former Public Servants

6D.477 (1996-01-01) Care must be taken to ensure that contracts with former public servants in receipt of a pension are able to bear the closest public scrutiny, and reflect fairness in the spending of public funds. (See 6D.482 and 7A.095.)

Former Public Servants is defined as:

- an individual;
- an individual who has incorporated;
- a partnership made of Former Public Servants; or
- a sole proprietorship or entity where the affected individual has a major interested in the entity.

Retirement Waiting Period

6D.478 (1996-01-01) When the provisions of the Conflict of Interest and Post Employment Code for Public Office Holders and/or the Conflict of Interest and Post Employment Code for the Public Service apply, there is normally a retirement waiting period of one year following the date of

retirement before the services of a former public office holder can be used on a government contract.

The exception is former ministers, for whom the prescribed waiting period is two years.

The retirement waiting period does not apply to former members of the Canadian Forces or Royal Canadian Mounted Police (RCMP).

Treasury Board Approval

6D.479 (1996-06-03) **TB approval is required** if the total value of a contract with a former public servant in receipt of a pension (including amendments) exceeds:

(a) $100,000 if the contract is competitive; and
(b) $25,000 if the contract is non-competitive.

Amendments to former public servant contracts where the total cumulative value of the contract (including all amendments) exceeds $100,000 (competitive) or $25,000 (non-competitive) are to be approved by Treasury Board.

6D.481 (1999-12-13) For non-competitive contracts with former public servants in receipt of a pension pursuant to the *Public Service Superannuation Act* who have been retired for less than one year, the following fee abatement formula shall be used in negotiations to determine the maximum fee payable, for the remaining days within the one year period.

D = ((M+F)/260) - (P/260)

D = maximum payable per diem rate;

M = maximum salary of the former public servant, updated to the current level, or the estimated salary cost of having the work done by a qualified public servant;

F = cost of usual fringe benefits, 30 percent;

P = total annual pension in pay.

Example: Maximum salary = $60,000; benefits are 30 percent of salary;
Pension after 35 years' service = $42,000 ($60,000 x 0.7);

per diem = (60,000 + 18,000)/260 - 42,000/260 = $138.46

No exceptions to the application of the formula or to the maximum rate allowed shall be permitted without prior TB approval.

Workforce Reduction Programs

6D.482 (1996-06-03) In addition to the requirements of the contract fee abatement policy for former public servants in receipt of a pension (see 6D.481), the amount payable for professional fees when contracting with former public servants, whether they are in receipt of a pension or not, members of the Canadian Forces, and members of the RCMP, who have received a lump sum payment for employment termination under a workforce reduction program, has been limited during the period for which the lump sum payment applies.

This restriction on the amount payable for professional fees applies to service contracts awarded to former public servants in receipt of a lump sum payment for employment termination under a workforce reduction program, either competitively or non-competitively. It does not apply if the contract is not specifically for the services of the former public servant.

For the purpose of the policy relating to Workforce Reduction Programs, the definition of former public servants included in 6D.477 includes former members of the Canadian Forces and former members of the RCMP.

For purposes of this policy, the lump sum payment period is defined as the period measured in weeks of salary, for which payment has been made to facilitate the transition to retirement or to other employment for public servants whose employment has been terminated because of the down-sizing initiatives required to adjust government spending. The lump sum payment period does not include the period of severance pay, which is measured in a like manner.

SACC Manual clauses A9103T or A9104T, and A9105C and A9106T must be included in all bid solicitations and contracts for services, which may involve Former Public Servants, to ensure compliance with the various public service workforce reduction programs (see 6D.482). These clauses require the contractor to make available to the Crown, any details of the status of a particular individual with respect to cash out amounts and time equivalents, pension payment details, and status of ownership, so that the contract fee abatement policies (see 6D.481 and 6D.483) may be applied, if applicable. In other words, individual contractors or employees of firms bidding on contracts with the Crown must be prepared to sign a waiver of privacy with respect to this information.

6D.483 (1998-02-16) For contracts with former public servants in receipt of a lump sum payment, whether contracts are awarded competitively or non-competitively, the contractor cannot receive, in total, fees in excess of $5,000 (including GST/HST), whether applicable to one or more contracts, **during the period of the lump sum payment**. The contract fee otherwise payable for any contract awarded to an affected former public servant must be abated in total, once the $5,000 limit has been reached, during the contractor's lump sum payment period. Reasonable overhead expenses such as travel costs are excluded from the $5,000 limit but, because of the sensitivity of these contracts, these costs should be strictly controlled. Departments and agencies **must obtain Treasury Board approva**l for all contract situations where affected former public servants might receive fees totalling more than $5,000 during their lump sum payment period.

6D.484 (1996-01-01) The abatement of the contract fee during the lump sum payment period applies to all contracts with former public servants who have received a lump sum departure or retirement incentive payment, including former members of the Armed Forces and the Royal Canadian Mounted Police.

6D.485 (1996-01-01) **For contracts awarded non-competitively**, the application of the current requirement for the one year contract fee abatement policy is postponed to have it begin **at the conclusion of the lump sum payment period**. (See 6D.481) This requirement applies only to former public servants in receipt of a pension payable pursuant to the *Public Service Superannuation Act* as indexed by the *Supplementary Retirement Benefits Act*. The exemption to the current contract fee abatement policy for former members of the Armed Forces and the RCMP is continued. (See 6D.478)

6D.486 (1996-01-01) Where a Former Public Servant works as an employee of, or is a subcontractor to, an established firm contracting with the Government, the contract fee restrictions do not apply. (See 6D.482)

Section 6E: Process

Legal Services

6E.506 (1994-06-23) Contracting officers must be aware that solicitor/client privilege exists for the legal opinions given by Legal Services, and that such opinions should not be disclosed without knowledge and recommendation of legal counsel.

6E.507 (2005-06-10) Contracting officers must seek advice from Legal Services in the following circumstances:

(a) where Director General, Assistant Deputy Minister, Deputy Minister, Minister or Treasury Board approval is required to enter into or modify a contract (see Annex 6.1(c));

(b) all contracts containing special terms or deviations from Public Works and Government Services Canada (PWGSC) or Canadian Commercial Corporation (CCC) general and supplemental general terms and conditions;

(c) if a supplier proposes to prepare the contract or significantly amend a proposed contract;

(d) all situations in which work has been completed pursuant to a verbal request from a representative of a client and a confirming order is being sought (see 7F.692);

(e) all agency, licence and loan agreements (except standard Department of National Defense loan agreements PWGSC-TPSGC 7118, Loan Agreement - DND Equipment), and contracts where royalties are to be paid to a contractor or where licences are to be obtained from third parties (such as third party software licences);

(f) all contracts under which payment is secured by means of a letter of credit;

(g) all letters of intent, and go-ahead letters;

(h) all letters of comfort;

(i) all contracts with foreign corporations where the contract value exceeds $1 million;

(j) all CCC domestic purchase contracts over $1 million and all CCC representative agreements;

(k) all contracts where questions may arise regarding "conflict of interest" issues or the post-employment code for former public servants;

(l) all defence contracts where the provisions of section 20 of the *Defence Production Act*, respecting title to any government issue or building, may be applicable;

(m) any proposed assignment of a contract to a third party;

(n) all Terminations for Default, Terminations by Mutual Consent, and confirming Notices of Terminations for Convenience.

Note: The initial Notices of Termination for Convenience, *(see Standard Acquisition Clauses and Conditions* Manual clauses J0200C and J0205C), do not require a legal opinion and may be issued by the contracting officer in accordance with 11.14D.

(o) every case of receivership or impending or actual bankruptcy of a contractor;

(p) every situation where security is to be taken to ensure repayment of a debt or satisfaction of an obligation to the Crown;

(q) all memoranda of understanding;

(r) all formal agreements;

(s) when there is a request for information or documentation from, or contact is required with, outside lawyers.

Legal Services must be involved before any binding action that is included in these mandatory items (such as the entry into, the termination of, or a modification to, a contract) is taken by the contracting officer. Normally, consultation is most appropriate before issuing a bid solicitation.

6E.508 (1994-06-23) Contracting officers should also seek advice from Legal Services with respect to:

(a) any proposed contract for services, where there is a question regarding the possible development of an employer-employee relationship;

(b) any proposed contract, where a clause providing for liquidated damages is to be included to cover the late receipt of deliverables;

(c) any proposed contract containing previously-approved deviations from standard terms and conditions, where such approval had been given by Legal Services more than two years before;

(d) any proposed contract in which questions about liability or insurance are raised;

(e) any arrangement to supply goods or services being entered into with a Special Operating Agency, when there are questions about the appropriate provisions or form of the documentation;

(f) meetings in which the supplier or contractor was accompanied by a lawyer, or for which the supplier or contractor may or will be accompanied by one;

(g) contracts requiring security for performance;

(h) contracts to be placed with a supplier with whom disagreements are likely to be encountered or a supplier with marginal financial resources;

(i) contracts placed in the United States where state taxes may be an issue;

(j) disputes arising after the contract has been awarded.

6E.509 (1994-06-23) Legal services relating to contracting must only be sought from PWGSC Legal Services or from a regional office of Justice Canada, when the latter has agreed with PWGSC Legal Services to provide counsel to a region.

External Communications

6E.515 (2005-06-10) For media enquiries, the Minister and the Deputy Minister (DM) are the official spokespersons for PWGSC. Other PWGSC personnel may be authorized by the DM to perform this role.

The Corporate Services, Human Resources and Communications Branch, which has the operational responsibility for PWGSC's media relations, maintains a list of authorized spokespersons.

The Branch also has functional responsibility for coordinating relations between PWGSC and Members of Parliament, including correspondence, verbal communications, and Question Period.

Bases of Payment

6E.521 (1994-06-23) There are seven bases of payment which may be used. In descending order of preference, these are:

- Firm Price;
- Firm Base Price subject to Economic Price Adjustment;
- Fixed Time Rate;
- Cost Reimbursable with Incentive Fee;
- Cost Reimbursable with Fixed Fee;
- Cost Reimbursable with Fee Based on Actual Costs;
- Cost Reimbursable with No Fee.

The Basis of Payment should reflect the commodity, the duration of the contract, and how well the requirement was able to be defined. Multiple bases of payment may be used in one contract.

Firm Price

6E.525 (1994-06-23) This provides for a price, which is not subject to adjustment, to reflect actual costs incurred by the contractor in performance of the contract or part thereof. It gives maximum profit incentive to the contractor for cost control, in that the contractor assumes full responsibility for all costs under or over the firm price. In addition, it places a minimum administrative burden on both contracting parties.

6E.526 (1994-06-23) Use this basis of payment when:

(a) the contractor has previously manufactured the particular product or provided the particular service, or similar products or services, and has sufficient experience to permit a realistic statement of work based on firm specifications; and

(b) the statement of work can be costed in terms of quantities of material and labour time required; and

(c) a realistic estimate of the material prices and labour and overhead rates applicable during the contract period can be made.

6E.527 (1994-06-23) Subsequent to the negotiation of a firm price basis of payment, the contractor must resubmit the price proposal based on the agreement reached and include a price certification in accordance with clause C0003T of the *Standard Acquisition Clauses and Conditions* (SACC) Manual.

6E.528 (1994-06-23) Discretionary audit clauses may be included in the contract as appropriate.

Firm Base Price Subject to Economic Price Adjustment

6E.532 (1994-06-23) It may not be possible to obtain a realistic estimate of the material prices and/or labour and overhead rates required for the use of a firm price basis of payment and it may be necessary to negotiate provisions for price adjustments. These provisions provide for revisions to the firm base price upon the occurrence of certain contingencies.

6E.533 (1994-06-23) The economic price adjustments are determined as described in 6C.297.

Fixed Time Rate

6E.537 (1994-06-23) A fixed time rate provides for the payment to the contractor for the actual amount of time spent in performance of the work, as confirmed by government audit, on the basis of a predetermined fixed time rate. The fixed time rate usually includes a direct labour rate, overhead rate(s) and profit.

6E.538 (1994-06-23) Use this basis of payment when:

(a) it is not possible to estimate in advance the extent or duration of the work, but it is possible to determine within reasonable limits the applicable direct labour and overhead rates during the contract period; and

(b) there is provision for adequate controls to ensure that inefficient or wasteful methods are not being used by the contractor.

6E.539 (1994-06-23) Contracts or parts of contracts with a fixed time rate basis of payment may also provide for a ceiling price, by which the contractor is bound to complete the prescribed work without additional payment whether or not the actual costs exceed the ceiling price. If a ceiling price is to be used, there must be full agreement between the parties as to what constitutes the prescribed work.

Before agreeing to the incorporation of a ceiling price in a fixed time rate contract, the contracting officer should consider whether a firm price contract would be more appropriate.

6E.540 (1999-12-13) When contracts, or parts of contracts, with a fixed time rate basis of payment do not include a ceiling price, a limitation of the Crown's liability must be made a term of the contract, unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause C6000C or C6001C.

6E.541 (1994-06-23) Following the negotiation of fixed time rates, the contractor must resubmit the price proposal based on the agreement reached and include a rate certification.

6E.542 (1994-06-23) Time Verifications, Rate Certifications and Discretionary Audits must be provided for in contracts.

Cost Reimbursable with Incentive Fee

6E.546 (1994-06-23) A cost reimbursable with incentive fee basis of payment reimburses the contractor for costs incurred in performance of the work, as determined by government audit, and adds a fee which is adjusted by formula in accordance with the relationship which total allowable actual costs bear to a predetermined target.

6E.547 (1994-06-23) Use this basis of payment when the criteria required for a firm price basis of payment are lacking, and the products and services being acquired are of a nature that the assumption by the contractor of a degree of cost responsibility is likely to provide a positive incentive for effective cost control and contract performance.

6E.548 (2004-05-14) When a cost reimbursable with incentive fee basis of payment is used, it is necessary to negotiate in advance a target, a target fee, a maximum fee and a formula for fee adjustment.

The target should be the estimated costs of performing the work, computed in accordance with Contract Cost Principles 1031-2, assuming the contractor's current efficiency trend is maintained.

The target fee, based on the target costs, and the maximum fee should be an amount no greater

than that calculated in accordance with the procedures for profit determination.

The formula provides for both an increase in fee above the target fee, up to the maximum fee, based on a sharing between the contractor and Canada of any decrease in actual acceptable costs below the target, and a decrease in the fee below the target fee based on a sharing between the Contractor and Canada of any increase in actual acceptable costs above target.

6E.549 (1999-12-13) Contracts or parts of contracts with a cost reimbursable or incentive fee basis of payment should not include a ceiling price, which requires agreement between the parties as to what constitutes the prescribed work, since this conflicts with the reason why this basis of payment is being used in the first place, i.e. the fact that a realistic statement of work cannot be submitted by the contractor.

In contracts or parts of contracts with this basis of payment, which do not include a ceiling price, it is mandatory that a limitation of the Crown's liability be made a term of the contract, unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause C6000C or C6001C.

Cost Reimbursable with Fixed Fee

6E.553 (1994-06-23) This provides for the reimbursement to the contractor of the actual cost incurred in performance of the work, as determined by government audit, together with a predetermined fixed fee. Although the fixed fee does not vary with actual costs incurred, it may be renegotiated under certain circumstances.

6E.554 (1994-06-23) Use this basis of payment when circumstances do not permit the use of a firm price or fixed time rate, and the possible savings from the use of an incentive fee are likely to be more than offset by the complexities of contract administration resulting from its use.

6E.555 (1994-06-23) The amount of the fixed fee, based on an estimate of the costs to be incurred, should be no greater than the appropriate amount of profit. If it is not possible for both parties to reach agreement on an estimate of the costs to be incurred, as a basis for calculating the fixed fee, swing points are used. Swing points are the amounts of estimated costs, one higher and one lower than the amount used for the calculation of the fixed fee, at which the fixed fee will be renegotiated.

6E.556 (1999-12-13) Contracts or parts of contracts with this basis of payment may also include a ceiling price, through which the contractor is bound to complete the prescribed work without additional payment whether or not actual costs exceed the ceiling.

If it is possible to determine the prescribed work and for the parties to agree on an estimated amount to complete it as a basis for the ceiling price, it may be appropriate to use another basis of payment - i.e. one which provides for a more equitable sharing of responsibilities and risks between the contractor and the Crown.

In contracts or parts of contracts with this basis of payment, which do not include a ceiling price, it is mandatory that a limitation of the Crown's liability be made a term of the contract, unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause C6000C or C6001C.

Cost Reimbursable with Fee Based on Actual Costs (Cost Plus)

6E.560 (1994-06-23) This basis of payment provides for the reimbursement to the contractor of costs incurred in performance of the work, as determined by government audit, together with a fee based on the actual costs incurred.

6E.561 (1994-06-23) Use this basis of payment only when circumstances permit the use of no other

basis of payment.

6E.562 (1994-06-23) The amount of fee, based on the actual costs incurred, as determined by government audit, will be no greater than the appropriate level of profit.

6E.563 (1994-06-23) Ceiling prices are not applicable when this basis of payment is used.

6E.564 (1999-12-13) In contracts or parts of contracts with this basis of payment, which do not include a ceiling price, it is mandatory that a limitation of the Crown's liability be made a term of the contract, unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause C6000C or C6001C.

Cost Reimbursable with No Fee

6E.568 (1994-06-23) A cost reimbursable with no fee basis of payment provides only for the reimbursement to the contractor of actual costs incurred, as determined by government audit.

6E.569 (1994-06-23) Except for contracts covering the provision of assistance to a contractor, this basis of payment is rarely used. Contractors cannot normally be expected to accept a contract which provides for no profit for the manufacture of products or the provision of services.

6E.570 (1999-12-13) A ceiling amount to be paid by the Crown for completion of the prescribed work may be included if appropriate.

In contracts or parts of contracts with this basis of payment, which do not include a ceiling price, it is mandatory that a limitation of the Crown's liability be made a term of the contract, unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause C6000C or C6001C.

Cost Reimbursable Contracts - Audit

6E.576 (1994-06-23) Cost reimbursable contracts or contracts with cost reimbursable elements, require special attention because the price is not specified in the contract, but rather is determined after the completion of the work. All cost reimbursable contracts are to contain a reference that the costs being incurred must be determined by a PWGSC audit. (See 7A.D45.)

This audit provides the basis for certification that the price is reasonable.

6E.577 (1994-06-23) For all cost reimbursable contracts valued over $50,000 placed with Canadian suppliers, the contracting officer must, on completion of the work, place on file a certification that the final amount paid represents a reasonable price.

This certification may be based on the findings of a formal or an informal audit.

6E.578 (1994-06-23) All bid solicitation and contract documents containing cost reimbursable elements must incorporate an appropriate basis of payment clause (see SACC Manual, clauses C0200D to C0205D).

6E.579 (1999-12-13) All cost reimbursable contracts must also include SACC Manual clause C0300D or C0301D as appropriate, which call upon the contractor to provide a cost submission to the contracting officer upon completion of the contract, and annually for multi-year contracts.

The requirement for a cost submission will be listed as a mandatory deliverable item within the contract. However, for repair and overhaul (R&O) service contracts, the contracting officer or audit agency may determine whether a cost submission is needed as a deliverable item. The standard clause pertaining to R&O service contracts must be used.

Progress Payments and Advance Payments

6E.585 (1996-12-02) Progress payments or advance payments may be considered only if all of the following conditions are met:

(a) adequate security for the payment is ensured;

(b) the Crown receives value commensurate with the amount of the payment during the fiscal year in which the payment is made;

(c) the client has adequate funds to provide the financing; and

(d) one of the following:

(i) there is economic advantage to the Crown that clearly outweighs the financing cost associated with the progress or advance payment (see 6E.587(b));

(ii) the contractor could suffer hardship or provide financing only with difficulty or at rates considered to be uneconomical in relation to prevailing chartered bank prime lending rates;

(iii) the value of the contract is considered to be beyond the assessed financial capabilities of the contractor;

(iv) there is to be a long duration for contract performance; or

(v) there is an entrenched tradition or practice of receiving advance or progress payments from the purchaser in a particular industry or segment of industry. However, payments can only be made for goods or services received in the same fiscal year. Funds must be spent in the fiscal year for which they are appropriated and cannot be carried forward by means of advance payments.

Notes:

1. TB guidelines specify that advance payments should be considered only in extraordinary circumstances. Even if the above conditions are met, advance payments are rarely justified. Progress payments are more frequent.

2. In the case of subscriptions or insurance premiums, which are often for a term of one full year and which may not start exactly on April 1, payments must be restricted to goods or services provided in no more than the current and next fiscal years. For instance, a publication subscription paid in February 2005 cannot cover a period beyond March 2006.

3. In the case of multi-year contracts requiring continuing advances, contracting authorities should negotiate the payment of a series of separate advances covering each fiscal year. Thus, a payment can be made for a maintenance contract, for the period of a contract, from February to March 2005 and then another payment covering the period April 2005 to March 2006.

4. In exceptional situations, such as armament purchases or extended warranty service, where up-front payments covering more than one fiscal year must be made to the supplier, contracting authorities must decide on a case by case basis if an advance payment is unavoidable and can be substantiated. This type of case should be extremely rare.

5. In all cases, a payment cannot be made in the current fiscal year for a contract which will not start until the next fiscal year.

6. The requirement that payment be made only for goods or services received in the same fiscal year may require modification of the Method of Payment for requirements whose period of delivery or service spans fiscal years. Specifically, it may be necessary to provide for multiple payments, at the appropriate point in the contract period.

6E.586 (1996-12-02) Special considerations apply to foreign purchases.

(a) In the case of United States purchases, progress or other payments on account have an effect on the application of taxes, relating to the time and place of title passing to the Crown. (See 6D.462.) Legal Services should be consulted to ensure that appropriate terms in the contract protect against unnecessary taxes.

(b) For other foreign purchases, where progress or other payments on account are granted, a check should be made to determine if the application of sales, use, or some other form of tax is related to the time and place of title passing to the Crown. If this is the case, contracting officers must consult Legal Services.

(c) In the case of purchases from the United States Government, through the Foreign Military Sales (FMS) program, advance payments are required in accordance with United States law prior to commencement of delivery for any goods and services to a foreign customer. In this case, the standard terms and conditions for FMS sales from the U.S. Government have been approved by Treasury Board. Any change in the standard terms and conditions will require a submission for Treasury Board approval.

6E.587 (2005-06-10) The following factors must be evaluated to determine the method of payment (advance or progress payment) most appropriate to a particular procurement:

(a) risk exposure for the Crown, if situations such as insolvency, work cancellation or work default occur;

Pertinent factors include:

(i) Can an advance payment be protected by securing unconditional guarantees or performance bonds from financial institutions or from associated or parent companies with good financial credentials?

(ii) What is the likely marketability and resale value of work-in-process to which the Crown acquires title by virtue of making progress payments? The disparity between the amount of progress payments and the resale value of inventory is a measure of the risk exposure for the Crown.

(b) financing cost estimates;

Since provision for progress or advance payments involves a real or imputed cost to the Crown, this cost should be calculated for each of the available options. Apply the chartered bank prime lending rate, as advised periodically by the Director, Cost and Forensic Accounting Directorate, to the cumulative net financing (i.e. cumulative cash payout by the Crown minus cumulative value of deliveries under the contract), using reasonable assumptions regarding work progress and item deliveries.

(c) the potential reduction in contract price resulting from the various methods of payment;

Since progress or advance payments reduce the need for borrowing by the contractor, or reduce the size of equity capital on which a return must be realized, lower prices should flow through to the Crown. The price reduction will vary with the different methods of payment and their relative attractiveness to the contractor.

(d) financial circumstances which may affect the client's ability to finance the various options.

Progress Payments

6E.591 (1994-06-23) In the case of a progress payment, the general conditions provide that title to the materials or work-in-process will vest in the Crown upon making such payment.

6E.592 (1994-06-23) When a progress payment is to be used, milestones, when possible, should be specified to relate payments to measurable progress on the contract. Technical or other contractual achievement yardsticks may be used as milestones. The value of each milestone should be negotiated before contract award.

6E.593 (1994-06-23) When progress payments against milestones are not possible because of the nature of the contract, progress payments may be made at set periods of time on a calendar basis (time payment method), or based upon the actual costs incurred for material purchases and the partial completion of work as certified by company and government inspectors.

6E.594 (1994-06-23) A combination of milestone and cost incurred progress payments is also possible for different phases of the contract.

The combination method can be used, for example, to pay incurred costs in the early stages of a major procurement when it would be difficult to define milestones, with payments for later and more definable stages of the production process made against specified milestone achievements.

6E.595 (1994-06-23) If milestone or cost incurred progress payments are not possible, the time payment method of making progress payments is to be used with caution. The overriding requirement for use of this method is the existence of a project progress monitoring and control system to provide the contracting officer with reliable indicators of the actual value of work accomplished when a payment is due. With the exception of rental and service contracts, the time payment method must be supported at the director level or above.

Holdbacks

6E.599 (1998-02-16) For all contracts where progress payments are provided, holdbacks must be used to avoid overpayment and to act as an incentive for the contractor to complete the job. However, for contracts using milestone payments, a requirement for a holdback may be included at the discretion of the contracting officer.

The following limits on payments, for contracts involving progress payments, apply:

(a) Firm Price, with Milestone Payments:

Total Allowable Costs: up to 100% of negotiated milestones
Purchased Accountable Advance Materials: nil
Goods and Services Tax/Harmonized Sales Tax: nil
Profit: nil

(b) Firm Price, with Progress Payment on basis of Negotiated Cost [1]:

Total Allowable Costs: up to 90%
Purchased Accountable Advance Materials: 100%
Goods and Services Tax/Harmonized Sales Tax: if payable
Profit: pro rata

(c) Cost Reimbursable [1]:

Total Allowable Costs: up to 90%
Purchased Accountable Advance Materials: 100%
Goods and Services Tax/Harmonized Sales tax: if payable
Profit: pro rata

(d) Fixed Time Rate [1]:

Total Allowable Costs: up to 90%
Purchased Accountable Advance Materials: 100%
Goods and Services Tax/Harmonized Sales Tax: if payable
Profit: pro rata

(e) Price to be Negotiated

(i) Last year's negotiated rates/prices serve as interim rates for new year [2]:

Total Allowable Costs: up to 100%
Purchased Accountable Advance Materials: 100%
Goods and Services Tax/Harmonized Sales Tax: if payable
Profit: pro rata

(ii) All Other Contracts [1]:

Total Allowable Costs: up to 75%
Purchased Accountable Advance Materials: 100%
Goods and Services Tax/Harmonized Sales Tax: if payable
Profit: pro rata

6E.600 (1997-09-15) Exceptions to these payment ceilings may be considered:

(a) where recognized trade practices supporting such exceptions can be demonstrated; or

(b) in the case of organizations that do not receive a profit or fee; or

(c) where alternative methods of financial protection are employed, e.g. security deposits (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) or surety bonds.

6E.601 (1999-12-13) The timing for making decisions relating to the method of payment to be used varies with the solicitation method employed.

(a) For an Invitation to Tender (ITT), the method of payment must be selected prior to issuing, and included in, the tender documents. (Use SACC Manual clause H1003D.) Financing costs will not constitute an evaluation factor.

(b) For competitive Requests for Proposal (RFPs), the RFP will clearly specify that any requirement on the part of the bidder for receipt of progress or advance payments will constitute an evaluation criterion (this may require SACC Manual clause H1003D). When evaluating proposals, the cost to the Crown of providing the progress or advance payments will be taken into account, as will the risk of exposure from the method of

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1 The percentages shown apply to incurred costs (incurred hours for fixed time rate contracts).

2 The percentages shown apply to the previous year's rates.

payment, and the availability of funds.

This cost determination may be waived when all responsive bidders have requested the identical method and pattern of payment (e.g. progress payments on a cost-incurred basis with virtually identical payout schedules).

Advance Payments

6E.605 (1994-06-23) For contracts for services greater than $25,000, any advance payment should be protected by some form of guarantee given by a financially strong third party. The guarantee usually takes the form of a surety bond from an associated or parent company or a financial institution, or an irrevocable Letter of Credit from a Canadian bank. It should provide for return to the Crown of the unliquidated balance of the advance, plus interest, in the event of work cancellation or other contract termination for the Crown's convenience. Other types of guarantees may be discussed with a cost analyst.

A decision to not insist on guarantees requires a strong business case.

For contracts for services of less than $25,000, security may be dispensed with where the contracting officer certifies that the contractor has been actively engaged in the particular industry and enjoys a good reputation in that industry, and that PWGSC has no record of significant financial or performance problems encountered in past dealings, if any, with the firm.

Bidders' Conferences and Site Visits

Bidders' Conferences

6E.611 (2001-05-25) A Bidders' Conference is used to provide information to potential bidders, and to ensure that all potential bidders receive the same information. A conference is to be held only when such a meeting is required for potential bidders to fully understand the proposed procurement. Bidder attendance is optional. (See 7A.029 and 7C.260.)

Site Visits

6E.615 (2001-05-25) Bidder attendance at site visits may be optional or mandatory. Mandatory site visits apply to all potential bidders - even those who contend they are already familiar with the site in question. (See 7A.029 and 7C.261.)

The need for a mandatory site visit should be carefully examined and documented on the file as part of the procurement planning. Consideration should be given to the cost and relative hardship imposed on potential bidders not in the immediate vicinity of the site when deciding if a site visit will be mandatory.

Transportation Information

6E.621 (2004-12-10) All goods requirements with an estimated expenditure of $25,000 (including GST/HST) or more, and with transportation charges exceeding $1,500 are subject to a detailed analysis of such charges by the Traffic Management Directorate, with the following exceptions:

(a) contracts for repair and overhaul, development, engineering services, technical studies and tooling;

(b) capital assistance;

(c) construction of complete ships or complete aircraft;

(d) contracts in which clients retain control of all or part of delivery;

(e) contracts for perishable foods;

(f) purchases from Canadian suppliers on behalf of a foreign government or agency, unless assistance is requested by that government or agency;

(g) standing offers, where order quantities and destination are unknown;

(h) food and bulk fertilizer purchases under an external aid program;

(i) requirements for multiple items which may result in more than one contract and for which identification of individual transportation costs is not practicable;

(j) contracts for complete systems where multiple components may be shipped from multiple sources and locations and for which establishment of an FOB Origin cost is impractical;

(k) service contracts; and

(l) procurements covered by the North American Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement (WTO-AGP) or the Canada-Korea Telecommunications Equipment Agreement (CKTEA), unless a non-competitive process under one of the Limited Tendering reasons in the Agreement is used.

6E.622 (2003-12-12) FCA Free Carrier (...named place) Incoterms 2000 is to be used for all Department of National Defence (DND) sole source contracts, and all Repair and Overhaul (R&O) contracts where transportation is not part of the competitive bid. DND will manage the inbound logistics (coordinate, arrange and pay for all inbound transportation) for these contracts. For United States (U.S.) Foreign Military Sales contracts only (not all U.S. contracts) FOB Plant will continue to be used and DND will manage the inbound logistic on those contracts as well.

The contractor is to deliver these goods FCA. For these contracts, the named place shall always be the contractor's facility, unless otherwise directed by DND. The contracting officer shall include in the solicitation document and the contract one of the following SACC Manual transportation clauses: D0035D, D0037D or D0038D. These clauses direct the contractor to obtain shipping instructions from DND and how to do so. Contractors may also contact DND Headquarters at (613) 996-0454 or (613) 995-6958 should they have any transportation queries.

6E.623 (2004-12-10) To assist contracting officers in determining which shipping clause is applicable for use in their procurement, the following list of clauses and their application is provided for consideration:

(a) DND contracts:

(i) for delivery at origin for international contracts - use clause D0035D (clauses C2608D and C2610D may apply);

(ii) for delivery at origin for Canadian contracts - use clause D0037D;

(iii) for U.S. Foreign Military Sales contracts - use clause D0038D (clauses C2608D and C2610D may apply);

(iv) for delivery at destination - use clause D4001C (clauses C2600T and C2600C may apply).

(b) All other government departments:

(i) for delivery at origin - use clause D4000C (use clauses C5200T and C5200C or C5201C in procurement documents);

(ii) for delivery at destination - use clause D4001C (use clauses C5200T and C5200C in procurement documents).

Design Change/Deviation Procedures

6E.627 (1994-06-23) If design changes or deviations are needed during the life of a contract, the interested parties must understand the extent and nature of the changes and the procedure to be followed.

6E.628 (1994-06-23) The Design Change/Deviation procedure applies when requested by the client, stipulated in the requisition, agreed to by PWGSC and incorporated into the contract. If not stipulated initially, the procedure may be introduced later through a contract amendment.

6E.629 (1994-06-23) When requesting authority to enter into a contract, the contracting officer should also request authority for an estimated amount to be set aside and designated for design change or deviations. This amount will not appear in the initial contract, but will be held in reserve as an authorized fund to incorporate approved design changes or deviations into the contract by amendment. These amendments will be subject to the non-competitive contract approval levels.

The requirement to do this will depend on the nature of the contract.

6E.630 (1994-06-23) For DND requirements, the contracting officer is to use National Defence Standard D-02-006-008/SG-001, Design Change/Design Deviation and Waiver Procedure.

6E.631 (1994-06-23) In the case of high value or complex defence procurements, other procedures such as CFTO C-05-002-001/AG-000, Aerospace Engineering Change Proposal, may be used, or special procedures written to suit particular contracts.

Procurement Time Frames

6E.640 (1994-06-23) Sufficient time must be allowed for precontract analysis, recommendation, approval and carrying out the procurement. When establishing the timetable, in consultation with the client, the following factors should be taken into consideration:

(a) the nature of the procurement;
(b) the level of approval required, including the Deputy Minister (DM), the Minister or Treasury Board (TB);
(c) translation requirements;
(d) the period for the receipt of bids;
(e) the evaluation process; and
(f) the requirement for negotiation.

6E.641 (2001-05-25) Approximately five weeks are required for review by the Audit and Review Branch (ARB), the DM and the Minister. This includes the time required by sectors/regions to respond to any modifications recommended by ARB, as well as the time required for the presentation of submissions to the DM and the Minister.

In the normal course of events, submissions must be received by the TB Secretariat three weeks before being scheduled on a TB agenda. Consequently, TB submissions must be submitted to ARB at least eight weeks prior to the required decision date.

When it is reasonable to expect that TB approval will be required, the bid validity period must be sufficient to ensure that bids are still valid when the TB approval is received.

Departmental Plain Language Standard Procurement Templates

6E.643 (2005-06-10) Public Works and Government Services Canada (PWGSC) has implemented Departmental Plain Language Standard Procurement Templates including new standard instructions and new general conditions for use by its contracting officers for the procurement of goods or services (excluding construction).

PWGSC contracting officers must use the Departmental Plain Language Standard Procurement documents for Low Dollar Value and Medium Complexity requirements for goods or services for competitive or non-competitive requirements (refer to *Standard Acquisition Clauses and Conditions [SACC]* Manual 2T-LDV1 and 2T-MED1 respectively).

In order to maintain a "common look and feel" for PWGSC's procurement documents, contracting officers must not modify or change the order and content of these standard templates except where indicated.

Contracting officers are invited to consult the procedures 2T-PROC1 found in the SACC Manual for the use of the LDV and Medium Complexity Templates. For more information, contact Gaëtane Dagenais, Procurement Process Tools Division.

Contract Approval

6E.647 (1994-06-23) All requirements over $50,000 require approval through either the Contract Planning and Advance Approval (CPAA) or the formal Procurement Plan processes.

Requirements for less than $50,000 are approved according to sector/region procedures.

The CPAA or formal Procurement Plan must be approved before the Notice of Proposed Procurement, Advance Contract Award Notice or bid solicitation document is released.

Contract Request Forms

6E.651 (2002-05-24) Submissions are prepared using the Contract Request forms PWGSC-TPSGC 1151-1 and PWGSC-TPSGC 1151-2.

Contract Planning and Advance Approval Process

6E.655 (1994-06-23) The CPAA process allows contracting officers to award contracts without further reference to the approval authority when there are no significant changes from an approved CPAA form.

The CPAA is to be used for procurements valued at $50,000 or more which fall within approval levels up to and including directors general, except for procurements which require a formal Procurement Plan (see 6E.662).

6E.656 (1994-06-23) Contracting officers must complete the CPAA form and submit it to the appropriate approval authority. Copies of the form are to be sent to all line management officers between the contracting officer and the approval authority, sector/region resources such as legal counsel, contract quality control and cost analysts, as required, and commodity teams, if applicable.

6E.657 (1994-06-23) On receipt of the submission, the approval authority will, within two working days, review it and either grant full approval to proceed or identify concerns and direct changes to the proposed strategy.

6E.658 (1994-06-23) If the procurement action results in a significant change from the originally approved plan, this change must be approved in accordance with sector/region procedures. If

there is no significant change, the contracting officer will prepare the contract for the appropriate signing authority.

Once the contract is prepared, it is subject to a mandatory independent review, in accordance with sector/region procedures, prior to award and signing.

Formal Procurement Plan Process

6E.662 (1996-12-02) A formal Procurement Plan is normally prepared for:

(a) all procurements estimated to exceed the approval levels of directors general;

(b) all procurements for the services of former public servants in receipt of a pension where the fee component is estimated to exceed $25,000 for non-competitive contracts or $100,000 for competitive;

(c) all procurements which are considered to be sensitive or have significant socio-economic impact (i.e. which will or may require the Minister's involvement at some stage).

The exclusions are the supply of edible agricultural and fishery products purchased for foreign aid programs, and CCC contracts.

6E.663 (2004-12-10) The Procurement Plan must include the following elements:

DESCRIPTION

Give a brief description of the requirement.

ESTIMATED COST AND NAME OF CLIENT

ANTICIPATED CONTRACT APPROVAL AUTHORITY REQUIRED

SOURCING

Identify applicable trade agreements (NAFTA, WTO-AGP, CKTEA, AIT and CLCAs) and any significant policies governing sourcing decisions (Set-aside Program for Aboriginal Business; Canadian Content; Shipbuilding, Repair, Refit and Modernization, etc.)

Explain the sourcing strategy i.e. GETS, GBO, other public advertising, source lists (one time, ongoing).

Substantiate any decision to go sole source.

POLICY ISSUES

Attach relevant Procurement Review Committee documents (see 5.090). Identify any other relevant socio-economic considerations.

Outline any special or unusual aspects of the procurement.

Recommend a course of action to resolve or handle any problems involving potential major risks or deviations from sourcing policy or other PWGSC policy. Where there are major risks inherent in the proposed approach, they must be examined in consultation with PWGSC financial and legal officers.

EVALUATION CRITERIA

Identify the evaluation criteria and the selection method to be used with any bid solicitation, including pricing basis, point rating or mandatory/desirable criteria for the technical evaluation.

MILESTONES

Give target dates for important milestones (e.g. bid solicitation, contract award, delivery schedule).

ADDITIONAL COMMENTS

Include any information that should be brought to the approval authority's attention.

CONTRACTING OFFICER

State the name, sector/region, division and telephone number of the officer responsible for the project.

COMMENTS

Leave two or three lines for comments by the approval authority.

Approvals

6E.667 (1994-06-23) The director general will forward the completed Procurement Plan to the next level of management for approval.

6E.668 (2001-12-10) If events during the procurement process result in a significant change in procurement strategy, a revised Procurement Plan must be approved before implementation.

Section 6F: Solicitation Checklist

6F.690 (2001-12-10) Before preparing a bid solicitation, the contracting officer should ensure that the following items have been considered. Relevant information is then to be included in the bid solicitation.

(a) **Statement of work**: define the work to be done or the products to be acquired in clear and concise terms. If a requirement cannot be clearly defined, indicate the objectives and performance criteria to be met, and the evaluation criteria to be used.

(b) **Technical requirements**: ensure that adequate technical/performance specifications (or purchase description) are included, and that mandatory requirements are clearly defined.

(c) **Trade references**: "brand name or equal" type of purchase description should not be used, unless no other specification is available.

(d) **Appropriate action:** determine whether a requirement can be fulfilled from an existing Standing Offer. Ensure that the most efficient and effective procurement strategy is being followed.

(e) **Evaluation criteria**: evaluation criteria, and their relative weighing/importance, must be clear, and the evaluation process and team, if applicable, defined. Indicate whether, and under what conditions, alternatives will be considered.

(f) **Contractor selection**: determine the basis on which a contractor will be selected. If the intent is to award the contract on the basis of best value, the criteria and the methods that will be used to determine the best value should be stated.

(g) **Sourcing:** ensure that the application of trade agreements has been verified, and that government sourcing procedures and departmental policies have been reviewed.

(h) **Industrial Security requirements** (Personnel or organization): ensure that industrial security requirements have been defined adequately and reviewed by Canadian and International Industrial Security Division.

(i) **Employment equity**: for procurements valued at more than $200,000, contracting officers must remind bidders of the potential application of the Federal Contractors Program for Employment Equity.

(j) **Pricing factors**: determine all factors which will affect price (e.g. duties, taxes, transportation and installation costs). Identify potential currency issues.

(k) **Terms and conditions**: include applicable General Conditions and Supplemental General Conditions. Consult Legal Services for any deviations from General or Supplemental General Conditions.

(l) **Standard/special clauses**: use, whenever possible, standard clauses as detailed in the Standard Acquisition Clauses and Conditions (SACC) Manual. If a situation arises for which a standard clause does not exist or an existing clause requires changes, ensure that the Crown's interests are protected. Consult Legal Services when necessary.

(m) **Intellectual property**: ensure that ownership of intellectual property has been dealt with.

(n) **Employer-employee relationship**: ensure that potential employer-employee

relationships are dealt with.

(o) **Basis of payment**: determine the most appropriate basis of payment.

(p) **Funding level**: consider, when issuing a request for proposal, whether or not to include an estimated or maximum funding level (e.g. when a requirement involves an investigation or a study, the depth of the investigation or study will often depend upon the funds available).

(q) **Financial security**: specify, when applicable, the type, combination and amount of financial security required.

(r) **Delivery**: define delivery requirements. Avoid statements such as "as soon as possible" which could cause unjust rejection of bids for unsatisfactory proposed delivery.

(s) **FOB point**: specify the FOB (free on board) or FAS (free alongside ship) or FAF (free alongside flight) point, as applicable.

(t) **Quality assurance**: include the government quality assurance required, such as inspection, process control, acceptance criteria, etc.

(u) **Multi-item requirements**: when appropriate, emphasize the prerogative to award the contract on either an aggregate or partial basis.

(v) **Preparation instructions**: determine the desired format and any special instructions for the presentation of bids. The evaluation process will be simplified if proposals are presented using the same format.

(w) **Bidding period**: allow sufficient time for the preparation and return of bids, taking into account mandatory requirements under international agreements, the complexity and urgency of the requirement, the necessity for suppliers to contact subcontractors, and the geographical location of suppliers.

(x) **Bid validity period**: ensure that the proposed bid validity period allows sufficient time for the bid evaluation process and the contract approval process.

(y) **Bidders' conference or site visit**: the need for, and requirement for potential bidders to attend, a bidders' conference or site visit must be established.

(z) **Closing date and time**: indicate the closing date and time clearly. The normal closing time is 2 p.m. local time at the place of closing on the established date.

(aa) **Form of bids**: contracting officers must ensure that instructions for the submission of bids are not open to misinterpretation.

(ab) **Receipt of bids**: all tenders and competitive proposals and quotations for requirements estimated to exceed $5,000 are to be directed to a designated bid receiving area.

(ac) **Public opening**: only Invitations to Tender are opened publicly. State the time, date and place where tenders will be opened. The public tender opening time is the specified bid closing time.

(ad) **Approvals**: ensure that all required approvals have been obtained.

(ae) **Controlled Goods:** ensure that any “controlled goods” have been identified and adequate security precautions are in place for their safeguard and transfer.

Annex 6.1: (2003-12-12) Conditions Imposed on the Approval Authority Limits for Departmental Personnel

The approval authority limits for departmental personnel are subject to the following conditions:

(a) that the Assistant Deputy Minister/Directors General/Senior Directors/Regional Directors/Directors, European and Washington Directorates, ensure that, for contracts and contract amendments requiring their approval, the terms and conditions of the contract are in all respects consistent with the representations made to them as to the substantive nature of the transaction;

(b) that the Assistant Deputy Minister/Directors General/Senior Directors ensure that for contracts and contract amendments requiring their approval, the contract quality assurance officers in place have been duly consulted and have had an opportunity to review the contractual documents and the substance of the business case;

(c) that the Assistant Deputy Minister/Directors General/Senior Directors ensure that for contracts and contract amendments requiring their approval, the cost analysts and legal officers assigned to the sector/region have been given the opportunity to review the contractual documents and provide such comment, as may be necessary, to ensure that the nature of the business case can be clearly understood and that the other conditions of the delegation have been duly complied with;

(d) that the Assistant Deputy Minister/Directors General/Senior Directors/Regional Directors/Directors, European and Washington Directorates, ensure that, for contracts and contract amendments requiring their approval, reports are maintained regarding turnaround times;

(e) (i) that the Directors General immediately post to senior management, procurement plans for procurement with an estimated value of $1 million or more; and

(ii) that the Director General post, to senior management, a summary of the Contract Request, 48 hours before contract approval.

NOTE: The Minister's approval authority is required for specific submissions as described in sections 1.1, 1.2 and 1.14 of Annex 6.1.1.

Annex 6.1.1: Contract Approval and Signing Authorities in Support of Clients' Programs Only - Other than for Canadian Commercial Corporation

(**2004-05-14**)

Approval Authorities

1.1 Submissions (Contract Requests) granting approval to enter into and amend contracts, excluding those described in section 1.3 to 1.13 below, as follows:

(a) in accordance with

(i) Annex 6.1.2 for goods and/or services,

(ii) Annex 6.1.4 for defence construction, or

(b) when the award is not being made to the bidder offering the best value, based on the published evaluation criteria and selection method, non-competitive approval in accordance with Annex 6.1.2.

NOTE: Recommendations to bypass the bidder offering the best value, based on the published evaluation criteria and selection method, should be a rare occurrence. All recommended awards of this nature must uphold the principles of fairness and openness and must be compliant with the applicable trade agreements. Officers should take note that trade agreements and bid challenge mechanisms have reinforced the need to adhere to these principles.

Minister

1.2 Submissions (Contract Requests) granting approval to utilize either a standing offer or a supply arrangement method of supply when individual call-ups will not exceed the limits prescribed by Treasury Board, as follows:

(a) in accordance with Annex 6.1.2 for goods and/or services, or

(b) if the planned limit on the total expenditure against the standing offer exceeds the delegated contract approval authorities:

Minister

NOTE: See section 1.13 below with respect to bulk fuels.

1.3 Submissions (Contract Requests) granting approval to enter into contracts for the services of former public servants in receipt of a pension (see 6D.477 and 6D.4B1), as follows:

(a) when the contract does not exceed $25,000 (non-competitive) or $100,000 (competitive):

in accordance with Annex 6.1.2 for goods and/or services, and Annex 6.1.4 for defence construction, or

(b) if the contract value exceeds $25,000 (non-competitive) or $100,000 (competitive):

Treasury Board

(c) all amendments to contracts, where the total contract value including amendments exceeds $25,000 (non-competitive) or $100,000 (competitive):

Treasury Board

NOTE: The fee component in any non-competitive contract must be abated if the individual has been retired for less than one year and is in receipt of a pension (see 6D.4B1).

1.4 Submissions granting approval to enter into or amend a contract with a former public servant, when the former public servant is in receipt of a lump sum payment pursuant to a workforce reduction program and the fee component will exceed $5,000 of either the individual contract or a combination of contracts, during the period covered by the lump sum payment (see 6D.4B3).

Treasury Board

1.5 Confirming Orders

Submissions (Contract Requests) granting approval to issue a Confirming Order are to be approved at the Director level or higher authority based on non-competitive contract approval authority limits. (See 7F.691)

1.6 Submission (Contract Requests) granting approval to enter into or amend an agreement for the supply of any edible agricultural product purchased for foreign aid programs, as follows:

(a) in accordance with Annex 6.1.2, or

(b) if the total amount payable under the agreement, inclusive of any amendments, exceeds the limits in Annex 6.1.2 but does not exceed $5 million: all positions in Level 1.

1.7 Submissions (Contract Requests) granting approval to enter into or amend an agreement to transport by ocean-going vessel any goods shipped for the Canadian International Development Agency, as follows:

(a) in accordance with Annex 6.1.2, or

(b) if the aggregate payable under the agreement, including any amendments thereto, exceeds the limits in Annex 6.1.2 but does not exceed $2.5 million: all positions in Level 1.

1.8 Submissions (Contract Requests) granting approval to enter into or amend contracts to repair and overhaul of military equipment, as follows:

(a) in accordance with Annex 6.1.2, or

(b) if the contract, including any amendments thereto, exceeds the limits in Annex 6.1.2 but does not exceed $25 million: all positions in Level 1.

1.9 Submissions (Contract Requests) granting approval to enter into or amend a service contract for transportation services from common carriers, if the rates charged do not exceed the normal rates for such services, as follows:

(a) in accordance with Annex 6.1.2, or

(b) if the estimated value of the contracts or contract amendments exceeds the limits in Annex 6.1.2:

Directors General, Supply Operations and Regional Directors General/Directors.

1.10 Submissions (Contract Requests) granting approval to enter into or amend a service contract for

electricity, gas, water, sewage disposal, heat and telecommunication services, if the rates do not exceed the normal rates and the contract does not involve negotiated installation or capital charges in excess of $200,000, as follows:

(a) in accordance with Annex 6.1.2, or

(b) if the estimated value of the contract or contract amendment exceeds the limits in Annex 6.1.2:

Directors General, Supply Operations and Regional Directors General/Directors.

1.11 Submissions (Contract Requests) granting approval to enter into and amend contracts for the procurement of ammunition under the Munitions Supply Program, as follows:

(a) in accordance with Annex 6.1.2, or

(b) if the total payable under the contract, inclusive of any amendments, exceeds the limits of Annex 6.1.2 but does not exceed $25 million: all positions in Level 1.

1.12 Submissions (Contract Requests) granting approval to enter into and amend contracts for the procurement of goods under the U.S. Foreign Military Sales Program and the CNDS program (from U.S. DoD - National Security Agency) as follows:

(a) in accordance with Annex 6.1.2, or

(b) if the total amount payable under the contract, inclusive of any amendments, exceeds the limits in Annex 6.1.2 but does not exceed $12.5 million: all positions in Level 1.

1.13 Submissions (Contract Requests) granting approval to utilize a standing offer method of supply for the procurement of bulk fuels, when individual call-ups will not exceed $10 million, as follows:

(a) in accordance with Annex 6.1.2, or

(b) if the planned limit on the total expenditure against the standing offer exceeds the limits in Annex 6.1.2:

Directors General, Supply Operations and Regional Directors General/Directors
Director, European Directorate

1.14 Submissions (Contract Requests) granting approval to enter into and amend contracts for advertising services, as follows:

(a) in accordance with Annex 6.1.2, or

(b) if the total amount payable under the contract, inclusive of any amendments, exceeds the limits in Annex 6.1.2 but does not exceed $10 million: all positions in Level 1.

Signing Authorities

1.15 Purchase orders, contracts, standing offers, supply arrangements, formal agreements and arrangements, Stores and Supply Transfer Orders, written direction to the Agency of Record, assignments, go-ahead letters and messages, letters of intent, consents to subcontract, termination notices, and amendments to any of the above, as follows:

(a) in accordance with Annex 6.1.2 for goods and/or services, or

(b) in accordance with Annex 6.1.4 for defence construction;

and if under departmental seal, together with the Corporate Secretary.

1.16 Advance, Milestone and Progress Payments:

Certificates on claim forms for advance, milestone and/or progress payments as prerequisite for certification pursuant to section 34 of the "*Financial Administration Act*:"

(a) Incumbents of positions listed in Annex 6.1.2, with the exception of Senior Purchasing Assistants and Buying Clerks/Regional offices:

Unlimited

(b) Science Procurement Senior Purchasing Assistants:

Contracts beyond approval authority: Claims without holdbacks or final claims to a maximum of $40,000

Contracts within approval authority: All claims

1.17 Release and Settlement documents:

Assistant Deputy Minister, Government Operational Services Branch
Chairman, Contracts Claims Resolution.

1.18 Instructions for shipment, transportation, storage and warehousing of machine tools, special production tooling and test equipment;

Directors, Group Managers and Section Chiefs of Supply Operations and Regions, Project Managers, Major Crown Projects.

1.19 Instructions to contractors concerning Industrial Security requirements:

Director, Canadian and International Industrial Security Directorate

1.20 Certifications required by the Canada Revenue Agency from PWGSC that items imported by the Department of National Defence are "defence supplies", as defined in the *Defence Production Act*, pursuant to Order-in-Council P.C. 1966-2184, as amended P.C. 1967-969, and section 17 of the *Financial Administration Act*:

Directors General, Supply Operations and Regions; Senior Directors and Directors, headquarter; and Regional Directors.

1.21 Certificates under departmental seal that documents are true copies:

Corporate Secretary.

1.22 **Conditional Emergency Contracting Authority**

An increase in approval authority from Treasury Board for Emergency Contracting to $15M has been approved. This authority rests with the Minister.

Authority limits apply to the cumulative value of the contract including amendments	Conditional Emergency Contracting Authority

Departmental Limit	$15M
Level 1	
Level 2	
Level 3	
Level 4	

This emergency contracting authority can be used only if all of the following criteria are met:

- the action is in response to pressing emergencies where there will be significant human and/or financial risks;
- the Minister invokes the National Security or Extreme Urgency provisions of the applicable trade agreements;
- the requirement cannot be satisfied by normal contracting procedures due to the urgency of the situation;
- the applicable departmental Minister approves the use of these special authorities; and
- the new exceptional contracting authorities remain subject to the reporting requirements for the use of emergency contracting as set out in the TB Contracting Policy.

Annex 6.1.2: Approval Authority Limits for Goods, Services, Construction, Telecommunications and A&E Services

(2005-06-10)

Contract Entry and Amendment Approval Limits - GOODS

	GOODS								
	Electronic			Competitive			Non-Competitive		
	C	A	Signing	C	A	Signing	C	A	Signing
Minister	40M	20M	Full	10M	5M	Full	2M	1M	Full
ADM	20M	10M	Full	5M	2.5M	Full	1M	500K	Full
DG's, RDG's,	20M	1M	Full	5M	1M	Full	1M	500K	Full
Senior Directors	15M	750K	Full	3.5M	750K	Full	750K	500K	Full
RD's	10M	500K	Full	2.5M	500K	Full	500K	500K	Full
Directors	10M	500K	Full	2.5M	500K	Full	500K	500K	Full
Managers	1M	200K	Full	1M	200K	Full	400K	200K	Full
Chiefs	400K	100K	C: 30M A: 15M	400K	100K	C: 7.5M A: 3.75M	150K	100K	C: 2.25M A: 1.125M
Sr. CMO's	300K	50K	C: 30M A: 15M	300K	50K	C: 7.5M A: 3.75M	100K	50K	C: 2.25M A: 1.125M
CMO's	200K	25K	C: 30M A: 15M	200K	25K	C: 7.5M A: 3.75M	50K	25K	C: 2.25M A: 1.125M
Contract Officers	100K	15K	C: 20M A: 1M	100K	15K	C: 5M A: 1M	30K	15K	C: 1.5M A: 1M
Buyers	70K	10K	C: 20M A: 1M	70K	10K	C: 5M A: 1M	20K	10K	C: 1.5M A: 1M
SPAs	40K	5K	C: 20M A: 1M	40K	5K	C: 5M A: 1M	10K	5K	C: 1.5M A: 1M
Buying Clerks	10K	2K	C: 20M A: 1M	10K	2K	C: 5M A: 1M	4K	2K	C: 1.5M A: 1M

Notes:

Position Titles: Position titles shown above are examples only - all equivalent positions (as shown in the List of Equivalent Positions following the approval authority charts) have the same authorities as indicated above.

Ratifications: Authorities for approving agreements which involve: pre-contractual work, ratification of contractual commitments, confirming orders, or contracts/amendments which include Pre-contractual Work clauses, or any other retroactive elements are limited to 50 percent of the non-competitive dollar thresholds specified above. The minimum approval authority is the Director level. This 50 percent reduction for ratifications applies to all dollar thresholds below the Assistant Deputy Minister level.

Contract Entry and Amendment Approval Limits - SERVICES

	SERVICES								
	Electronic			Competitive			Non-Competitive		
	C	A	Signing	C	A	Signing	C	A	Signing
Minister	20M	10M	Full	10M	5M	Full	3M	1.5M	Full
ADM	10M	5M	Full	5M	2.5M	Full	1.5M	750K	Full
DG's, RDG's,	10M	1M	Full	5M	1M	Full	1.5M	750K	Full
Senior Directors	7M	750K	Full	3.5M	750K	Full	1M	700K	Full
RD's	5M	400K	Full	2.5M	400K	Full	400K	400K	Full
Directors	5M	400K	Full	2.5M	400K	Full	400K	400K	Full
Managers	1M	200K	Full	1M	200K	Full	400K	200K	Full
Chiefs	400K	100K	C: 30M A: 15M	400K	100K	C: 30M A: 15M	200K	100K	C: 30M A: 15M
Sr. CMO's	300K	50K	C: 30M A: 15M	300K	50K	C: 30M A: 15M	100K	50K	C: 30M A: 15M
CMO's	200K	25K	C: 30M A: 15M	200K	25K	C: 30M A: 15M	50K	25K	C: 30M A: 15M
Contract Officers	100K	15K	C: 20M A: 1M	100K	15K	C: 20M A: 1M	30K	15K	C: 20M A: 1M
Buyers	70K	10K	C: 20M A: 1M	70K	10K	C: 20M A: 1M	20K	10K	C: 20M A: 1M
SPAs	40K	5K	C: 20M A: 1M	40K	5K	C: 20M A: 1M	10K	5K	C: 20M A: 1M
Buying Clerks	10K	2K	C: 20M A: 1M	10K	2K	C: 20M A: 1M	4K	2K	C: 20M A: 1M

Notes:

Position Titles: Position titles shown above are examples only - all equivalent positions (as shown in the List of Position Equivalents following the approval authority charts) have the same authorities as indicated above.

Ratifications: Authorities for approving agreements which involve: pre-contractual work, ratification of contractual commitments, confirming orders, or contracts/amendments which include Pre-contractual Work clauses, or any other retroactive elements are limited to 50 percent of the non-competitive dollar thresholds specified above. The minimum approval authority is the Director level. This 50 percent reduction for ratifications applies to all dollar thresholds below the Assistant Deputy Minister level.

Contract Entry and Amendment Approval Limits - CONSTRUCTION

	CONSTRUCTION								
	Electronic			Competitive			Non-Competitive		
	C	A	Signing	C	A	Signing	C	A	Signing
Minister	20M	10M	Full	10M	5M	Full	500K	500K	Full
ADM	10M	5M	Full	5M	2.5M	Full	250K	250K	Full
DG's, RDG's	10M	1M	Full	5M	1M	Full	250K	250K	Full
Senior Directors	7.5M	500K	Full	3.5M	500K	Full	200K	200K	Full
RD's	5M	125K	Full	2.5M	125K	Full	125K	125K	Full
Directors	5M	125K	Full	2.5M	125K	Full	125K	125K	Full
Managers	5M	125K	Full	2.5M	125K	Full	125K	125K	Full
Chiefs	1M	50K	C: 15M A: 7.5M	1M	50K	C: 7.5M A: 3.75M	30K	50K	C: 375K A: 375K
Sr. CMO's									
CMO's									
Contract Officers	500	25K	C: 10M A: 1M	500K	25K	C: 5M A: 1M	25K	25K	C: 250K A: 375K
Buyers									
SPAs									
Buying Clerks									

Notes:

Position Titles: Position titles shown above are examples only - all equivalent positions (as shown in the List of Position Equivalents following the approval authority charts) have the same maximum authorities as indicated above. Authorities shown may be restricted within individual sectors and regions. Please contact your quality assurance representative to confirm the authorities for your position title.

Ratifications: Authorities for approving agreements which involve: pre-contractual work, ratification of contractual commitments, confirming orders, or contracts/amendments which include Pre-contractual Work clauses, or any other retroactive elements are limited to 50 percent of the non-competitive dollar thresholds specified above. The minimum approval authority is the Director level. This 50 percent reduction for ratifications applies to all dollar thresholds below the Assistant Deputy Minister level.

Defence Construction: Construction contracting authorities for procurements carried out on behalf of Department of National Defence (DND) are limited by an agreement between PWGSC and Defence Construction Canada (DCC) that PWGSC will procure construction services on behalf of DND, only if the value of the procurement does not exceed $60,000. If the value of such a procurement on behalf of DND exceeds $60,000 approval to proceed must be obtained from DCC.

Contract Entry and Amendment Approval Limits - TELECOMMUNICATIONS

	TELECOMMUNICATIONS								
	Electronic			Competitive			Non-Competitive		
	C	A	Signing	C	A	Signing	C	A	Signing
Minister	200M	100M	Full	20M	10M	Full	3M	1.5M	Full
ADM	100M	50M	Full	10M	5M	Full	1.5M	750K	Full
DG's, RDG's	100M	1M	Full	10M	1M	Full	1.5M	750K	Full
Senior Directors	75M	750K	Full	7.5M	750K	Full	75K	750K	Full
RD's	50M	400K	Full	5M	400K	Full	400K	400K	Full
Directors	50M	400K	Full	5M	400K	Full	400K	400K	Full
Managers	1M	200K	Full	1M	200K	Full	400K	400K	Full
Chiefs	400K	100K	C: 150M A: 75M	400K	100K	C: 15M A: 7.5M	200K	100K	C: 2.25M A: 1.125M
Sr. CMO's	300K	50K	C: 150M A: 75M	300K	50K	C: 15M A: 7.5M	100K	50K	C: 2.25M A: 1.125M
CMO's	200K	25K	C: 150M A: 75M	200K	25K	C: 15M A: 7.5M	50K	25K	C: 2.25M A: 1.125M
Contract Officers	100K	15K	C: 100M A: 1M	100K	15K	C: 10M A: 1M	30K	15K	C: 1.5M A: 1M
Buyers	70K	10K	C: 100M A: 1M	70K	10K	C: 10M A: 1M	20K	10K	C: 1.5M A: 1M
SPAs	40K	5K	C: 100M A: 1M	40K	5K	C: 10M A: 1M	10K	5K	C: 1.5M A: 1M
Buying Clerks	10K	2K	C: 100M A: 1M	10K	2K	C: 10M A: 1M	4K	2K	C: 1.5M A: 1M

Notes:

Position Titles: Position titles shown above are examples only - all equivalent positions (as shown in the List of Position Equivalents following the approval authority charts) have the same authorities as indicated above.

Ratifications: Authorities for approving agreements which involve: pre-contractual work, ratification of contractual commitments, confirming orders, or contracts/amendments which include Pre-contractual Work clauses, or any other retroactive elements are limited to 50 percent of the non-competitive dollar thresholds specified above. The minimum approval authority is the Director level. This 50 percent reduction for ratifications applies to all dollar thresholds below the Assistant Deputy Minister level.

Contract Entry and Amendment Approval Limits - A&E SERVICES

	A&E SERVICES								
	Electronic			Competitive			Non-Competitive		
	C	A	Signing	C	A	Signing	C	A	Signing
Minister	2M	>1M max 2M	Full	1M	>250K max 1M	Full	100K	100	Full
ADM	1M	>500K or 25% of orig. max 1M	Full	500K	>125K or 25% of orig. max 500K	Full	50K	50	Full
DG's, RDG's	750K	500K	Full	500K	>125K or 25% of orig. max 500K	Full	50K	50	Full
Senior Directors	700K	500K	Full	500K	125K	Full	50K	50	Full
RD's	500K	50K	Full	500K	50K	Full	50K	50	Full
Directors	500K	50K	Full	500K	50K	Full	50K	50	Full
Managers	500K	50K	Full	500K	50K	Full	50K	50	Full
Chiefs	250K	50K	C: 1.5M A: 1.5M	125K	50K	C: 750K A: 750K	50K	50	C: 75K A: 75K
Sr. CMO's									
CMO's									
Contract Officers	100K		C: 1M	70K		C: 500K	25K		C: 50K
Buyers									
SPAs									
Buying Clerks									

Notes:

Position Titles: Position titles shown above are examples only - all equivalent positions (as shown in the List of Position Equivalents following the approval authority charts) have the same authorities as indicated above. Authorities shown may be restricted within individual sectors and regions. Please contact your quality assurance representative to confirm the authorities for your position title.

Ratifications: Authorities for approving agreements which involve: pre-contractual work, ratification of contractual commitments, confirming orders, or contracts/amendments which include Pre-contractual Work clauses, or any other retroactive elements are limited to 50 percent of the non-competitive dollar thresholds specified above. The minimum approval authority is the Director level. This 50 percent reduction for ratifications applies to all dollar thresholds below the Assistant Deputy Minister level.

List of Equivalent Positions
(2003-12-12)

Level 1

ADM Supply Operations
Executive Director, CCSB
Director General, Supply Operations
Director General, CCSB
Regional Director General
Regional Director, Supply
Director, Crown Assets Disposal
Director, Seized Property Management
Director, European Region
Director, Washington Region
Senior Director, Procurement Directorate

Level 2

Director, Supply Operations
Director CCSB
Deputy Director
Project Manager
Procurement Manager, Washington
Manager
Project/Commodity Manager
Executive Producer, CCSB
Supply Planner
Composition Analyst
Senior Account Advisor
Senior Contracts Officer, Washington

Level 3

Chiefs
Chief, Crown Assets Distribution
Associate Producer, CCSB
Client Services and Commodity Manager, Industrial and Commercial Products
Supervisor
Senior Procurement Officer
Senior Engineering Procurement Officer
Senior Contract Management Officer
Supply Team Leader
Supply Specialist
Team Leader
Senior Case Officer
Engineering Project Officer
Procurement Officer
Contract Management Officers
Contract Management Officer, MCP
Marine Technical Inspectors (when performing purchasing functions)
Contracts Officer, Washington
Representative, Seized Real Property
Senior Contracting Officer
Case Officer
Recycling Specialist

Level 4

Producer, CCSB
Contract Officer
Contracting Officer
Transportation Officer
Service Officer
Purchasing Agent
Purchasing Officer
Printing Product Officer
Printing Supervisor
Transportation Clerk
Supply Officer
Buyer
Senior Purchasing Assistant
Production Assistant, CCSB
Purchasing Assistant
Sales Representative, Crown Assets Distribution
Representative, Seized Moveable Property
Project Clerk
Contract Clerk
Contracting Clerk
Buying Clerk

Annex 6.4: Canadian General Standards Board - Lists and Listing Programs (2002-12-13)

1. **Qualification Program List (QPL)**

   (a) paints, pigments and related products;

   (b) stacking, dedicated task, sled-based metal framed and multi-task rotary chairs

   (c) stationary storage cabinets

   (d) vertical and lateral filing cabinets

   (e) systems furniture

   (f) free standing work stations

   (g) commercial carpets

   (h) residential carpets

   (i) carpet underlay

   (j) rejuvenation of laser printer cartridges

   (k) plastic jugs used for packaging of edible oil (CIDA)

   (l) bags for transport of food aid (CIDA)

   (m) bag fillers - marking, packing and packaging specifications (CIDA)

   (n) training of security personnel

   (o) suppliers of security services/guards

   (p) dockside monitoring companies (for Department of Fisheries and Oceans)

2. **Certification Program List (CPL)**

   (a) polyethylene vapour barriers

   (b) surgical and patient examination rubber gloves

   (c) breather-type sheathing membrane

   (d) firefighter's protective clothing protecting against heat and flame

   (e) fireline workwear for forest firefighters

   (f) Laboratory Acceptance Program

3. **Registered Quality Systems List (ISO 9000 Quality Management Systems and ISO 14000 Environmental Management Systems)**

   List of companies that are in compliance with the ISO 9001, 9002 or 9003 models for quality

systems (1994 version) and ISO 9001:2000.

4. **Registered Environmental Management Systems List**

   List of companies that are in compliance with the ISO 14001:1996 standard for environmental management systems.

5. **Certified Occupational Health and Safety Management Systems (OHSAS) List**

   List of companies that are in compliance with the OHSAS 18001:1999 specification for health and safety management systems.

Annex 6.5: Department of National Defence Qualified Products Lists

- batteries
- decals, for military identification
- electronic components, active: electron tubes, electronic modules, discrete semiconductors, filters, microcircuits, piezoelectric crystals and oscillators
- electronic components, passive: capacitors, connectors, relays and resistors
- fire fighting agents and chemicals
- flux, liquid soldering, rosin base
- gaskets
- hose fittings
- hydraulics
- insulation and packing materials
- marine and industrial coatings and related products
- mechanical hardware
- panels, information, integrally illuminated
- petroleum products
- plastic sheet, laminated, metal-clad
- printed-wiring boards
- rubber: hoses, tires and tubes
- solder, for electronic use
- wire and cable

Annex 6.6: Management of Risks

1. Risk management process is a prerequisite for the management of risks, and it involves the following five steps:

   (a) risk assessment;
   (b) examining the options for managing the risks;
   (c) selecting the best option(s);
   (d) implementing the selected option(s); and
   (e) monitoring.

A. Risk Assessment

Risk assessment involves the identification of any potential losses that may arise from the performance of the contract, and, subsequently, the analysis of the frequency and severity of these losses.

1. **Identifying** the sources of loss potential or exposures by conducting an examination of areas of the contractor's operations, and the contract work having the potential for loss (e.g., property; legal liability; and personnel exposures, especially loss of key personnel).

   Identification techniques to be used include: reviews of records and loss data; questionnaires; surveys and exploratory testing; and, flow charts. Flow charting is a particularly useful technique whereby a picture can be drawn of the various stages in the process of carrying out the contract and the need for key loss controls along the way can be identified, e.g., pick-up, transportation, delivery/ disposal of dangerous goods. Flow charting also helps identify critical interdependencies and bottlenecks as in multiple plant operations and sources of supply.

2. **Analysis** of the exposures identified should then target areas for loss control activities by providing a better understanding of the primary components of those losses or loss potentials, i.e., loss frequency and loss severity. Analytical techniques employed could include regression and simulation analysis.

B. Examining the options for managing the risks

Once the risks associated with the performance of the contract have been identified, risk control techniques are used to prevent or reduce losses. Risk financing techniques are used to finance any accidental losses the contractor could not prevent.

1. Risk Control

   While control of the risks being indemnified should be the primary focus of the risk management plan, it must also address the other risks of accidental loss associated with the performance of the contract. There are four primary means of risk control, i.e., avoidance, loss prevention, loss reduction, and contractual transfer. The risk management plan should show the loss control options that the contractor has considered.

   (a) **Avoidance** can be on a planned basis before a loss occurs, e.g. by taking a different route or means of accomplishing an objective or cancellation of the activity. It can also refer to abandonment of an activity giving rise to the loss - permanently, or pending re-design, e.g., new packaging to prevent tampering with a drug.

   (b) **Loss prevention** is generally favoured in cases of high frequency losses, probably of low magnitude, e.g., fender benders, where risk control can be effectively brought to bear on preventative measures, e.g. training.

   (c) **Loss reduction** relates to high severity (magnitude) losses, e.g., natural disasters and

liability exposures, probably of low frequency but where the primary effort is directed to containing the magnitude, e.g., by fast action on a liability claim, development and rehearsal of disaster management plans.

(d) **Contractual transfer for control purposes** which, by way of contract or other means, shifts the legal responsibility for a loss.

2. Risk Financing

Self-underwriting option of the government applies to those risks to which the government alone is exposed and over which it generally has control.

For risks under the contractor's control, provision will still have to be made by the contractor to finance any losses as they occur. Options are risk retention, risk sharing and risk transfer. Generally the preferred financing option or a combination of options will tend to be a reflection of the frequency/severity characteristics of the loss or loss potential.

(a) **Risk retention** may generally apply more to small, frequent loss events, or predictable loss events where, related to the cost of other options and the contractor's financial capability, the contractor may elect to absorb such losses without benefit of other financing. Because of the federal government's virtually unlimited underwriting capacity through spreading the risks across the tax base, in the same way as an insurer spreads the risk across the insured, risk retention or self-underwriting is the government's selected risk financing option for its own risks.

(b) **Risk sharing** is in the middle of the risk financing continuum. Options include deductible plans with insurers, pooling mechanisms, captives, or being a member of a risk retention group - usually all from the same industry.

(c) **Risk transfer for risk financing purposes** is done primarily through the purchase of insurance. Contractual transfer of financial responsibility is also an option.

C. Selection, implementation and monitoring of the best option to manage the risks:

Selecting the best option(s), implementing the selected option(s), and monitoring are the remaining steps of the risk management decision making process. These steps should be addressed by the contracting officer or the contractor by taking into consideration the following main factors: (a) the contract's value, type, and complexity; (b) the cost-benefit analysis; (c) the experience of the contractor in managing similar risks; and, (d) legislation considerations.

Annex 6.7: Insurance Clauses
(2004-05-14)

A. Type of Risk - Lease of motor vehicles by the Crown

Number	Description
G6001D	Lease of Motor Vehicles by the Crown

B. Type of Risk - Contracts not involving lease of motor vehicles and only when the potential for loss arising from the Contractor's performance of the contract is identified to be high.

Number	Description
G1001D	Purchase Commercial Insurance and Proof of Insurance Coverage
G1005D	When no insurance provisions are required

Risk concerning

B.1. - Loss or Damage to Government Property

Number	Description
G3001D	All Risk Property Insurance

B.2. - Third Party Liability

Number	Description
G2001D	Commercial General Liability; and,
G2015D	Liability Insurance Endorsement

Depending on the requirement, one or more of the following clauses may also need to be included in the bid solicitation and contract.

Third Party Liability - Special Risks

Number	Description
G2002D	Requirement for Professional Expertise, e.g. architect
G2003D	Product Liability
G2020D	Automobile Liability Insurance
G2025D	Automobile Liability Endorsement
G2030D	Aviation Liability Insurance
G2035D	Aviation Liability Endorsement
G2040D	Environmental Impairment Liability Insurance
G2045D	Director’s and Officer’s Liability Insurance
G2050D	Bailee’s Customer’s Goods Liability Insurance
G4001D	Aircraft Charter
G4002D	Aircraft Dry Lease
G5001D	Ship Repair and Conversion
G5002D	Ship Repair Involving Casual and Intermittent Work

Annex 6.8: Insurance of Government-Owned or Leased Vehicles

I. Government-Owned Vehicles

Country	Period	Policy Requirement
CANADA	Long-term	Self-underwriting option
U.S.	Long-term OR For trips to the U.S.	(1) Third party liability and collision: commercial insurance (2) Damage to vehicle: self-underwriting option

II. Other Vehicles, Including Those Leased by the Government

Type of Vehicle	Country	Term of Lease	Policy Requirement
EXECUTIVE	CANADA	Long-term	Comprehensive Commercial Insurance, including collision and third party liability; self- underwrite the deductible
EXECUTIVE	CANADA	Short- term	- ditto -
EXECUTIVE	U.S.	Long-term	- ditto -
EXECUTIVE	U.S.	Short-term	Purchase additional commercial insurance to cover third party liability and collision for the U.S. Risks; self-underwrite the deductibles
NON-EXECUTIVE	CANADA	Long-term	Self-underwrite except if Provincial legislation applies
NON-EXECUTIVE	CANADA	Short-term	Comprehensive Commercial Insurance, including collision and third party liability; self-underwrite the deductible
NON-EXECUTIVE	U.S.	Long-term	Purchase additional Commercial Insurance to cover third party liability and collision for the U.S. Risks; self-underwrite any damage to government vehicle
NON-EXECUTIVE	U.S.	Short-term	Utilize commercial insurance coverage (third party liability and collision for the U.S. Risks) administered by SIPSS, PWGSC; self-underwrite the deductible

Annex 6.8: Insurance of Government-Owned or Leased Vehicles

I. Government-Owned Vehicles

Country	Period	Policy Requirement
CANADA	Long-term	Self-underwriting option
U.S.	Long-term OR For trips to the U.S.	(1) Third party liability and collision: commercial insurance (2) Damage to vehicle: self-underwriting option

II. Other Vehicles, Including Those Leased by the Government

Type of Vehicle	Country	Term of Lease	Policy Requirement
EXECUTIVE	CANADA	Long-term	Comprehensive Commercial Insurance, including collision and third party liability; self- underwrite the deductible
EXECUTIVE	CANADA	Short- term	- ditto -
EXECUTIVE	U.S.	Long-term	- ditto -
EXECUTIVE	U.S.	Short-term	Purchase additional commercial insurance to cover third party liability and collision for the U.S. Risks; self-underwrite the deductibles
NON-EXECUTIVE	CANADA	Long-term	Self-underwrite except if Provincial legislation applies
NON-EXECUTIVE	CANADA	Short-term	Comprehensive Commercial Insurance, including collision and third party liability; self-underwrite the deductible
NON-EXECUTIVE	U.S.	Long-term	Purchase additional Commercial Insurance to cover third party liability and collision for the U.S. Risks; self-underwrite any damage to government vehicle
NON-EXECUTIVE	U.S.	Short-term	Utilize commercial insurance coverage (third party liability and collision for the U.S. Risks) administered by SIPSS, PWGSC; self-underwrite the deductible

Annex 6.9: Insurance of Government-Owned or Leased Equipment

I. Government-owned equipment

A. Operated by government employees

Self-underwriting option must be utilized.

B. Leased to contractor

1. Without operator or driver:

   Equipment floater insurance or any equivalent insurance coverage must respond to any loss or damage to government equipment.

2. With operator or driver:

Control of Work	Policy Requirement
Work of operator or driver controlled by government	Self-underwriting option is applicable concerning any loss or damage to government equipment while being driven or operated by government employees. However, contractor's insurance must respond to any loss or damage to the equipment while property is in the care, custody and control of the contractor.
Work of driver controlled by contractor	Contractor's insurance must respond to any loss or damage to government equipment (contractor's responsibility because the property is in the care, custody and control of the contractor).

II. Leased from dealer

A. Operated by government employees

Self-underwriting option must be utilized.

B. Operator or driver being employees of the contractor

Control of Their Work	Policy Requirement
By government: - employer-employee relationship	Self-underwriting option must be utilized for any damage or loss to equipment while being operated or driven by government employees
Work of driver controlled by dealer	Contractor's insurance must respond to any loss or damage to government equipment

Annex 6.10: List of GST/HST - Exempt Supplies (2003-12-13)

Exempt Supplies

An exempt supply is not taxable. Thus, a supplier does not collect the Goods and Services Tax (GST), or the Harmonized Sales Tax (HST) on sales of exempt supplies. The supplier is not eligible for any input tax credits on purchases related to the exempt supply. As a result, the supplier passes on to the consumer the GST/HST that the supplier has paid, as part of the overhead. This is where exempt supplies differ from zero-rated supplies.

The following are exempt supplies.

1. Health and dental services. (Only services performed for medical or reconstructive purposes are exempt. Services performed for cosmetic reasons are not exempt.) This includes:

   (a) hospital and nursing home services;
   (b) medical devices prescribed by a medical practitioner;
   (c) diagnostics, treatments and other health care services prescribed by a medical practitioner;
   (d) ambulance services;
   (e) nursing services;
   (f) dental hygienist services.

   (A medical practitioner is a person entitled under provincial law to perform a medical or dental service.)

2. Day care services for children less than 15 years old.

3. Personal care services in an institution for children or disabled or underprivileged persons.

4. Legal aid services. That is, the person receiving the services pays no GST/HST. The lawyer performing the service bills the legal aid plan and charges GST/HST.

5. Most educational services. This includes virtually everything associated with primary or secondary education, including tutoring. Most other educational services are exempt except those that are purely recreational in nature. University and college meal plans are also exempt.

6. Most supplies by charities and many supplies of a public service nature by public service bodies. These are exempt except for exclusions given in Schedule V, Part VI, section 2 of the *Excise Tax Act*. Example: The sale by a charity of property acquired for resale and any service in connection with it are not exempt (2(e)). Most universities in Canada are charities for the purposes of the GST/HST and therefore their supplies are generally exempt.

7. Most financial services provided in Canada.

8. Long-term residential rents and sales of used housing.

Zero-Rated Supplies

Zero-rated supplies are taxable supplies on which the tax rate is 0 percent. Persons involved in the production of zero-rated supplies can claim input tax credits on the supplies they use. This makes sure there is no GST/HST paid by the consumer.

The following are zero-rated supplies.

1. Goods and services supplied or to be supplied to a purchaser outside of Canada.

2. Basic groceries, except soft drinks, candies and confections and snack foods.

3. Agriculture and fisheries products, except the following:

   (a) cut flowers, foliage or trees;
   (b) bedding plants;
   (c) sod;
   (d) soil and soil additives;
   (e) seeds, in quantity ordinarily sold or offered to consumers;
   (f) natural fertilizer unless sold in bulk;
   (g) wood;
   (h) horses;
   (i) wool other than in an unprocessed state;
   (j) fur and animal hide.

4. Prescription drugs for human use, dispensed by a medical practitioner or on the prescriptions of a medical practitioner for the personal use of the recipient or a related individual.

5. Medical devices (includes replacement parts and charges for installation and repair).

6. International freight services. This includes freight outbound from Canada and freight into Canada from outside. Freight from one part of Canada to another is included if it is part of a continuous movement into or from Canada.

Non-taxable Imports

Non-taxable under the GST/HST refers to certain imports listed in Schedule VII of the *Excise Tax Act*. No tax is paid on the importation of these supplies.

1. Certain goods which are exempt from customs duties, e.g. - foreign-based conveyances coming into Canada, settler's effects, foreign diplomat's effects, tourist's baggage, foreign purchases brought back by returning residents.

2. Prizes and trophies won abroad (other than merchantable goods, such as a car).

3. Tourist literature supplies by foreign governments or like organizations which is to be distributed for free.

4. Goods donated to charities.

5. Warranty replacement parts.

6. Zero-rated supplies in section 2 of Part I or in Parts II, III, IV, or VIII of Schedule VI of the *Excise Tax Act*.

7. Imported goods valued at under $40 when delivered by mail or courier. This parallels current customs remission orders and like them does not cover alcohol, tobacco, etc.

8. Prescribed imports. Provision is made for granting relief from GST/HST on importation of goods by way of regulations of the Governor in Council.

Indians, Indian Bands and Band-empowered Entities

Technical Information Bulletin B-039R *GST Administrative Policy - Application of GST to Indians*, sets out Canada Customs and Revenue Agency's (CCRA) guidelines concerning the treatment of purchases made by Indians, Indian bands and band-empowered entities (BEEs). The conditions described therein

must be satisfied for tax relief to apply (e.g., an Indian must present proof of registration under the *Indian Act* to a vendor in order to acquire property or services on reserve without the payment of GST/HST.

1. Generally, GST/HST does not apply to:

   (a) goods acquired on reserve by Indians, Indian bands or BEEs;

   (b) goods acquired off reserve by Indians, Indian bands or BEEs, where the supplier or the supplier's agent delivers the goods to the reserve;

   (c) services performed totally on reserve where they are acquired by Indians ;

   (d) services performed on or off reserve, such as legal or accounting services, where they are acquired by Indian bands or BEEs for band management activities or for real property on reserve (exception: Indian bands or BEEs pay GST/HST on off-reserve purchases of transportation, short-term accommodation, meals and entertainment and recover the GST/HST paid through a rebate mechanism if the purchases are for band management activities or for real property on reserve);

   (e) services acquired by Indians for real property interests on a reserve.

2. Unincorporated Indian-owned businesses receive the same tax relief on the acquisition of property and services as that of their Indian owner. Indian-owned corporations are treated like all other businesses and are required to pay GST/HST on their purchases unless they qualify as BEEs and the conditions set out in B-039R are met.

3. Indian bands and BEEs (e.g., band-run schools and hospitals) may also be entitled to file the applicable Public Service Body Rebate to recover a partial rebate on any remaining GST/HST paid. Funding provided by Indian bands to non-profit organizations is the same as government funding to qualify for the 50 percent GST/HST rebate to non-profit organizations.

NOTE: Indian-owned businesses are required to collect and remit GST/HST on the supply of taxable goods and services to non Indians on or off a reserve.

Annex 6.11: Goods on Which Excise Tax is Payable
(2004-12-10)

PETROLEUM PRODUCTS

Gasoline: gasoline; aviation; unleaded aviation; and unleaded
Fuel: diesel and aviation

AUTOMOBILES

Automobiles (not including ambulances) in excess of 2,007 kg; station wagons and vans in excess of 2,268 kg

Air conditioners designed for use in automobiles, station wagons, vans or trucks

JEWELLERY, WATCHES

Jewellery, real or imitation; certain goldsmiths' and silversmiths' products

Clocks and watches which the duty paid value exceeds $50

OTHERS

Amusement devices (coins, discs or token operated games)

Cigarettes and manufactured tobacco

Cigars

Lighters (cigarette)

Matches

Playing cards (per pack)

Wines

Insurance premiums on policies placed with unlicensed insurers or through non-resident brokers or agents.

Annex 6.12: Application of Provincial Taxes to the Government of Canada (2003-12-12)

Summary of the Application of Provincial Taxes to the Government of Canada

	NF	PE	NS	NB	QC	ON	MB	SK	AB	BC	NT	YT	NU
Harmonized Sales Tax	T	N/A	T	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
General Sales Tax	N/A	E	N/A	N/A	E	E	E	E	N/A	E	N/A	N/A	N/A
Ancillary taxes:													
Tobacco	T	T	T	T	T	T	T	T	E	T	T	T	T
Fuel	T	T	T	T	T	T	T	E	E	T	E	E	E
Vehicle registration fees	T	T	T	T	T	T	T	T	E	T	E	E	E
Amusement/Admission	N/A	N/A	T	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Broadcast advertising	N/A	N/A	N/A	N/A	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Insurance premiums	N/A	N/A	N/A	N/A	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Room tax	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	T	N/A	N/A	N/A
Environmental (i.e. tires, batteries and lubricating oil)	T	T	T	T	T	N/A	T	T	T	T	N/A	T	N/A
Third party acquisitions (see note 5):													
Harmonized Sales Tax	T	N/A	T	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
General Sales Tax	N/A	T	N/A	N/A	T	T	T	T	N/A	T	N/A	N/A	N/A
Meals	T	T	T	T	T	T	T	T	N/A	T	N/A	N/A	N/A
Transient accommodation	T	T	T	T	T	T	T	T	T	T	N/A	N/A	N/A
Motive fuel	T	T	T	T	T	T	T	T	T	T	T	T	T

Legend:

T - Taxable
E Exempt
N/A Non Applicable (refers to goods and services not subject to tax according to existing provincial statutes)

Notes:

1. Tobacco, Fuel, Amusement/Admission, Broadcast Advertising and Room Tax

Departments and agencies are responsible for paying these provincial ancillary taxes directly to suppliers. The license numbers should not be quoted unless these purchases are also subject to provincial general sales tax.

2. Environmental Levies

Environmental levies for the recycling of tires may be found at: www.catraonline.ca for all provinces and territories except Ontario (decision due January 2004), Northwest Territories and Nunavut. The fees vary depending on the weight and size of the tires. In British Columbia the payment of an environmental levy is applicable on the purchase of lead-acid batteries weighing more than 2 kg and in Alberta, environmental handling charges are applicable for lubricating oil in accordance with the by-laws of the Alberta Used Oil Management Association (AUOMA). Departments and agencies shall continue to pay these fees directly to suppliers when purchasing these items, including the purchase of vehicles.

3. Quebec Tax on Insurance Premiums

The Reciprocal Taxation Agreement (RTA) with Quebec requires the payment of sales tax on insurance premiums which relate to policies dealing with life, health or physical integrity, with a portion of the premium assigned to the occurrence of risk in Quebec.

Departments and agencies are responsible for paying this tax along with the premium directly to the insurance broker. However, the sales tax applicable to the employers share of premiums for employee group insurance plans such as Disability Insurance, Group and Surgical Medical Insurance will be calculated by Public Works and Government Services Canada pay offices and be remitted directly to the Province of Quebec.

4. Motor Vehicle Registration Fees

The RTAs require the payment of motor vehicle registration fees for vehicles held by federal departments and agencies, except in Alberta (no RTA), the Northwest Territories, Nunavut and Yukon. The departments are responsible for paying motor vehicle registration fees directly.

5. Taxes on Third Party Purchases

Departments and agencies are to reimburse PST in respect of goods or services acquired by or on behalf of a department where such goods or services are acquired other than in the name of the department and are acquired by employees in the course of employment related travel or purchased out of petty cash.

Annex 6.12: Application of Provincial Taxes to the Government of Canada (2003-12-12)

Summary of the Application of Provincial Taxes to the Government of Canada

	NF	PE	NS	NB	QC	ON	MB	SK	AB	BC	NT	YT	NU
Harmonized Sales Tax	T	N/A	T	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
General Sales Tax	N/A	E	N/A	N/A	E	E	E	E	N/A	E	N/A	N/A	N/A
Ancillary taxes:													
Tobacco	T	T	T	T	T	T	T	T	E	T	T	T	T
Fuel	T	T	T	T	T	T	T	E	E	T	E	E	E
Vehicle registration fees	T	T	T	T	T	T	T	T	E	T	E	E	E
Amusement/Admission	N/A	N/A	T	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Broadcast advertising	N/A	N/A	N/A	N/A	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Insurance premiums	N/A	N/A	N/A	N/A	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Room tax	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	T	N/A	N/A	N/A
Environmental (i.e. tires, batteries and lubricating oil)	T	T	T	T	T	N/A	T	T	T	T	N/A	T	N/A
Third party acquisitions (see note 5):													
Harmonized Sales Tax	T	N/A	T	T	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
General Sales Tax	N/A	T	N/A	N/A	T	T	T	T	N/A	T	N/A	N/A	N/A
Meals	T	T	T	T	T	T	T	T	N/A	T	N/A	N/A	N/A
Transient accommodation	T	T	T	T	T	T	T	T	T	T	N/A	N/A	N/A
Motive fuel	T	T	T	T	T	T	T	T	T	T	T	T	T

Legend:

T - Taxable
E Exempt
N/A Non Applicable (refers to goods and services not subject to tax according to existing provincial statutes)

Notes:

1. Tobacco, Fuel, Amusement/Admission, Broadcast Advertising and Room Tax

Departments and agencies are responsible for paying these provincial ancillary taxes directly to suppliers. The license numbers should not be quoted unless these purchases are also subject to provincial general sales tax.

2. Environmental Levies

Environmental levies for the recycling of tires may be found at: www.catraonline.ca for all provinces and territories except Ontario (decision due January 2004), Northwest Territories and Nunavut. The fees vary depending on the weight and size of the tires. In British Columbia the payment of an environmental levy is applicable on the purchase of lead-acid batteries weighing more than 2 kg and in Alberta, environmental handling charges are applicable for lubricating oil in accordance with the by-laws of the Alberta Used Oil Management Association (AUOMA). Departments and agencies shall continue to pay these fees directly to suppliers when purchasing these items, including the purchase of vehicles.

3. Quebec Tax on Insurance Premiums

The Reciprocal Taxation Agreement (RTA) with Quebec requires the payment of sales tax on insurance premiums which relate to policies dealing with life, health or physical integrity, with a portion of the premium assigned to the occurrence of risk in Quebec.

Departments and agencies are responsible for paying this tax along with the premium directly to the insurance broker. However, the sales tax applicable to the employers share of premiums for employee group insurance plans such as Disability Insurance, Group and Surgical Medical Insurance will be calculated by Public Works and Government Services Canada pay offices and be remitted directly to the Province of Quebec.

4. Motor Vehicle Registration Fees

The RTAs require the payment of motor vehicle registration fees for vehicles held by federal departments and agencies, except in Alberta (no RTA), the Northwest Territories, Nunavut and Yukon. The departments are responsible for paying motor vehicle registration fees directly.

5. Taxes on Third Party Purchases

Departments and agencies are to reimburse PST in respect of goods or services acquired by or on behalf of a department where such goods or services are acquired other than in the name of the department and are acquired by employees in the course of employment related travel or purchased out of petty cash.

Annex 6.14: Interim Corporate Security Technical Standard (2003-12-12)

Destruction of Sensitive Information

A Introduction

The Government Security Policy (GSP) states that sensitive information for which the retention period approved by the National Archivist has expired, and that does not have a historical or archival value, should be promptly destroyed. The associated Physical Security Standard (*Treasury Board Security Policy*) affirms that sensitive non-electronic information must be destroyed using equipment listed in the Royal Canadian Mounted Policy (RCMP) *Security Equipment Guide*. (See Appendix A, Security in Contracting for Mobile Destruction Guidelines.)

Exception: Low-sensitive information marked "PROTECTED A" may be discarded after hand shredding. This technical standard sets out the procedures for the destruction of sensitive information in Public Works and Government Services Canada (PWGSC).

B Internal Shredding

Destruction of Classified Information and Information Marked PROTECTED "C"

1. (a) Classified assets marked SECRET or TOP SECRET or PROTECTED "C" must be destroyed using Type II destruction equipment which reduces paper assets to a maximum of 1 x 14.3 mm (Annex 6.15).

   (b) Classified assets at the Confidential level must be destroyed using Type III equipment which reduces paper fragments to a maximum of 5 mm in width and any length (Annex 6.15).

2. Classified information and information marked PROTECTED "C" **are ONLY to be destroyed within the department**.

3. An approved shredder must be used to shred sensitive information (see: RCMP *Security Equipment Guide* SSB/SG-20).

4. A label is to be affixed to the shredder indicating the highest level of sensitive information that can be destroyed by this equipment.

5. Sensitive information awaiting destruction is to be kept separate from other information awaiting destruction.

Destruction of Protected Information

1. Based on guidelines in the GSP and the varied nature of protected assets at the PROTECTED "A" and "B" levels among different government departments, destruction levels for these assets are left to individual departments based on a Threat and Risk Assessment (TRA). Notwithstanding, most government departments group the PROTECTED "A" and "B" assets with Confidential assets and use Type III approved equipment which reduces paper assets to a maximum of 5 mm in width and any length (Annex 6.15).

2. An approved shredder must be used to shred sensitive information (see: RCMP *Security Equipment Guide* SSB/SG-20).

   Exception: Low-sensitive information marked PROTECTED "A" may be discarded after

hand shredding.

3. A label is to be affixed to the shredder indicating the highest level of sensitive information that can be destroyed by this equipment.

4. Information awaiting destruction must be safeguarded in the same manner prescribed by the highest level of classified or protected information involved in the destruction process.

5. Sensitive information awaiting destruction is to be kept separate from other information awaiting destruction.

C Exterior Bulk Destruction
(includes National Archives and Contractors Premises)

1. **No PWGSC CLASSIFIED INFORMATION or PROTECTED "C" marked information** is to be forwarded for destruction outside the department.

2. When sensitive marked (PROTECTED "A" and PROTECTED "B") information is being forwarded for destruction, at the National Archives or a Contractor's premises, the following applies:

   a) Information awaiting destruction must be safeguarded in the same manner prescribed by the highest level of classified or protected information involved in the destruction process.

   b) A Type IV approved equipment which reduces paper assets to a maximum of 5 mm in width and any length is required. See the RCMP *Security Equipment Guide* (SSB/SG-20).

   c) A Request for Non-Accessioned Disposal (ARC 0203) (Annex 6.16) is to be completed for the destruction of sensitive documents. The upper half is to be completed by the originator of the request for destruction. The bottom section, Certificate for Destruction, should be completed by the Federal Records Center of National Archives Canada or the contractor. It includes the date of destruction and signature of the authorized person who witnessed the destruction.

   d) The Canadian and International Industrial Security Directorate (CIISD) issues the Facility Security Clearance (FSC) for Contractor's performing sensitive government destruction at their facilities, on behalf of PWGSC and its clients.

   e) CIISD ensures the client's requirements for handling, storing and transportation of the waste material at the Contractor's facilities are met in accordance with established government security policies and standards.

   f) Verification of the security screening of Contractor personnel can be obtained from CIISD.

   g) Information is to be destroyed on site, and under no circumstances is the waste material to be sold before it is shredded.

Mobile Destruction

The Regional Manager of Security (or, for the National Capital area, the local security representative) is to be contacted any time mobile shredding is being considered.

1. **No PWGSC CLASSIFIED INFORMATION or PROTECTED "C" information** is to be forwarded for destruction outside the department.

2. Information awaiting destruction must be safeguarded in the same manner prescribed by the highest level of classified or protected information involved in the destruction process.

3. Sensitive protected information awaiting destruction is to be kept separate from other information awaiting destruction.

4. The Regional Manager of Security (or, for the National Capital area, the local security representative is to ensure that equipment conforms with approved size standards and that the cutter is functioning properly by testing several sheets of waste paper.

Appendix A
(2002-05-24)

Security in Contracting for Mobile Destruction Guidelines

The Canadian and International Industrial Security Directorate (CIISD) is no longer responsible for Facility Security Clearances for **Mobile Shredding** companies. The onus is now on the client department to ensure security compliance. The following is offered as a guide to the client:

- Information awaiting destruction must be safeguarded in the same manner prescribed by the highest level of classified or protected information involved in the destruction process.
- Information is to be destroyed at the departmental site.
- The departmental organization is responsible for collecting and delivering it's information to the destruction equipment on the departmental site.
- An employee of the departmental organization cleared to the same level as the information being destroyed must be present to monitor the destruction process.
- Verify the residue (if questionable, forward to the local departmental security authority for RCMP verification of whether the equipment being used is satisfactory) and obtain a sample for future reference.
- If the destruction is done in multiple batches or over a number of days, hourly samples should be taken.
- Verify the residue (if questionable, forward to the local departmental security authority for RCMP verification of whether the equipment being used is satisfactory) and obtain a sample for future reference.
- If the destruction is done in multiple batches or over a number of days, hourly samples should be taken.
- The departmental employee should ensure that extra paper is run through the disintegrator to prevent sensitive information being left in the machine.
- The local departmental security representative is to ensure that equipment conforms with approved size standards and that the cutter is functioning properly by testing several sheets of waste paper.
- **Mobile disintegration** equipment is approved for the destruction of Confidential information and protected information up to and including particularly sensitive when it is fitted with a 3/8 inch security screen. The choice of screen size is based on a Threat Risk Assessment as per the Government Security Policy.
- The Certificate for Destruction should be completed by the company. It is to include the date of destruction and signature of the authorized person who witnessed the destruction.
- When contracting with mobile shredding companies for the destruction of **classified** information it is recommended there be a contract clause specifying the requirement for paper assets to be reduced to a maximum of 5mm in width and any length. Request a sample before issuing the contract.

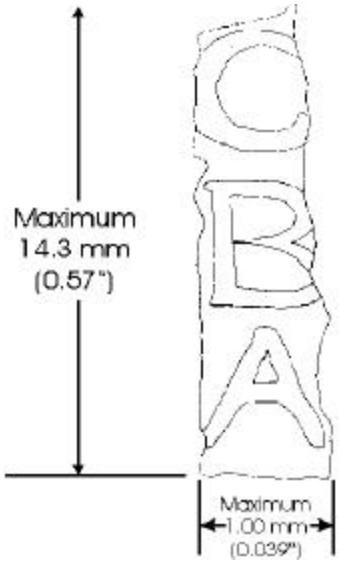
Annex 6.15: Classified Levels of Shredder

The following lists the classification levels of shredders as defined in the Destruction in the National Interest (DNI) Test Standard. Figures 1 and 2 illustrate these definitions, where Samples 1 and 2 are **actual examples** of **Type II and Type III Shredder chaff**.

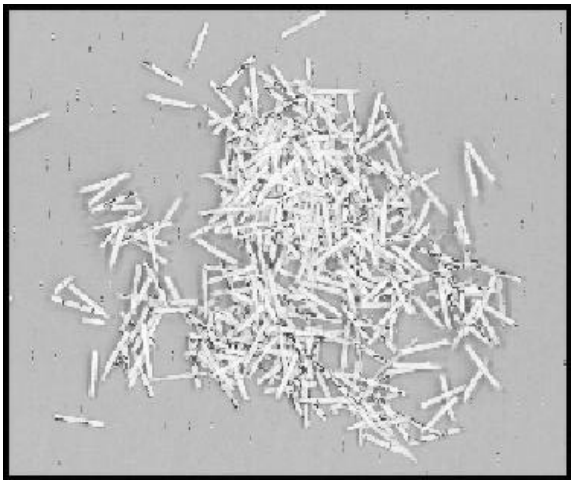
TYPE II

- A single piece of residue shall be no greater than **1.00 mm in width and 14.3 mm in length**, provided there is no more than one complete alphanumeric character from any one line, and no more than one complete alphanumeric character from the one immediately above and below the said line. Consistent with the foregoing, there shall not be more than three (3) complete alphanumeric characters* on any one piece of residue.

FIGURE 1
Actual examples



SAMPLE 1
1.00 mm in width and 14.3 mm in length,
See below actual size



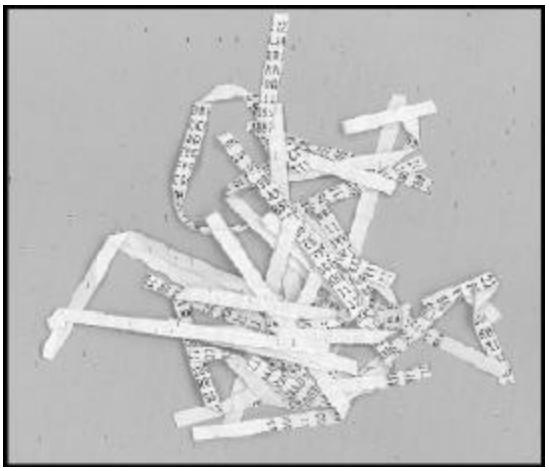
Note: * An alphanumeric character in this standard cannot be smaller than 15 cpi with 6 lpi.

TYPE III

A single piece of residue shall be no greater than 5.0 mm (0.20 inch) in width and any length, providing there are no more than three complete alphanumeric characters * on any one line.

FIGURE II
Actual examples

SAMPLE II
5.0 mm (0.20 inch) in width and any length
See below actual size



NOTE: *An alphanumeric character in this standard cannot be smaller than 15 cpi with 6 lpi.

Annex 6.16: Request for Non-Accessioned Disposal

National Archives of Canada | **Archives nationales du Canada**

Regional Operations | **Opérations régionales**

REQUEST FOR NON-ACCESSIONED DISPOSAL

DEMANDE D'ÉLIMINATION DES DOCUMENTS NON ENREGISTRÉS

Department — Ministère	Room No. — Nº de pièce
Address — Adresse	Telephone — Téléphone

It is requested that the following described records be destroyed by shredding at a Federal Records Centre building or by other Secure disposal means.

On demande que les documents décrits ci-dessous soient déchiquetés dans un Centre fédéral de documents, ou détruits de tout autre façon sécuritaire.

Type of records — Type de documents	
Security classification — Code sécuritaire	Incl. Years — Période visée
Extent (lin. Metres) — Importance (mètres lin.)	NA/TB Authority No. — No. d'autorisation des AN/CT
Authorized by (signature) — Autorisé par (signature)	Date
Print name — Nom en lettres moulées	Position — Poste
Signature for receipts FRC — Signature sur réception (CFD)	Date

National Archives of Canada | **Archives nationales du Canada**

Regional Operations | **Opérations régionales**

FEDERAL RECORD CENTRES

Certificate of destruction

This is to certify that the above described records have been destroyed by:

Witnessed by:
Témoin :

Signature

Print Name – Nome en lettres moulées

Date

CENTRES FÉDÉRAUX DE DOCUMENTS

Certificat de destruction

La présente atteste que les documents décrits ci-dessus ont été détruits par :

Certified by:
Certifié par :

Signature

Date

ARC 0203

Chapter 7 - Competitive Procurement

Section 7A: Preparing a Bid Solicitation

Documents

7A.001 (2005-06-10) The cover pages of bid solicitations are based on standard forms . They are:

PWGSC-TPSGC 9400-2	Request for Proposal
PWGSC-TPSGC 9168	Request for a Supply Arrangement
PWGSC-TPSGC 212	Revision to a Supply Arrangement
PWGSC-TPSGC 9169	Supply Arrangement (This is not a contract)

Every bid solicitation should include the standard instructions and conditions (Section 1 of the *Standard Acquisition Clauses and Conditions* [SACC] Manual), which will provide bidders with relevant information.

Terms and Conditions

7A.002 (2005-06-10) Most procurements of goods and services are to be carried out using the general conditions and supplemental general conditions found in the SACC Manual. The conditions to be used depend on the nature of the procurement:

	General Conditions	Supplemental General Conditions
General Conditions - Goods or Services (Medium Complexity	2010	
General Conditions - Goods or Services (Low Dollar Value)	2029	
Other goods and services, except those listed below	9601	
Goods with some R&D, Contractor to own Intellectual Property	9601	9601-6
Goods with some R&D, Canada to own Intellectual Property	9601	9601-7
Research and Development	9624	
Services, except those listed below	9676	
EDP Requirements		
Hardware Purchase/Lease	9601	9601-1 ***See NOTE below**
Software Development / Modification	9601 or 9624	9601-2
Systems Integration	9601	
Licensed Software	9601	9601-4

Support Services for Licensed Software	9601	9601-5
Ships		
Construction - Firm Price	1026A	1028 or 1036
Construction - Cost Reimbursable	1026B	1033
Repairs	1026A	1029
Construction (not ships)	1034	LAB 180
Procurement for the Canadian Commercial Corporation		
Defence requirements (other than US Government)	1026A or 1026B	
Defence requirements (US Government)	1026A or 1026B **(see CCC-6 for exceptions)**	
Non-defence requirements	CCC50	

Note: If any software is to be delivered under the contract, including any software necessary to run the hardware, supplemental general conditions 9601-3 and 9601-4 must also form part of the contract. Other supplemental general conditions should also be incorporated if applicable.

Where other than standard terms and conditions are required, the contracting officer must consult Legal Services.

7A.003 (2005-06-10) General conditions and supplemental general conditions must be used as complete sets. Contracting officers may not mix sections from different sets of conditions to create contract documents.

A specific procurement may require the modification or deletion of individual terms or conditions. These changes must be discussed with the client prior to inclusion in the bid solicitation or contract, to ensure that complete understanding exists as to the extent of the client's rights and responsibilities. They must also be approved by Legal Services, to ensure that the rights of the Crown are protected.

A change approved by Legal Services within the previous two (2) years may be used without again consulting Legal Services. (See 6E.50B.)

Bid Solicitation and Comprehensive Land Claims Agreements

7A.004 (2002-12-13) Methods of bid solicitation include the Government Electronic Tendering Service, Telephone-Buys, source lists, facsimile distribution, and newspapers or a combination of methods. Longer bidding periods may be required because of the remoteness of some of the areas. Whenever possible, competition must be sought.

Urgent requirements must continue to be dealt with on a case-by-case basis in a manner which is consistent with the provisions of the applicable Comprehensive Land Claims Agreement.

The Nunavut Tunngavik Incorporated is responsible for preparing and maintaining a List of Inuit firms in the Nunavut Settlement Area. The Makivik Corporation, the Cree Regional Authority and the Naskapi Indian Band of Quebec are responsible for preparing and maintaining lists of aboriginal firms in the James Bay and Northern Quebec Settlement Area. These lists include information on the goods and services the firms are in a position to furnish in relation to government contracts. These lists shall be used by Canada for the purpose of requesting firms in the respective settlement areas to participate in solicited bidding. This shall not restrict the

ability of any firms, not on the lists, to tender bids for government contracts.

To obtain an up-to-date copy of the Nunavut List of Inuit Firms, please contact:

Nunavut Tunngavik Incorporated
Business Development Department
P.O. Box 638
Iqaluit, NU X0A 0H0
Telephone: 1-888-646-0006
Facsimile: (867) 975-4949

For information on how to obtain up-to-date copies of the list of James Bay and Northern Quebec firms, please contact the organizations listed below.

Makivik Corporation
3333 Place Cavendish, 3rd Floor
St-Laurent, QC H4M 2X6
Telephone: (514) 745-8880
Facsimile : (514) 745-3700

Oujé-Bougoumou Cree
203 Opemiska Meskino
Oujé-Bougoumou, QC G0W 3C0
Telephone: (418) 745-3931
Facsimile: (418) 745-3844

Grand Council of the Crees (of Quebec)
24 Bayswater Avenue
Ottawa, ON K1Y 2E4
Telephone : (613) 761-1655
Facsimile : (613) 761-1388

Naskapi Development Corporation
120-1000 St-Jean-Baptiste Avenue
Quebec, QC G2E 5G5
Telephone : (418) 871-5100
Facsimile : (418) 871-5254

Naskapi Indian Band of Quebec
P.O. Box 970
Schefferville, QC G0G 2T0
Telephone: (418) 585-2686
Facsimile : (418) 585-3130

CKTEA

Note: Special procedures only apply to procurement covered by the Canada-Korea Telecommunications Equipment Agreement (CKTEA), but not by the World Trade Organization Agreement on Government Procurement.

7A.006 (2001-12-10) When requirements consist of more than one good, the certification for Canadian and/or Korean content can be done in the following ways:

(a) **Aggregate**. Multi-item requirements will be certified on an aggregate basis; or,

(b) **Item by Item**. Multi-item requirements will be certified on an item-by-item basis. In

these cases, suppliers will be asked to identify separately each item that meets the definition of Canadian or Korean goods (see 5.06B).

7A.007 (2002-05-24) For procurement to which the special procedures under the CKTEA applies, the contracting officer shall decide, at the procurement planning stage, whether the procurement will be:

(a) **Solely Limited**: the solicitation will be solely limited to suppliers who could offer Canadian and/or Korean goods and services when the contracting officer believes there exists in the marketplace, two or more such suppliers (solely limited certifications are provided in the *Standard Acquisition Clauses and Conditions* (SACC) Manual, under clause numbers K5001T, K5003T, K5004T, K5011T, K5013T or K5014T). Except for bids that will be publicly opened, the contracting officer will determine whether:

(i) the bidder will be required to submit the certification of content with bid (K5001T, K5003T, K5004T), or

(ii) the bidder will be asked for the certification if it is not submitted with bid (K5011T, K5013T or K5014T). The contracting officer must indicate in the clause the number of days that the bidder will have to submit the certification upon request. Bidders will normally be given no more than three (3) working days to provide signed CKTEA certifications. The specified time period should be dependent upon the urgency of the requirement.

For publicly opened bids, the bidder must be required to submit signed certification with bid (K4001T, K4003T or K4004T).

The contracting officer will normally not require bidders to submit certifications with bid unless the requirement is urgently needed by the client; or

(b) **Conditionally Limited**: the solicitation will be conditionally limited when the contracting officer is uncertain whether two or more suppliers of Canadian and/or Korean goods and services exist (conditionally limited certifications are provided in the SACC Manual, under clause numbers K5002T, K5005T or K5006T). The bidder will be required to submit certification of content with bid; or

(c) **Open**: when the contracting officer is of the opinion that two or more suppliers of Canadian and/or Korean goods and services do not exist, the solicitation shall be open to all suppliers. Bidders are not required to provide a certification.

7A.008 (2002-05-24) Once the sourcing strategy is determined, the contracting officer will prepare a Notice of Proposed Procurement (NPP). The procurement opportunity will be coded on the Government Electronic Tendering Service (GETS) as:

(a) Solely Limited, per procedure 7A.007 (a);
(b) Conditionally Limited, per procedure 7A.007 (b); or,
(c) Open, per procedure 7A.007 (c).

Canadian Content

7A.010 (1995-07-01) When requirements consist of more than one good, the Canadian content certification can be done in the following ways:

(a) Aggregate. Multi-item requirements will be certified on an aggregate basis; or,

(b) Item by Item. Multi-item requirements will be certified on an item-by-item basis. In these cases, suppliers will be asked to identify separately, each item that meets the definition

of Canadian goods in 5.072 or 5.073.

7A.011 (2003-12-12) For procurement to which the Canadian Content Policy applies, the contracting officer shall decide, at the procurement planning stage, whether a competition will be:

(a) **Solely Limited**: the solicitation will be solely limited to suppliers who could offer Canadian goods and/or services when the contracting officer believes there exists, in the marketplace, three or more such suppliers (solely limited certifications are provided in the SACC Manual, under clause numbers K4001T, K4003T, K4004T, K4011T, K4013T or K4014T). Except for bids that will be publicly opened, the contracting officer will determine whether:

(i) the bidder will be required to submit the certification of content with bid (K4001T, K4003T or K4004T), or

(ii) the bidder will be asked for the certification if it is not submitted with bid (K4011T, K4013T or K4014T) The contracting officer must indicate in the clause the number of days that the bidder will have to submit the certification upon request. Bidders will normally be given no more than three (3) working days to provide signed Canadian Content certifications. The specified time period should be dependent upon the urgency of the requirement.

For publicly opened bids, the bidder must be required to submit signed certification with bid (K4001T, K4003T or K4004T).

The contracting officer will normally not require bidders to submit certifications with bid unless the requirement is urgently needed by the client; or

(b) **Conditionally Limited**: the solicitation will be conditionally limited when the contracting officer is uncertain whether three or more suppliers of Canadian goods and/or services exist (conditionally limited certifications are provided in the SACC Manual, under clause numbers K4002T, K4005T or K4006T). The bidder will be required to submit certification of content with bid; or

(c) **Open**: when the contracting officer is of the opinion that three or more suppliers of Canadian goods and/or services do not exist, the solicitation shall be open to all suppliers. Bidders are not required to provide a certification.

7A.013 (2003-12-12) Once the sourcing strategy is determined, the contracting officer will prepare a Notice of Proposed Procurement (NPP). The procurement opportunity will be coded on GETS as:

Solely Limited, per procedure 7A.011 a): Code O-5;

Conditionally Limited, per procedure 7A.011 b): Code O-4; or,
Open, per procedure 7A.011 c): Code O-1.

Bid Closing

7A.015 (1995-07-01) All bid solicitations must specify the bid closing date, time and location.

Contracting officers must ensure that instructions for the submission of bids and closing time for each solicitation are clearly stated in the bid solicitation document and not open to misinterpretation. Contracting officers must also ensure that the closing date appearing on the Notice of Proposed Procurement (NPP) does not conflict with the bid solicitation.
SACC Manual clause A0000T should be used, so that it is clear that only bids received via Canada Post and bearing a "postmark" are eligible bids if they were mailed prior to the day of

bid closing, and received prior to bid award. This applies to bids sent via any Canada Post service, including Priority Courier and Xpresspost. Provisions of the Late Bid procedure (see 7D.304) do not apply if any other courier service is used.

7A.016 (1996-06-03) Where a need is identified (e.g. a large number of bulky proposals is expected) to receive bids at a location other than the designated bid receiving area, contracting officers must make arrangements with the bid receiving personnel before establishing a bid closing date.

An assessment of this location is carried out by bid receiving personnel, ***in consultation with departmental security personnel****, to ensure the complete physical security of bids from the time of receipt to the time of opening. The responsibility for recording bids received at these locations remains with the designated bid receiving personnel.*

7A.017 (2004-05-14) Bids resulting from a competitive Request for Quotation (RFQ) below $25,000 (including all applicable taxes) may be submitted to the contracting officer instead of a designated bid receiving area. These RFQs must inform suppliers that:

(a) modifications are not permitted after a quotation is received;
(b) any quotation received after the specified date, regardless of time of mailing, shall be considered non-responsive; and,
(c) if all quotations are received before the specified date, the appropriate contract document (see 7E.500) may be issued immediately.

Bid Security

7A.020 (1997-09-15) When bid security is required, the bid solicitation must clearly state that it is mandatory and, unless otherwise indicated, will either be in the form of a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit), or a surety bond.

7A.021 (1997-09-15) Bidders who supply a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) as bid security are required to submit their bids under seal (except in Quebec, where the seal concept does not apply). This procedure provides a legal basis for full or partial forfeiture of the security deposit in the event the bidder withdraws the bid before acceptance, refuses to enter into a contract or fails to furnish the required contract security.

7A.022 (1997-09-15) To prevent problems in obtaining the required contract financial security at a later date, bid solicitations must specify that, if the required contract security is not furnished within the period specified, a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) given as bid security will be forfeited or payment demands will be made against the bid support letter of credit. The amount forfeited must not exceed the difference between the bid price and the amount of the contract entered into by the Crown.

This provision is also contained in the Bid Bond in Annex 7.1.

7A.023 (2003-05-30) Unless the acceptable form of security is limited to security deposits (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit), the bid solicitation must include a list of those surety companies whose bonds are acceptable to the government, together with specimen forms of the applicable model bond forms. Deviation from the specimen bond shall be permitted only with the prior approval of Legal Services.

Specimen forms are in annexes 7.1 (Bid Bond), 7.2 (Labour and Material Payment Bond), and 7.3 (Performance Bond).

"The Labour and Material Payment Bond contained in Appendix S of the Treasury Board Contracting Policy 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."

"The Claimant's Payment Bond form is a 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."

7A.024 (2000-12-01) For procedures on handling bid security, see Annex 7.4, Handling, Custody and Safekeeping of Financial Security. The contracting officer must instruct the bid receiving area as to the handling of bid securities received.

Performance

7A.026 (1995-07-01) Performance means the fulfillment or accomplishment of that which is required by a contract or under a condition.

7A.027 (1998-11-23) When required, bid solicitations may contain various mechanisms for encouraging timely performance, such as:

(a) contract security (financial):

(i) security deposits, whereby the contractor deposits securities (government guaranteed bonds, bill of exchanges or irrevocable standby letters of credit) which Public Works and Government Services Canada (PWGSC) may convert to complete the contractor's obligation; or

(ii) performance bonds, which are a type of surety bond used to guarantee the performance of the contract;

(b) holdbacks, whereby an amount is withheld under a contract to ensure the due performance of the contract.

Normal arrangements for holdbacks will be incorporated into contracts by including the relevant SACC Manual clause H1003D in bid solicitation or contractual documents.

(c) liquidated damages clauses, whereby provision is made for the Crown to recover the pre-estimated loss or rate of loss that would result from a delivery default, without being required to prove actual damages.

Where the inclusion of a liquidated damages clause is appropriate, the contracting officer must incorporate such provisions by including SACC Manual clause D0024D in both the bid solicitation and contract.

Care should be taken to ensure that the rate of assessment of liquidated damages is reasonable. The probable damages should be established by reference to the individual circumstances of the particular procurement. The contract should specify the ceilings for collection of liquidated damages. Such ceilings or maximums can be stated in either of two ways:

(i) by specifying a fixed amount payable upon delinquency (refer to SACC Manual clause D0024D). This method should be used when it is intended that the contract will be terminated immediately when delinquency occurs and the supplies or services reprocured elsewhere. The cost of reprocurement is to be included in the overall fixed amount; or

(ii) by specifying a rate of assessment of damages (refer to SACC Manual clause D0024D). This rate per calendar day of delay up to a stated maximum number of days will be subject to the limitation that the total amount of liquidated damages shall not exceed a stated percent of the contract price. This method should be used when, upon default occurring, it is intended to serve notice of default requiring the contractor to remedy the default within a stated period of time. The cost of reprocurement is to be excluded in computing liquidated damages, since this item will be claimable separately in the event that the contract is terminated and the supplies or services procured elsewhere.

To ensure uniformity of application, the amount or overall ceiling should not exceed 10 percent of the contract price. Ceilings in excess of 10 percent may be used where justified by the individual circumstances of the particular acquisition, subject to the approval of the contract approval authority.

(d) delivery incentive payments, whereby provision is made in the pricing basis for early delivery.

Such incentives for early delivery should be considered only in the case of major procurements with long lead times for delivery, where such payment provisions can act as an incentive to the contractor in putting forth special efforts to achieve earlier than scheduled delivery and the client agrees because of substantial realizable cost savings and other benefits.

Communications - Solicitation Period

7A.028 (2002-12-13) To ensure the integrity of the competitive bid process, enquiries and other communications regarding any procurement, from the issue date of the solicitation up to the award date, are to be directed **only** to the PWGSC contracting officer responsible for the procurement, not to the client department or other government officials. (See SACC clause A0012T.)

Bidders' Conference and Site Visits

7A.029 (1997-09-15) Whenever there is to be a bidders' conference (see 6E.611) or site visit (see 6E.615):

(a) The NPP and bid solicitation documents must clearly state that there will be an optional bidder's conference or optional/mandatory site visit and indicate the location, date and time.

(b) Schedule the meeting on a date that will:

(i) allow bidders time to obtain and review the bid solicitation; and

(ii) allow for preparation and distribution of minutes in sufficient time for bidders to prepare and submit bids before the bid closing date.

(c) In the event of a mandatory site visit, the NPP and bid solicitation documents must clearly state that:

(i) the site visit is mandatory; and

(ii) failure to attend will render bidders non-responsive.

(d) In the event of either an optional site visit or bidder's conference:

(i) the NPP and bid solicitation documents shall indicate that attendance by

potential bidders is optional; and

(ii) bidders that do not attend are not precluded from submitting a bid.

7A.030 (1995-07-01) Refer to SACC Manual, Subsection 5-A, for clauses concerning location, timing and administration of the bidder's conference or site visit. Request in the bid solicitation that bidders identify, in writing, before the meeting date, the names of the representatives who will attend and a list of the issues they propose to raise.

Progress Payments and Advance Payments

7A.033 (1995-07-01) When progress payments or advance payments are used, contracting officers should include the appropriate clause from SACC Manual, Subsection 5-H, in all bid solicitation and contract documents.

Interest Payments on Overdue Accounts

7A.035 (1994-06-23) The government pays interest on overdue accounts for contracts, call-ups against a standing offer and purchase orders.

7A.036 (2003-05-30) When including general conditions 1034, Construction - Fixed Price and Unit Prices, payment of interest on overdue accounts will be made in certain circumstances, as described in section 51. Any change to this section which increases the Crown's liability in respect of the payment of interest must be approved by Treasury Board prior to inclusion in the contract.

7A.037 (1994-06-23) When dealing with federally or provincially regulated public utility companies, the conditions for payment of interest must conform with those approved by the appropriate regulatory bodies.

7A.038 (2001-12-10) In all other instances, the appropriate SACC Manual clause H4900D reflects the government's policy to automatically pay interest to its suppliers when an account is not paid within fifteen (15) calendar days of the due date and the government is responsible for the delay. When progress payments are made, both the bid solicitation and contract must contain the clause H4900D.

The interest payment conditions set out in his clause must be strictly adhered to, except in special cases where the client requisition specifies a payment period longer than thirty (30) days. Examples of this are when extensive product evaluation, inspection or testing requirements are involved.

Cash Discount Considerations

7A.041 (1994-06-23) For all contracts except those for advertising, payment may be made in advance of the due date when the supplier offers a discount for early payment and the discount at least offsets the cost to the government of paying early. Cash discounts for early payment will not be considered in the evaluation of bids.

When the successful bidder is offering a cash discount, this should be shown prominently in the contract, so that the paying office can take appropriate advantage of the offered discount.

Payment by Credit Card

7A.042 (1996-06-03) Supplier invoices may be paid using the Government of Canada Acquisition Card (credit card) in lieu of cheque issue, however, vendors are not obligated to accept credit cards as a payment instrument unless it is specifically set out in the contract or standing offer. In some

instances, early payment via credit card may still represent a cost saving to the supplier.

The decision to use credit cards for payment of supplier invoices is a cash management decision made by the client. Where it is anticipated that the client may use the credit card to pay invoices, this should be identified in the contract/standing offer using SACC Manual clauses H3027T and H3027C.

When the successful bidder is offering to accept payment by credit card, this should be shown prominently in the contract, so that the paying office can take appropriate advantage of the offered method of payment.

Audit Clauses

Cost Reimbursable

7A.045 (1994-06-23) Bid solicitations and contracts containing cost reimbursable elements must incorporate an appropriate audit clause. The term "cost reimbursable" covers the following bases of payment: Actual Cost; Cost plus Fixed Fee; Cost plus Percentage of Cost; and Target Price/Ceiling Price/Target Cost.

7A.046 (1998-11-23) Upon completion of a cost reimbursable contract, and also annually for multi-year contracts, the contractor will be required to provide a cost submission to the contracting officer. This is implemented by using SACC Manual clause C0300D and C0301D. The requirement for a cost submission must be listed as a mandatory deliverable item within the contract, except that it is discretionary in the case of Repair and Overhaul contracts.

Fixed Time Rate

7A.047 (1998-11-23) Upon completion of a fixed time rate contract, the contractor must provide a submission detailing the actual time incurred in performance of the contract. The requirement for this submission will be included as a mandatory deliverable item by using SACC Manual clause C0708D. In addition, SACC Manual clause C0700D or C0701D must be used, to provide for the verification of time for acceptability and the verification of time for accuracy.

Method of Bid Response

7A.051 (2004-05-14) The contracting officer may select from the following methods of bid response:

(a) in writing
- all values;

(b) by telephone
- below $25,000 (including all applicable taxes);
- any amount, in cases of documented extreme urgency (director approval mandatory)

(c) by electronic transmission (e.g. electronic bid package or facsimile). (See 7D.317)
- any amount, except for bids required to be under seal and bids required to contain a surety bond.

Where some form of, or any, electronic transmission of bids is not acceptable, this must be clearly indicated in the bid solicitation, and should be in the Notice of Proposed Procurement.

Canadian Arsenals Limited Certification

7A.055 (1994-06-23) The Act to authorize the divestiture of Canadian Arsenals Limited reflects the wish of the Government of Canada to maintain Canadian Arsenals Limited as a Canadian-owned and -controlled Corporation. It prevents non-residents from holding or beneficially owning more than 25 percent of the voting shares in respect of which votes may ordinarily be cast to elect directors of the Corporation. The Purchase and Sale Agreement relating to the divestiture also contains this restriction. By the same instrument, the seller and the buyer have agreed respectively to request confirmation of and to confirm the maintenance of the Canadian ownership status of the Corporation as a condition of each future supply contract to be entered into between these two parties.

7A.056 (1994-06-23) All PWGSC contracts with Canadian Arsenals Limited, or any successor corporation formed by any subsequent amalgamation of the Corporation, must include SACC Manual clause K9002D. This clause certifies compliance with the requirements of the *Canadian Arsenals Limited Divestiture Authorization Act*.

Transportation Costs

7A.060 (1998-02-16) For most requirements with an estimated expenditure of $25,000 (including GST/HST) or more, with known delivery points, contracting officers should solicit bids on the basis of FOB destination. (See 6E.621 and 7D.409.)

For requirements with unknown delivery points, contracting officers should solicit bids on the basis of FOB origin only.

Truck Haulage Rates

7A.061 (2002-12-13) The purpose of this policy is to make provision for independent trucking contractors working on federal government contracts to be paid haulage rates that are in accordance with minimum or maximum rates as and where established by the provincial and territorial governments across Canada, as required by section 16.14 of the *TB Contracting Policy*. These rates are not necessarily those established or recommended by the various independent trucker's association. For haulage work between provinces and territories, the applicable rates are to be those that are in effect in the province or territory in which the majority of the work or the largest component of the work is located.

For requirements involving work in whole or in part of a haulage nature, bid solicitation documents must include SACC clause C5205T. Clause C5205C must be included in any resulting contractual documents. The bid solicitation clause requires the prime contractor to agree to pay and to certify that, under any resulting contract, it will pay its subcontractors haulage rates as established by the relevant provincial or territorial authority, as and where applicable. The contractor is also required to flow down this commitment to any subcontractors. The contract document clause will provide the right to audit to ensure compliance with the requirement of the Truck Haulage Rates policy.

Where the rates quoted are below the minimum rates or above the maximum rates established by the appropriate provincial or territorial authorities, prior to the award of the contract or standing offer, contracting officers should exercise due diligence by:

(a) challenging the validity of the quoted rates,

(b) requesting the bidder/tenderer to confirm its intention to comply with the policy and/or regulations and to explain how it intends to comply, and

(c) providing that bidder/tenderer with the opportunity to withdraw (not correct / fix) its bid/tender/offer.

Fair Wages

7A.062 (2002-12-13) The purpose of this policy is to make provision for ensuring that, on federal government construction contracts, contractors will pay their employees at least the minimum wages as and where established by the federal government across Canada and described in the applicable Fair Wages schedule(s). The applicable wage schedule is to be the one that is in effect in the area in which the work, the majority of the work or the largest component of the work is located.

For requirements involving fair wages, bid solicitation documents must include clause C5205T. Clause C5210C must be included in any resulting contractual document. The bid solicitation clause requires the prime contractor to agree to pay and to certify that, under any resulting contract, it will pay its employees at least the minimum wage rates as established by the relevant federal authority. The contractor is also required to flow down this commitment to any subcontractor. The contract document clause will provide the right to audit to ensure compliance with the requirement of the Labour Conditions and Fair Wage Schedule.

Where the wages quoted are below those in the schedule published by the federal authority, prior to the award of the contract or standing offer, contracting officers should exercise due diligence by:

(a) challenging the validity of the quoted wages,

(b) requesting the bidder/tenderer to confirm its intention to comply with the policy and/or regulations and to explain how it intends to comply, and

(c) providing that bidder/tenderer with the opportunity to withdraw (not correct / fix) its tender/offer.

Multi-Item Bids

7A.064 (1994-06-23) While the standard conditions of bids provide for their acceptance "in whole or in part", it is sometimes appropriate to emphasize the prerogative to award the contract, or create the Standing Offer (SO), on either an aggregate or partial basis by including SACC Manual clause C9000T in the bid solicitation.

Royalty Payments and Licence Agreements

7A.068 (1997-06-23) Where royalty payments may have to be made by the contractor or subcontractors in the performance of contracts, the applicable sections of the appropriate general conditions or supplemental general conditions should be included in the bid solicitation document. Bidders must provide where applicable, the patent or registered industrial design numbers together with places and dates of issues and copies of the licence agreements; or technical descriptions and drawings of the processes or devices being purchased. (See 6B.159.)

Intellectual Property

7A.070 (2005-06-10) The bid solicitation should make clear to potential bidders the ownership of any Intellectual Property (IP) rights, as determined by the client department. SACC Manual clauses may be used in conjunction with the general conditions and supplemental general conditions to meet the client department's requirement (see Annex 7.5).

In the case of low-dollar value procurements which use general conditions 2029, section 13, Title, contains a provision to the effect that copyright, where it exists, belongs to Canada upon delivery and acceptance by Canada.

Exchange Rate Fluctuations

7A.075 (2003-05-30) Whenever it is proposed to offer protection against the risk of exchange rate fluctuation, SACC Manual clause C3010T must be included in the bid solicitation. (See 6C.313.)

Bidders requesting the exchange rate adjustment provision will use form PWGSC-TPSGC 9411, Claim for Exchange Rate Adjustments, to identify the value in foreign funds of the foreign currency component. The contracting officer will show in Column 3 the initial exchange rate factor which will be the Bank of Canada exchange rate in effect on the date of bid closing or on any other date specified in the bid solicitation. This exchange rate factor will be reflected in the resulting contract for the purpose of calculating the amount of any claim for adjustment.

7A.076 (1996-06-03) Whenever exchange rate fluctuation is not expected to be an issue and that it is therefore not proposed to offer protection against it, SACC Manual clause C3011T must be included in the bid solicitation to clearly indicate to bidders that a request for exchange rate adjustment will not be considered and that it will render the bid non-responsive.

Soliciting Standing Offers

7A.080 (2004-05-14) When seeking SOs from offerors, either competitively or sole source, the offeror downloads a Request For a Standing Offer (RFSO) on MERX, with instructions as to the use, purpose and limitations of the proposed SO.

7A.081 (2004-05-14) Standard instructions and conditions 9403-6, Standing Offers, are designed specifically for SOs, and should be called-up under the Incorporation by Reference clause M0000T at the beginning of each RFSO and Call-up Against a Standing Offer document.

7A.082 (1994-06-23) The contracting officer will establish and make reference to minimum, if applicable, and maximum financial limitations for individual call-ups in the SO.

Call-ups against SOs are considered individual contracts and are subject to contracting authorities delegated by TB to clients. The contracting officer may nevertheless set more restrictive limits appropriate to the individual SO.

7A.083 (2001-12-10) The inclusion of a Limitation of Expenditure in standing offers is optional. The contracting officer will determine the need for inclusion of a limit on the basis of the type of Standing Offer (Master or Individual), the degree of control over total expenditures which is either possible or desirable, and the needs of the client.

Services - Non-Permanent Residents

7A.088 (1994-06-23) The *Immigration Act* and Regulations set out the conditions under which non-permanent residents obtain employment authorization before receiving permission to enter Canada for temporary work. This includes temporary entry to perform work under contract to the federal government.

7A.089 (1994-06-23) When soliciting bids for goods and services that may result in the need for the services of non-permanent residents to be performed in Canada, the appropriate SACC Manual clauses must be included in bid solicitations and contracts:

(a) A2000D where the contract is to be with a Canadian supplier;
(b) A2001D where the contract is to be with a foreign supplier.

Former Public Servants

7A.095 (2004-05-14) SACC Manual clauses A9103T or A9104T, and A9105C and A9106T must be included in all bid solicitations and contracts for services, which may involve Former Public

Servants, to ensure compliance with the various public service workforce reduction programs. (See 6D.482.)

Former Public Servants is defined as:

- an individual;
- an individual who has incorporated;
- a partnership made of Former Public Servants; or
- a sole proprietorship or entity where the affected individual has a major interested in the entity.

Taxes and Duties

7A.100 (2003-12-12) It is established procedure, as set out in following sections, that bidders from outside Canada do not include applicable Canadian customs duties and excise taxes in their bids. SACC Manual clause A0221T should be used.

Contracting officers may on occasion judge it appropriate to request foreign suppliers to bid prices inclusive of these duties and excise taxes. In these cases, SACC Manual clause A0220T should be used. However, this may have an effect on the number of bidders, many of whom are accustomed to bidding FOB plant, and who are not prepared to take the time to gather the required information and make the necessary calculations. Note that it is the importer of record who is responsible for paying these excise taxes and duties, so a foreign bidder has no direct interest in the calculations unless the requirement is to be FOB destination.

Customs Duty

7A.101 (2003-12-12) Bid solicitations must contain all customs duty information necessary to permit bidders to submit responsive bids.

Bidders in Canada must include all applicable duties in their prices, unless otherwise indicated. In resultant contracts, all applicable duties must be included in the price.

Except where prices are specifically requested inclusive of duties and taxes in Canadian dollars (see 7A.100), bidders outside Canada must not include Canadian customs duty. In resultant contracts, duties must not be included in the price, but are to be paid, upon the importation of goods, by the client. However, a foreign-based contractor who subcontracts in Canada for manufacture and delivery of goods in Canada will include all applicable duties chargeable to the subcontract.

7A.102 (2004-05-14) For all Department of National Defence (DND) contracts, the Goods and Services Tax/Harmonized Sales Tax (GST/HST) is to be reimbursed for non GST/HST registrants. DND will reimburse prime contractors only the actual GST/HST that is paid to the Canada Revenue Agency (CRA). Refer to 7E.606 for further information on DND contracts only for handling of GST/HST at the contract award stage.

Withholding of 15 percent on Service Contracts with Non-Residents

7A.103 (2005-06-10) Non-resident contractors must be informed during bid solicitation and contract negotiation of the 15 percent withholding of payment. (See 6D.430 and 11.022.)

7A.104 (2005-06-10) Withholding pursuant to subsection 105(1) of the *Income Tax Regulations* does not apply to the following:

"***Reasonable travel expenses***

24. The CRA provides an administrative exception from withholding for reasonable travel

expenses. Travel expenses reimbursed to the non-resident for meals to a maximum of CAN$45 a day per person and accommodation to a maximum of CAN$100 a day per person will not be subject to Regulation 105 withholding and will not require vouchers to be retained by the payer.

25. Reasonable travel expenses, in excess of the above amounts, supported by vouchers retained by the payer and either paid directly to third parties on behalf of a non-resident, or reimbursed to a non-resident will also not be subject to Regulation 105 withholding.

26. Such travel expenses are limited to those expenses incurred for transportation, accommodation, or meals."

Canada Revenue Agency
Income Tax Information Circular 75-6R2

It should be noted that when a non-resident can demonstrate, based on treaty protection or estimated income and expenses, that withholding normally required is in excess of their ultimate tax liability, CRA may issue permission to the payer authorizing a reduction in withholding under subsection 105(1) of the Regulations. The procedure to apply for a reduction of withholding is provided for in Income Tax Information Circular 75-6R2, as well as in the Non-Resident Withholding Guide 2004.

7A.105 (1999-12-13) When a service contract is awarded to a non-resident contractor in respect of services rendered in Canada, SACC Manual clause C2900D must be used.

Defence Contract and Defence Supplies

7A.106 (2005-06-10) Any contract constituting a "defence contract" as defined in the *Defence Production Act* (DPA) must contain *Standard Acquisition Clauses and Conditions* (SACC) Manual clause A9006D. For standing offers, any call-up constituting a "defence contract" must incorporate clause M0022D.

A contract issued on behalf of the Department of National Defence (DND) is not necessarily a defence contract. For example, a contract for goods purchased for DND's day to day operations is not a defence contract. Furthermore, it is also possible for a defence contract to be issued on behalf of a department other than DND. Only the client, as the technical authority, can determine whether a particular requirement will result in a defence contract as defined in the DPA.

7A.107 (2005-06-10) Bid solicitations, Requests for Standing Offers and contracts for defence supplies estimated at $250,000 or more, that involve importation of defence supplies, and requires the contractor to be the importer, must contain SACC Manual clause C2601D. This clause specifies that the contractor will be responsible for pre-arranging remission on importation or for paying customs duties on importation and applying to the Canada Revenue Agency (CRA) for a refund. Use SACC Manual clause C2610D when DND is the Importer of Record. The importer is responsible for applying to Public Works and Government Services Canada in good time for the certification required by the Customs Tariff.

According to the CRA, "defence supplies" include only those specified goods which are, or may be, used directly or indirectly in the defence of Canada. Goods purchased for DND's day to day operations are not eligible.

7A.108 (2003-12-12) In bid solicitation documents subject to Tariff Item No. 9982.00.00 of the Schedule to the *Customs Tariff*, prices should be requested from suppliers located in Canada with customs duty exempted.

Customs Duty and GST/HST on Tools, Equipment or Spare Parts in Contracts for Services by Non-residents

7A.112 (2004-05-14) Bid solicitations and contracts for the services in Canada of a non-resident must contain a provision which instructs the non-resident contractor to comply with Canada Border Services Agency' requirements and to pay customs duty, the GST and/or the HST, as applicable.

When it is anticipated that a non-resident may be required to import tools, equipment or spare parts to perform services in Canada, SACC Manual clause C2604D must be used.

Excise Taxes

7A.115 (1994-06-23) Bidders located in Canada must include all applicable excise taxes. In resultant contracts, the applicable taxes must be included in the total estimated price.

7A.116 (1994-06-23) Bidders located outside Canada must not include excise taxes. In resultant contracts, the applicable taxes shall not be included in the total estimated price.

Goods and Services Tax/Harmonized Sales Tax

7A.120 (1999-12-13) Bid solicitations, RFSOs and contracts must contain the appropriate GST/HST clause C2215D provided in the SACC Manual.

No GST/HST clause is necessary in bid solicitations or contracts where the contract will be performed entirely outside of Canada.

7A.121 (1998-02-16) Bidders shall provide the GST/HST separately in the bid. They must also indicate whether their supplies are fully taxable, zero-rated, or exempt, and must show into which category each item falls (see Annex 6.1D.)

Federal Contractors Program for Employment Equity

7A.127 (2004-05-14) All solicitations estimated at $200,000 or more (including all applicable taxes) must incorporate *Standard Acquisition Clauses and Conditions* (SACC) Manual clause K2000T, which specifies the possible application of the Federal Contractors Program for Employment Equity (FCP-EE). This clause also advises bidders subject to the FPC-EE that if they have been declared "ineligible contractors" by Human Resources and Skills Development Canada (HRSDC), they are ineligible to receive government contracts over the *Government Contracts Regulations* (GCRs) threshold for solicitation of bids (currently at $25,000). They are required to indicate their status with respect to FCP-EE, and sign a certification stating that if they are subject to FCP-EE, they continue to hold a valid certificate number, or if they have not obtained a number in the past, they are submitting an original certificate of commitment. SACC Manual clause K2003C will indicate that should a verification disclose a misrepresentation on the part of the bidder, the Minister shall have the right to treat the contract as being in default.

It would be prudent to include this clause in solicitations estimated slightly below $200,000 (for example, starting at $175,000), to allow for potential increases (beyond $200,000) in the resulting contract or standing offer value.

7A.128 (2004-05-14) All solicitations over the threshold for solicitation of bids as set out in the GCRs (currently at $25,000) and under $200,000 must contain SACC Manual clause K2002T which advises bidders that if they have been declared "ineligible contractors" by HRSDC, they are ineligible to receive government contracts over the GCR threshold for solicitation of bids (currently at $25,000). They are required to indicate their status with respect to FCP-EE, and sign a certification stating that if they have been subject to FCP-EE in the past, they continue to hold a valid certificate number. A new certificate is not required in this instance. SACC Manual clause K2003C will indicate that should a verification disclose a misrepresentation on the part of the bidder, the Minister shall have the right to treat the contract as being in default.

Controlled Goods

7A.130 (2004-12-10) SACC Manual clause A9130T must be included in bid solicitation documents and clause A9131C in contracts when there is production of or access to controlled goods.

For more information on controlled goods, contracting officers should visit the Controlled Goods Program Website.

Joint Ventures

7A.133 (1994-06-23) When bids are anticipated from joint ventures, the bid solicitation must include SACC Manual clause K9001T requiring bidders to state whether the bid is submitted in joint venture and, if so, the participants and the structure of the joint venture.

U.S. Defense Priorities and Allocations System

7A.140 (2004-05-14) The United States (U.S.) Defense Priorities and Allocations System (DPAS) is intended to:

(a) assure the timely availability of industrial resources to meet current national defense and emergency preparedness program requirements; and

(b) provide an operating system to support rapid industrial response in a national emergency. By specific agreement, Canada may have its contracts, involving U.S. suppliers, for defense program items assigned priorities under the DPAS.

Priority Ratings are intended to support approved Defense programs. Priority Ratings should **not** be used to support procurement of:

(a) civilian items for resale in Military Exchanges or the packaging for such items;

(b) any items which

(i) are commonly available in commercial markets for general consumption;

(ii) do not require major modification when purchased for approved program use; and

(iii) are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements; or

(c) items to be used primarily for administrative purposes, such as for personnel or financial management.

Contracting officers should seek assistance from the Central Allocations and Defence Priorities Section Officer, Business Management Directorate (BMD), to determine whether the system may be utilized for U.S. procurements when dealing with a contract with a defence connotation. The intent would be to utilize the system specifically to maintain delivery schedules to meet military production and logistical requirements. As well, section 700.17(f) of the DPAS regulation states: “A person is not required to place a priority rating on an order for less than US$50,000, or one-half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold, whichever amount is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating.”

Contracting officers may refer to either of the following Internet sites for reference material on

the DPAS: http://www.bxa.doc.gov/OSIES/DPAS/Default.htm and http://www.ml.afrl.af.mil/dpas/default.html.

Prior to contract award, and with consideration of the foregoing, contracting officers must insert SACC Manual clause C2800C in all Canadian defence contracts placed with U.S. suppliers and SACC Manual clause C2801C in all Canadian defence contracts placed with Canadian suppliers. (See 6B.195.)

To ensure that the U.S. DPAS is utilized when a U.S. supplier is involved in the procurement process, Canadian contractors should insert SACC Manual clause C2801C in their orders with other Canadian suppliers.

A priority rating placed on a U.S. supplier may be extended through the procurement chain to second, third and subsequent tiers of U.S. suppliers. This arrangement is not available to Canadian suppliers. Consequently, the priority rating placed on a Canadian supplier cannot be extended to other Canadian suppliers at any level.

Contracting officers must provide a copy of all the defence contracts and amendments placed with Canadian and U.S. suppliers to the Central Allocations and Defence Priorities Section Officer, BMD.

Copies of headquarters' contracts are distributed through arrangements made with the contract distribution area, but other officers must make their own arrangements to ensure distribution.

For a variety of reasons, U.S. suppliers may be unable to deliver material to Canadian contractors, within the time frames specified, despite the prompt application for and the timely issuance of a priority rating. To enable the Central Allocations and Defence Priorities Section Officer to intervene in delivery problems, the Canadian suppliers should prepare and submit form PWGSC-TPSGC 1451-1, Application for U.S. Priority Rating Covering Importation of Quarterly Requirements of Materials from the United States (english only) or PWGSC-TPSGC 1451-2, Application for U.S. Priority Rating Covering Specific Materials from the United States (english only).

BMD shall, on behalf of PWGSC, coordinate Canada's participation in the U.S. DPAS. Accordingly, all applications for priority rating shall be referred to the Central Allocations and Defence Priorities Section Officer, BMD.

The Special Priorities Assistance request is not a substitute for procurement planning nor is it intended to compensate for delinquency in placing orders.

Section 7B: Issuing a Bid Solicitation

Publicly Advertised Procurement

7B.160 (2004-12-10) Public advertising using the Government Electronic Tendering Service (GETS) is Public Works and Government Services Canada's (PWGSC) preferred notification process for competitive procurement. Procedures 5.047 and 5.048 identify when a different notification method may be considered.

GETS is the generic name of the on-line business opportunity identification and bid solicitation document distribution service. MERX is the trade mark under which Mediagrif Interactive Technologies Inc. is operating GETS for the Government of Canada. MERX provides services to both the buyer and supplier community. MERX allows users (including contracting officers and suppliers) with Internet capability to view and search procurement notices at no charge and to order bid solicitation documents. For more information about GETS (MERX), see 7B.207.

GETS is the only officially designated medium for public advertising under the Agreement on Internal Trade (AIT) and Canada-Korea Telecommunications Equipment Agreement (CKTEA). All Notices of Proposed Procurement (NPPs) and Advanced Contract Award Notices (ACANs) for AIT and CKTEA procurement must therefore be advertised on GETS (MERX). GETS (MERX) and the Government Business Opportunities (GBO) are the officially designated media under the North American Free Trade Agreement (NAFTA), and the World Trade Organization Agreement on Government Procurement (WTO-AGP). All NPPs and ACANs for NAFTA and/or WTO-AGP procurement must therefore be simultaneously advertised on both GETS and in the GBO.

Procurement Notices

7B.180 (2004-12-10) The contracting officer is responsible for preparing all procurement notices and, in the case of selective tendering procedures, any annual notices which establish and maintain a permanent list of qualified suppliers.

7B.181 (2004-12-10) The text of the Notice of Proposed Procurement (NPP) should contain sufficient information to allow a supplier to make an informed decision on whether to download or order a bid solicitation document. The notice must also indicate whether additional material will be sent separately.

7B.182 (2004-12-10) Contracting officers must indicate in the NPP which trade agreement or agreements apply, using the Agreement Type Code.

7B.183 (2004-12-10) For additional information concerning notification requirements under Procurement Strategy for Aboriginal Business' Set-Aside Program for Aboriginal Business, contracting officers should consult 9L.210, and for notification requirements under the Land Claims Set-Aside policy, they should consult 9M.050.

7B.184 (2004-12-10) Contracting officers can create and transmit NPPs to GETS (MERX) through Automated Buyer Environment (ABE). For non-ABE users, contracting officers can create an NPP directly on GETS (MERX) by using the Notice Creation tool.

7B.185 (2004-12-10) For those contracting officers not on ABE, the following statements must be typed in manually, for all requirements, as part of the NPP:

> "The Crown retains the right to negotiate with suppliers on any procurement."
>
> "Documents may be submitted in either official language of Canada."

For contracting officers not on ABE, the following statements must be typed in manually, for all Advanced Contract Award Notices (ACANs):

> "You are hereby notified that the government intends to negotiate with one firm only as identified above. Should you have any questions concerning this requirement, contact the contracting officer identified above."
>
> An ACAN allows departments and agencies to post a notice, for no less than fifteen (15) 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, on or before the closing date, a Statement of Capabilities that meets the requirements set out in the ACAN, the contracting authority may then proceed with the award. However, should a Statement of Capabilities be found to meet the requirements set out in the ACAN, then the contracting authority will proceed to a full tendering process. Suppliers who consider themselves fully qualified and available to provide the services/goods described herein, 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.
>
> The PWGSC file number, the contracting officer's name and the closing date of the ACAN must appear on the outside of the envelope in block letters or, in the case of a facsimile transmission, on the covering page.
>
> The Crown retains the right to negotiate with suppliers on any procurement.
>
> Documents may be submitted in either official language of Canada."

ABE will perform this function automatically.

7B.186 (2004-12-10) The NPP is posted on GETS (MERX) (and the GBO as applicable) once the related bid solicitation document(s) has/have arrived at GETS (MERX) and there are no discrepancies (all elements matching and correct).

7B.187 (2004-12-10) If the electronic notices are received at GETS (MERX) by 17:00 on a given day, and all the elements (notice, document, attachments) match and are correct, then the notice will be posted on GETS (MERX) for the following business day. Notices are posted on GETS (MERX) board only once a day, after midnight.

It is the responsibility of the contracting officer to ensure that the notice and bid solicitation document(s) have been successfully transmitted to GETS (MERX) and the notice posted properly.

7B.188 (2004-12-10) GETS (MERX) returns a confirmation of postings to PWGSC on a daily basis. (See 7B.191.)

With the exception of procurement subject to NAFTA, WTO-AGP, CKTEA and AIT, contracting officers may send a copy of the NPP to suppliers when it is considered necessary to ensure adequate competition. However, these suppliers are still required to obtain the bid solicitation documents from GETS (MERX). A covering letter should also be sent to suppliers.

Bid Solicitation Documents

7B.190 (2004-12-10) Contracting officers must forward bid solicitation documents to GETS (MERX) for

each publicly advertised competitive solicitation. All bid solicitation document elements must be received for distribution by GETS (MERX) (matching and correct) before the corresponding notice will be posted.

7B.191 (2004-12-10) The ABE Support Team - Client Services Support Desk (CSSD), Electronic Processes Directorate, acts as a focal point between GETS (MERX) and the System Administrators and contracting officers to facilitate corrections. Once the bid solicitation document is received by GETS (MERX), all elements are matched and verified correct (i.e. have passed the applicable GETS (MERX) Distribution Unit Quality Assurance checks), and CSSD and the contracting officer are alerted to discrepancies via the confirmation feed from GETS (MERX). (See 7B.186.) A bid solicitation document received at GETS (MERX) which does not have all elements matching and correct will be rejected and the NPP will be placed in a "suspend" file until corrective action is taken. Contracting officers should check the GETS (MERX) site the day after issuing the Notice and notify their System Administrator if the notice has not been posted.

7B.192 (2000-05-12) Corrections required on bid solicitation documents remain the responsibility of the contracting officer.

7B.193 (2004-12-10) The CSSD Team may be contacted by telephone at (819) 956-3325, by facsimile at (819) 956-8272, or by e-mail at: NCR-A2K1 SWAT.

Electronic Bid Solicitation Documents

7B.197 (2004-12-10) Contracting officers are encouraged to send bid solicitation documents to GETS (MERX) electronically through ABE. Depending on the complexity of attachments and inclusions in the bid solicitation package, contracting officers are now able to transmit most (except for Real Property attachments) solicitation documents electronically through ABE to GETS (MERX). ABE has the capability of converting several software applications into PDF format for electronic transmission to GETS (MERX), as well as the capability to transmit large documents electronically (i.e. up to 25MB with 10 inclusions - contact CSSD for more information if required). ABE is configured to handle the transmission of electronic documents in various software applications, including Microsoft Word, Adobe Acrobat (i.e. PDF format), Lotus WordPro and Lotus 1-2-3. Contracting officers are encouraged to maximize electronic procurement by obtaining relevant client-supplied bid solicitation documents electronically. ABE's ability to generate full electronic notices and bid solicitation documents for transmission to GETS (MERX) for distribution to suppliers can yield substantial savings to suppliers in the form of lower document costs.

Non-electronic Documents

7B.202 (2004-12-10) When the bid solicitation document or additional material cannot be sent electronically through ABE to GETS (MERX), contracting officers are responsible for ensuring that sufficient quantities of the bid solicitation documents in a physical format such as paper, diskette, or CD, or the additional materials (e.g. samples, technical drawings and specifications) are sent to the applicable GETS (MERX) Distribution Unit for distribution, and quantities replenished as required.

Contracting officers are responsible for estimating an appropriate number of copies of the bid solicitation documents in physical format and additional materials to send to GETS (MERX) if they cannot be transmitted to GETS (MERX) electronically through ABE. Should the quantities of the bid solicitation document in physical format sent by the contracting officer be insufficient, GETS (MERX) will contact the contracting officer when supplies are getting low and need to be replenished. Contracting officers will then be required to send additional quantities of the bid solicitation documents in physical format to GETS (MERX).

To obtain the required copies of non-electronic bid solicitation documents, contracting officers

may make the copies themselves or request the required copies from the client department. The department or agency initiating the requisition will be responsible for the duplication costs associated with ensuring that copies of a bid package are made available to GETS (MERX) for distribution.

In order to reduce the cost of copying, contracting officers are encouraged to obtain and prepare the bid solicitation documents in electronic format and should any problems be experienced in electronic transmission from ABE to GETS (MERX), contact CSSD.

Additional Bid Solicitation Material

7B.203 (2004-12-10) When additional materials associated with an opportunity (e.g. samples, technical drawings, technical data packages, specifications etc.) are being sent directly to suppliers, and not through GETS (MERX), the originating PWGSC office is responsible for selecting an appropriate method to ensure that this documentation or material relating to the procurement is sent to each supplier that has requested a bid solicitation document from GETS (MERX).

If technical data are to be sent to potential bidders from a different source - e.g. distributed by the client department, the bid solicitation documents should not be issued for posting until the data are available from that source. The bid solicitation must identify the source.

7B.204 (2004-12-10) When the client is responsible for distributing the technical material, the contracting officer must forward the mailing labels to the client.

7B.205 (1994-06-23) Suppliers are responsible for obtaining copies of the necessary technical data if such are available to the trade through normal business channels.

7B.206 (2004-12-10) For procurements that are publicly advertised, the distribution of bid solicitation documents and updates to suppliers from GETS (MERX) is arranged between suppliers and GETS (MERX), which is the sole distributor of documents. Contracting officers must not send bid solicitation documents directly to suppliers .

The Government Electronic Tendering Service (GETS)

7B.207 (2004-12-10) GETS is provided under the trade mark name MERX, by a supplier under contract with the Government of Canada. GETS (MERX) posts procurement notices and bid solicitation documents for suppliers to access. Suppliers with Internet access can search and view procurement notices on MERX at no charge. Suppliers who are MERX subscribers may view an electronic copy of the bid solicitation documents prior to ordering them. Suppliers who are Non-subscriber Order (NSO) users will only be able to view electronic bid solicitation documents on-line after ordering them. Suppliers wishing to order bid solicitation documents must pay a prepaid annual or monthly MERX subscription fee. Alternatively, suppliers may pay a one-time NSO user fee per order basket at the time of ordering a document, plus the other applicable costs for the document(s). Suppliers may view notices and bid solicitation documents on-line and may download the documents electronically, or order the documents by facsimile, e-mail, mail or courier, or may pick-up the documents, according to the supplier's preference and document format availability. The cost to suppliers of each document is based on the delivery method chosen by the supplier and on the size (i.e. number of pages) and format (paper or electronic) of the document. The fees for bid solicitation documents are posted on MERX.

For more information on the fee structure for suppliers, please see the MERX Website. General inquiries about the GETS may be directed to the Contracts Canada Information Centre of PWGSC at telephone number (819) 945-3440 or 1-800-811-1148 from across Canada. Suppliers wishing to subscribe or to order documents should contact the 13 hours a day, 5 days a week MERX Call Centre at telephone number 1-800-964-6379.

For information on the new MERX service, please visit the Electronic Supply Chain Website.

Government Business Opportunities (GBO)

7B.208 (2004-12-10) The latest GBO notices are available on-line from GETS (MERX) each business day (i.e. Monday to Friday). MERX subscribers also have the option to receive the GBO notices either by e-mail or by fax. To order bid solicitation documents, suppliers should contact the MERX Call Centre at the toll-free telephone number 1-800-964-6379. Suppliers that are not MERX subscribers must pay a one-time NSO user fee at the time of ordering a document. All suppliers, regardless of whether they are MERX subscribers or not, must also pay for the bid solicitation document itself.

Opportunity Matching Service

7B.209 (2004-12-10) MERX provides an opportunity matching service to subscribers. Subscribers provide MERX with a specific profile of the types of opportunities they would like to know about, and MERX searches daily for them. One opportunity matching profile will be available for free to all registered subscribers, excluding the NSO User service class. Additional profiles (i.e. quantity two (2) up to a possible maximum quantity of nine (9)) will be available to subscribers for a fee. MERX will notify registered subscribers by e-mail or fax, or on-line (depending on which delivery method suppliers choose for each profile they create) if any of the newly advertised procurement opportunities match their profile.

Determining the Bidding Period

7B.210 (2000-05-12) The setting of a bid closing date must take into account the level of complexity and the advertising medium required. Sufficient time must be allowed for a supplier to obtain the bid solicitation, and any additional material if applicable, and prepare and submit a bid.

7B.211 (2004-05-14) For procurements that are not subject to NAFTA, WTO-AGP or the CKTEA, (whether publicly advertised or not) the bidding period should not be less than fifteen (15) calendar days either from the date the requirement is posted publicly or, in the case of procurements not publicly advertised, from the date the bid solicitations are released. Low dollar value procurements below $25,000 (including all applicable taxes) may be for less than fifteen (15) days as appropriate for efficiency and cost effectiveness.

7B.212 (2004-12-10) For procurements that are subject to NAFTA, WTO-AGP and/or the CKTEA, the following periods for receipt of bids shall apply.

(a) For open tendering procedures, the period for the receipt of bids shall not be less than forty (40) calendar days from the date the Notice of Proposed Procurement (NPP) is published on GETS (MERX).

(b) For selective tendering procedures not involving the use of a permanent list of qualified suppliers, an invitation to qualify must be published for a minimum of twenty-five (25) days on GETS (MERX). Following the 25-day period, a NPP can then be published on GETS (MERX), allowing for the receipt of bids for not less than forty (40) days.

(c) When conducting a procurement using selective tendering from a permanent list of qualified suppliers, in addition to sending invitations to tender to the selected suppliers from the list, an NPP must be published. The NPP should be published at the same time as the initial issuance of the invitations to tender. When this is done, the period for receipt of bids must be no less than forty (40) days from the date of the publication of the NPP. In the event that it may not be possible to publish the NPP at the same time as the initial issuance of the invitation to tender, contracting officers should consult with the Acquisition Strategy and Relations Directorate (ASRD), at (819) 956-0919.

(d) Any time period for publication noted above may be reduced in certain circumstances:

(i) in the case of recurring contracts where the original NPP provided an estimate of when the subsequent notices will be published, the bid period for subsequent procurements may be reduced but not to less than twenty-four (24) calendar days;

(ii) where a state of urgency can be duly substantiated, the bid period may be reduced, but not less than ten (10) calendar days;

(iii) for an enterprise (Crown corporation) subject to NAFTA only, the period for the receipt of bids shall be twenty-four (24) calendar days for Crown corporations that have published an NPP, setting out a description of the subject matter, the time limits for the receipt of tenders, and a contact point for both information and requests for documents, for a minimum of forty (40) calendar days but not more than twelve (12) months;

(iv) where an enterprise (Crown corporation) subject to NAFTA only is using, as an invitation to participate, an NPP regarding a qualification system, the period for the receipt of bids shall be sufficiently long to allow for responsive bidding and may be fixed by mutual consent between the enterprise and all suppliers who have been qualified, but may not be set at less than ten (10) calendar days.

NAFTA, WTO-AGP and the CKTEA specify minimum publication periods. ASRD can assist in determining whether a proposed reduction to the minimum bid period is within the provisions of the agreements. At that point, the business decision as to how much the bid period is to be reduced is to be made by the contracting officer.

7B.213 (2004-12-10) Notices are removed from the GETS (MERX) at the end of the day of closing after which the associated document is no longer available for ordering by suppliers.

Controlled Goods

7B.215 (2002-05-24) Controlled goods cannot be released to persons that are not registered, exempt or excluded under the Controlled Goods Program (CGP).

7B.216 (2004-12-10) When the bid solicitation (e.g. Request for Proposal or Notice of Proposed Procurement) contains controlled goods (* e.g. like a drawing or Statement of Work), only those controlled goods cannot be released (e.g. through GETS [MERX]) to any persons that are not registered, exempt or excluded under the CGP; the remainder of the items are processed as usual.

* NOTE: Not all drawings or Statements of Work are controlled goods themselves even if they relate to controlled goods.

Registered persons are listed on the CGP Website. Once the contracting officer has verified that the person requesting the controlled goods is registered, the bid sets, drawings, statements of work, etc. containing the controlled goods may then be released through adequate means to preclude the examination of controlled goods by unauthorized persons.

7B.217 (2004-12-10) An export permit to export a controlled Technical Data Package (TDP) is required to all countries except, in most cases, the United States. Contracting officers must first determine if their TDP is, in fact, controlled. The ultimate authority for making this determination is the Export Controls Division of International Trade Canada (ITCan). A determination needs to be made as to whether or not the contractor has access to controlled goods, in Canada, under the *Defence Production Act*.

Generally, if the TDP contains technical information for the "development, production or use" of an item controlled under the Export Control List (ECL): Group 2, not all; Group 5, Item 5504 only;

and Group 6, all, then the TDP is controlled as well. If the TDP is designed solely for the solicitation of bids, it is probably not controlled. Contracting officers should contact the Export Controls Division, ITCan at (613) 996-2387 for assistance in making this determination.

7B.218 (2004-12-10) Security precautions for transferring controlled goods will vary depending on the type and size of the controlled goods. Safeguards chosen must adequately preclude the examination unauthorized transfer of controlled goods by a person who is not registered, exempt or excluded under the CGP and should be such as to make tampering evident. These include:

(a) using double envelopes, security seals and security-sealed containers;

(b) marking transfer containers with a return address;

(c) recording how the controlled good is being transferred;

(d) determining the reliability of a postal or courier service;

(e) transferring controlled goods by first class or registered mail, or by a reliable postal or courier service that offers: proof of mailing, a record while in transit, and a record of delivery;

(f) recording the controlled good being transferred and who is transferring it; or

(g) upon receipt, examining the packaging and sealing devices, and reporting tampering.

Procurements Not Publicly Advertised

7B.219 (2003-05-30) Official source lists are the basis for requesting firms to bid when a competitive procurement is not publicly advertised. When available, the contracting officer should use these lists as a basis for preparing the bid solicitation list.

Contracting officers should consider using the Supplier Registration Information system to identify potential sources of supply for low dollar value goods and services.

Contracting officers are reminded that an effort should be made to ensure best value to Canada in terms of who is invited, and also that the principle of "fairness and access" be displayed in a practical manner by rotating opportunities to bid within the suppliers on any given list.

7B.220 (1994-06-23) In preparing the bid solicitation list, the contracting officer may include suppliers suggested by the client.

7B.221 (2003-05-30) Whenever a supplier requests an opportunity to bid on a specific requirement, that supplier shall be given the opportunity, provided that it is not necessary to cancel the existing bid solicitation and issue a new one.

7B.222 (2004-12-10) When a procurement is not going to be advertised on the GETS (MERX) or in the *Government Business Opportunities*, the contracting officer is responsible for ensuring distribution of bid solicitations to potential bidders.

In headquarters, Tender Contract Distribution Unit performs this service.

Bid Solicitation Lists

7B.228 (1997-09-15) For solicitations not subject to public advertising, the list of suppliers being invited to bid is to be released automatically to all suppliers on that list at the time of solicitation. Lists will not be updated as new bidders request bid sets.

For solicitations subject to public advertising, the release of the bidders' list in response to requests received from non-electronic tendering service subscribers and parties other than potential sources of supply will be left to the discretion of the contracting officer.

When dealing with sensitive (designated/classified) requirements, bidders' lists or bid and contract information are not to be released. Such requests are to be referred to the Access to Information and Privacy Office at (819) 956-1820.

Section 7C: Actions During the Bid Solicitation Period

Changes to a Bid Solicitation

7C.250 (2004-12-10) Any significant change in the information provided in the Notice of Proposed Procurement (NPP) or bid solicitation documents before the bid closing date, requires an amendment to the NPP and/or bid solicitation document. All amendments must be given the same circulation as the original NPP and/or bid solicitation documents.

Contracting officers must ensure that the amendments to the NPP and/or bid solicitation documents are complete. The Government Electronic Tendering Service (GETS (MERX)) will forward a Notice of Amendment to all suppliers that originally requested the bid solicitation document, within four (4) working hours of receipt, first by e-mail, then by facsimile or by mail, if e-mail is not feasible. The supplier may then view the actual bid solicitation amendment document on-line through GETS (MERX) and/or download it electronically or order a hard copy from GETS (MERX). The update will then form part of the bid solicitation document.

7C.251 (2004-12-10) When a bid solicitation document is cancelled and reissued, a new NPP must be submitted for publication on GETS (MERX).

7C.252 (2004-12-10) Any significant information given to one supplier with respect to a proposed procurement must be given to all other interested suppliers in adequate time to permit the suppliers to consider such information and respond to the bid. In providing this information, contracting officers must take into consideration the time required to post amendments on GETS (MERX).

If there is insufficient time to ensure that all potential bidders can consider the information and respond accordingly, contracting officers may consider cancelling and reissuing the bid solicitation. (See 7D.466.)

7C.253 (1994-06-23) The contracting officer must inform the bid receiving area of any change to bid closing dates or times and must ensure that such notification has been received by the bid receiving area.

7C.256 (2004-12-10) A decision to extend the bidding period beyond the initially established closing date is a business decision that can be made by the contracting officer, based on the circumstances of the particular procurement. It may be possible to process an extension of the bidding period in a relatively short time frame (more or less 24 hours) where bids have been invited using source lists, or where the publicly advertised procurement is not subject to North American Free Trade Agreement (NAFTA), World Trade Organization Agreement on Government Procurement (WTO-AGP) or the Canada-Korea Telecommunications Equipment Agreement (CKTEA). All notices related to publicly advertised solicitations subject to NAFTA and the WTO-AGP must be published in the *Government Business Opportunities* (GBO) at the same time as they are published on GETS (MERX).

Bidders' Conferences and Site Visits

7C.260 (1997-09-15) The bidders' conference normally takes place at the Public Works and Government Services Canada (PWGSC) office issuing the bid solicitation. The contracting officer must prepare and circulate an agenda outlining elements to be discussed, including questions raised by potential bidders, prior to the conference. PWGSC will chair all bidders' conferences, and prepare Minutes which include any clarifications or specification changes which may result in a change to the requirement.

The Minutes must be distributed to all suppliers who have requested the bid package, or all

suppliers who have been invited to bid, in sufficient time to allow potential bidders to prepare and submit bids before the bid closing date. In addition, a copy must be sent to the GETS for inclusion in the existing bid solicitation.

7C.261 (1994-06-23) A site visit will be arranged in conjunction with the client. Although there are no formal Minutes, the client must be instructed to advise PWGSC of any clarifications, or changes in specifications, resulting from the site visit. The original bid solicitation must then be amended to reflect these changes or clarifications.

A copy of the solicitation amendments must be provided to all potential bidders who have already requested a bid solicitation document, or all suppliers who have been invited to bid.

Modification and Withdrawing of Bids

7C.267 (1994-06-23) Bids may normally be modified, withdrawn or resubmitted before the bid closing date provided that it is done in writing (this includes electronically transmitted responses.)

For quotations directed to the contracting officer only, to maintain the integrity of the bidding system, no modification will be considered after receipt of the quotation, unless negotiated by PWGSC, and negotiations must be held with all suppliers that submitted responsive quotations.

7C.268 (1994-06-23) If the bid conditions permit and a bidder increases a price prior to bid closing, any additional financial security required must be received within a reasonable period of time *(normally five working days)*.

Section 7D: Bid Handling

Authority

7D.300 (2004-05-14) Business Management Directorate (BMD) is responsible for the systems and procedures relating to the receipt and custody of bids.

At headquarters, bids are processed centrally at the Bid Receiving Unit, an organization of BMD. In the regions, operating procedures may be adapted to suit local conditions.

Bid Timeliness

7D.304 (2001-05-25) For all bid solicitations, except Requests For Quotations (RFQs) directed to the contracting officer, the bid closing date and time stipulated in the solicitation are firm. Contract award may take place immediately following bid closing or any time thereafter. The onus is on the bidder to ensure that the bid is delivered on time to the location designated in the solicitation. The only acceptable evidence to show timely receipt in the specified bid receiving area is a date and time stamp or other documentary evidence of receipt within the control of the bid receiving area.

Late bids are not to be accepted and will be returned. Records will be kept of all returned bids or proposals.

In headquarters, the BRU provides this service.

To reduce the effect of geographic distance, a bid delivered to the specified bid receiving area after bid closing and prior to contract award (which would otherwise be late), will be considered delayed and will be accepted only under the following circumstance (unless it is stated in the tender document that there will be a public opening):

> A bid delivered prior to contract award will be considered if it was postmarked by Canada Post (or the national equivalent of a foreign country) prior to the date of bid closing. Bids received after contract award will be returned to the sender.

The only pieces of evidence relating to a delay in the Canada Post Corporation (CPC) system that are acceptable to Public Works and Government Services Canada (PWGSC) are:

(a) a CPC cancellation date stamp;
(b) a CPC Priority Courier Bill of Lading; and
(c) a CPC Xpresspost Label,

that clearly indicate that the bid was mailed prior to the bid closing date.

7D.305 (1998-06-15) The onus for submitting bids on time at the specified location rests with the bidder. It is the bidder's responsibility to ensure correct delivery of its bid to the Crown.

7D.306 (1994-06-23) Written quotations directed to the contracting officer will be considered non-responsive if received after the specified date, regardless of the date of mailing.

To ensure that all responsive quotations are considered and to accommodate internal mail delivery schedules, contracting officers may need to delay the award of a purchase order until after delivery of the first morning mail on the day following the closing date.

Quotations must be signed and dated by the contracting officer upon receipt. Sectors/regions must ensure that the receipt, custody and handling of quotations submitted directly to the

contracting officer are conducted in a manner that reflects the principle of fairness to all suppliers.

7D.307 (1994-06-23) A bid being submitted by electronic transmission starting before, but ending after, the stated bid closing time is considered on time. When several bids form part of the same transmission, only those bids which began transmission before closing time will be accepted. Each bid is to be considered as a separate bid, even though it is part of the same transmission.

7D.308 (1994-06-23) In order to be accepted, a bid must contain the bid reference number, the closing date and time, and sufficient information to allow evaluation, such as: unit prices; country (when the bid is submitted in a foreign currency); sales tax; duty; technical data (where applicable); and, any deviations from the bid solicitation document.

7D.309 (1994-06-23) To ensure that official bid receipt time-keeping equipment represents the correct time, bid receiving areas shall calibrate this equipment and other official time pieces against the official National Research Council (NRC) time standard at least once every two working days.

The NRC time standard can be checked 24 hours a day at (613) 745-1576 (English) or (613) 745-9426 (French).

Bid Receiving

7D.315 (1998-06-15) Competitive bids, submitted to the bid receiving area, will be time and date stamped upon receipt, and kept unopened in a locked receptacle until after the closing time.

If an envelope/package does not indicate sufficient information for bid identification - i.e. solicitation number, company name and closing date and time, it will be necessary to open the envelope/package. Bid receiving staff will, in these instances, transfer the necessary information to the envelope/package, and reseal and initial the envelope/package before it is place in the bid box.

Bids delivered after the bid closing (see 7D.304), or for which the solicitation has been cancelled, are returned to the supplier unopened, with a covering letter explaining why the bid has been returned. If the envelope/package does not contain sufficient information to identify the company and/or the solicitation number, Bid Receiving Unit (BRU) staff will open the envelope/package for identification purposes, and return the bid with the appropriate letter explaining the reason for opening the bid.

At headquarters, bids received by the mail room are sorted and delivered unopened to the BRU. Facsimile bids destined for the BRU must be submitted to the Communications Center.

7D.316 (2004-05-14) When soliciting bids by telephone, the contracting officer must accurately transcribe the information taken, record the time and date, and initial the written record on file immediately. Written bid responses that have been solicited by telephone and directed to a central bid receiving area should not be opened publicly.

7D.317 (1994-06-23) For responses transmitted electronically, written confirmation by the bidder is required within a reasonable period of time after bid closing, unless an exact copy of the bid was sent by facsimile.

All documents confirming bids should bear the word "CONFIRMATION" and, upon receipt in the designated bid receiving area, will be time and date stamped and sent to the contracting officer. *This is to ensure that in case of conflict it is clear which bid takes precedence.*

Bid Opening

7D.321 (1994-06-23) After bid closing, bids are removed from the locked receptacle and opened. A

designated official, in the presence of at least one witness, records on a Bidders List, beside the name of the bidder, the type of response and, if applicable, the nature of the security submitted. This list is signed by the designated official and the witness.

7D.322 (1994-06-23) The bid receiving area will screen bids for completeness and, using a marker of non-reproducible ink that will stand out, draw lines through blank pricing spaces. Where pencilled or corrected information is shown, a photocopy of the bid is made and kept for audit purposes. This is to ensure that a bid cannot be altered. As evidence that the documents were processed and verified, all pages of a bid and any correspondence containing pricing information are perforated within the Date and Method of Solicitation area, or stamped on the reverse side, by the processing group. The bids are then verified and certified against the Bidders' List. The Bidders' List is kept on the purchase file.

7D.323 (2000-12-01) The bid receiving area will deal with bid security as instructed by the contracting officer. If no instructions have been provided, refer to Annex 7.4.

Handling of Sensitive Documents

7D.327 (2003-05-30) If a bid is marked as PROTECTED, CONFIDENTIAL, SECRET or TOP SECRET, it is to be delivered and transferred in accordance with government procedures for the transmittal of Protected/Classified information or assets. All responses and all other information or assets concerning a sensitive bid are sent by hand, at the appropriate time, to the contracting officer who originated the bid solicitation, and a receipt must be obtained.

Information about security procedures is available from the Canadian and International Industrial Security Directorate Web site.

Public Opening of Tenders

7D.333 (1994-06-23) When tenders are to be opened publicly, they are withdrawn from the locked receptacle, transported to the place of public opening and opened in the presence of a witness. The procedures for opening, screening, checking, verifying and certifying tenders opened publicly are the same as those for bids which are not opened publicly. The name and address of each bidder and the amount of each bid are to be read out.

If the tender requires multi-item bids without a total bid price, the bid price on each item is read out.

Modification and Withdrawal of Bids

7D.339 (1994-06-23) A response to a PWGSC bid solicitation, except RFQs, constitutes an offer which becomes a contractually binding commitment when it is accepted without deviation by PWGSC. One of the essential characteristics of an offer under the Invitation To Tender (ITT) and Request For Proposal (RFP) methods of bid solicitation is that the bidder agrees to keep the offer open for acceptance by PWGSC for a specific period after the bid closing.

Contracting officers should be aware of the rights afforded by law to both the buyer and the seller and to exercise care in dealing with suppliers when issues arise in relation to these rights. In common law, a mere statement that an offer will remain open for acceptance for a certain length of time, does not commit the offeror, who may effectively revoke the offer before the time has expired, if it has not been accepted. Under Quebec's civil law, a bidder who undertakes to keep an offer open for a specified period of time cannot withdraw the offer during such period of time without becoming exposed to a damage claim.

Although suppliers may not have the same rights under the law, PWGSC procedures are applied equally to all suppliers in a particular procurement.

Modification

7D.345 (1994-06-23) After bid closing, modifications initiated by a bidder are not permitted when they:

(a) change the price or any other substantive element of the bid (except in the situation where an already otherwise successful bidder submits a modification which makes the original offer more favourable to the Crown and in no way increases the tendered price); or

(b) change the position of the bid relative to any others received; or

(c) add a bid for an item or items which were omitted in the original bid; or,

(d) provide any bidder with an advantage, over any of the other bidders, which can be construed to be unfair or which in any way detracts from the integrity and impartiality of the competitive bidding process.

Withdrawal

7D.346 (1994-06-23) A bid withdrawn after bid closing cannot be resubmitted.

7D.347 (1994-06-23) Bids, submitted with bid security, may be withdrawn without compensation to the Crown if there is a significant error on the face of the bid. Approval at the director level is required before an error can be declared "significant on the face of the bid."

Examples of such errors include a missing page or a mistake in the addition of a series of numbers that appear in the bid.

If a bidder wishes to withdraw such a bid for any reason other than a significant error on the face of the bid, Legal Services must be consulted.

If there was a public opening, all bidders will be advised, under the signature of a director, of a decision to allow a bidder to withdraw a bid submitted with bid security, without a penalty, due to a significant error on the face of the bid.

Bid Discrepancies

7D.353 (1994-06-23) When there is a discrepancy between a telephoned or electronically transmitted bid and the confirming bid, the following applies:

(a) if both are received before the closing date, the lower price will govern unless the bid containing the higher price clearly states that it cancels and supersedes the previous submitted price;

(b) if the confirming bid is received after the closing date, the price in the electronically transmitted or telephoned response will govern.

Communications - Solicitation Period

7D.355 (2002-12-13) To ensure the integrity of the competitive bid process, enquiries and other communications regarding any procurement, from the issue date of the solicitation up to the closing date, are to be directed **only** to the PWGSC contracting officer responsible for the procurement, not to the client department or other government officials. (See SACC Manual clause A0012T.)

Evaluation of Responses

7D.359 (1994-06-23) Evaluation of the responses must proceed according to the predetermined and published evaluation criteria.

7D.360 (1994-06-23) Bids are non-responsive if they fail to meet any mandatory requirement set out in the bid solicitation. The reasons for declaring a bid non-responsive must be clearly described by the contracting officer and documented on the contract file.

CKTEA

Certification of the Bid

7D.361 (2004-12-10) When requirements consist of more than one good, the evaluation of certification under the special procedures of the Canada-Korea Telecommunications Equipment Agreement (CKTEA) can be done the following ways:

(a) **Aggregate**: a minimum of 60 percent of the total bid price must consist of Canadian and/or Korean goods; or,

(b) **Item by Item**: the bid certification is conducted on an item-by-item basis.

When the requirements consist of a mix of goods and incidental services, 60 percent of the total bid price must consist of Canadian and/or Korean goods and Canadian and/or Korean services.

An incidental service is any service that is included in a tender for the procurement of a Covered Good under this Agreement.

A service provided by an individual based in Canada or Korea is considered a Canadian or Korean service, respectively. Where a requirement consists of only one service, which is being provided by more than one individual, the service will be considered Canadian or Korean if a minimum of 60 percent of the total bid price for the service is provided by individuals based in Canada or Korea respectively.

A bid can be accepted in part without resubmission of a certification.

Application of the Special Procedures under the CKTEA

Note: When a procurement is covered by both the CKTEA and the World Trade Organization Agreement on Government Procurement (WTO-AGP), the procedures under the WTO-AGP are followed.

7D.362 (2002-05-24) Bids to which the special procedures under the CKTEA apply will be evaluated as follows:

(a) for **Solely Limited solicitations:**

(i) If the bidder was **required** to submit the certification with bid (K5001T, K5003T or K5004T), only bids with valid certifications will be evaluated. The bid evaluation process can proceed where there is at least one bid with a valid certification, otherwise the procurement must be retendered.

(ii) If the bidder was **not required** to submit the certification with bid (K5011T, K5013T or K5014T), the contracting officer will contact all bidders who did not submit a signed certification with bid and request the signed certification. If signed certifications are not received within the time period specified in the Canadian Content clause, bids are to be considered non-responsive. A bid will only be provided to the client for evaluation once a signed certification is

received. The bid evaluation process can continue as long as there is at least one bid with a valid certification, otherwise the procurement must be retendered.

(b) for **Conditionally Limited solicitations**, the contracting officer will, prior to the further evaluation of the bids, determine whether there are two or more bids with a valid certification. In this event, the evaluation will be limited to the bids with certification, otherwise all bids will be considered. If the bids with a valid certification are later determined to be non-responsive or withdrawn, and only one responsive bid of Canadian and/or Korean goods and/or services remains, the bid evaluation process will proceed. If all bids with a valid certification are subsequently found to be non-responsive or if their bids are withdrawn, then all other bids received should be evaluated.

7D.363 (2002-05-24) The onus is on the supplier to demonstrate that its bid meets the definition of Canadian and/or Korean goods and services. The supplier must execute and submit the certification form (see 5.069). When the *Standard Acquisition Clauses and Conditions* (SACC) Manual clauses K5003T, K5004T, K5005T, K5006T, K5013T, or K5014T are used, the supplier must clearly identify the status of each individual product.

PWGSC may verify the validity of the certification. If the certification is found to be invalid, then the offered goods or services are deemed not to meet the definition of Canadian or Korean under the CKTEA. Verification of the certification shall in no way alter the price quoted or any substantive element of the bid.

Federal Contractors Program for Employment Equity

7D.364 (2004-05-14) A recommended bid of $200,000 or more (including all applicable taxes) from a supplier subject to the Federal Contractors Program for Employment Equity (FCP-EE) cannot proceed to award unless a signed Certificate of Commitment or valid Certificate number is provided.

The Certificate of Commitment (LAB 1168) or a valid Certificate number is an essential pre-condition to the award of the contract. Compliance with FCP-EE is not a term of the resulting contract or standing offer, however, if a verification of the certification of eligibility discloses a misrepresentation by the bidder, the Minister may treat the resulting contract as being in default.

Ineligible Contractors

7D.365 (2004-12-10) Contractors that have withdrawn from the FCE-EE for reasons other than a reduction in their workforce, have been warned of the consequence of this action (i.e. ineligibility to receive future government contracts over the threshold for solicitation of bids as set out in the *Government Contract Regulations*, currently at $25,000). *Standard Acquisition Clauses and Conditions* (SACC) Manual clause K2002T for requirements estimated over $25,000 but below $200,000, is to be used to advise bidders of this condition and to require that they certify that they have not been declared ineligible by Human Resources and Skills Development Canada. SACC Manual clause K2000T for requirements estimated at $200,000 and over requires that they certify their eligibility to receive government contracts by indicating that if they have been assigned a certificate number in the past, that it is still valid. SACC Manual clause K2003C is to apply in conjunction with K2000T ($200,000 and over) and K2002T (over $25,000). If a verification of the certification of eligibility discloses a misrepresentation by the bidder, the Minister may treat the resulting contract as being in default.

Contracting officers are to treat as non-responsive any bid over the threshold for soliciting bids (currently at $25,000), from a supplier under sanction, either for non-compliance with the FCP-EE, or as a result of its voluntary withdrawal from the Program for a reason other than a reduction in their workforce.

While Treasury Board Secretariat Contracting Policy on FCP-EE (Appendix D) recommends verifying the eligibility of contractors by consulting the Publiservice site prior to awarding a contract, it is not mandatory to do so. However, should contracting officers wish to ensure that they are not recommending the award of contracts to any ineligible contractor, they can consult the List of Ineligible Contractors available on the Publiservice site. (**NOTE**: Only federal government employees can access this site).

For policy advice and guidance, contact the Workplace Equity Program Advisor at (819) 953-7495, or the PWGSC Policy Advisor at (819) 956-4744.

Canadian Content

Certification of the Bid

7D.366 (2003-12-12) When requirements consist of more than one good, the evaluation of Canadian content certification can be done the following ways:

(a) Aggregate: a minimum of 80 percent of the total bid price must consist of Canadian goods (see Annex 7.B); or,

(b) Item by Item: The bid certification is conducted on an item-by-item basis.

For requirements consisting of more than one service, a minimum of 80 percent of the total bid price must be provided by personnel based in Canada (see Annex 7.B).

When requirements consist of a mix of goods and services, 80 percent of the total bid price must consist of Canadian goods and Canadian services (see Annex 7.B).

A bid can be accepted in part without resubmission of a certification.

Application of the Policy

7D.367 (2002-05-24) Bids to which the special procedures under the Canadian Content Policy applies will be evaluated as follows:

(a) For **Solely Limited solicitations:**

(i) If the bidder was **required** to submit the certification with bid (K4001T, K4003T or K4004T), only bids with valid certifications will be evaluated. The bid evaluation process can proceed where there is at least one bid with a valid certification, otherwise the procurement must be retendered.

(ii) If the bidder was **not required** to submit the certification with bid (K4011T, K4013T or K4014T), the contracting officer will contact all bidders who did not submit a signed certification with bid and request the signed certification. If signed certifications are not received within the time period specified in the Canadian Content clause, bids are to be considered non-responsive. A bid will only be provided to the client for evaluation once a signed certification is received. The bid evaluation process can continue as long as there is at least one bid with a valid certification, otherwise the procurement must be retendered.

(b) For **Conditionally Limited solicitations**, the contracting officer will, prior to the further evaluation of the bids, determine whether there are three or more bids with a valid certification. In this event, the evaluation will be limited to the bids with certification, otherwise all bids will be considered. If the bids with a valid certification are later determined to be non-responsive or withdrawn, and less than three responsive bids of

Canadian goods and/or services remain, evaluation will continue among those bids which contain a valid certification. If **all** bids with a valid certification are subsequently found to be non-responsive or if their bids are withdrawn, then **all** other bids received should be evaluated.

7D.368 (2002-05-24) The onus is on the supplier to demonstrate that its bid meets the definition of Canadian goods and/or services. The supplier must execute and submit the certification form (see 5.074). When the *Standard Acquisition Clauses and Conditions* (SACC) Manual clauses K4003T, K4004T, K4005T, K4006T, K4013T or K4014T are used, the supplier must clearly identify the status of each individual product.

7D.369 (1995-07-01) PWGSC may verify the validity of the certification. If the certification is found to be invalid, then the offered goods or services are deemed not to meet the definition of Canadian Content. Verification of the certification shall in no way alter the price quoted or any substantive element of the bid.

Unsolicited Offers

7D.380 (1994-06-23) When a supplier, without receiving a copy of the bid solicitation document, submits an offer for an existing requirement, the unsolicited offer is considered on the same basis as other bids.

Qualifying Joint Venture Bids

7D.384 (1997-09-15) Joint venture bids are encouraged and, for evaluation purposes, shall be treated on an equal basis with other bids. A joint venture, regardless of how it has chosen to structure itself, can only be qualified as an eligible bidder if it is a financially viable legal entity.

Clarifications

7D.389 (1997-09-15) During the evaluation, contracting officers may find it necessary to seek clarifications or additional supporting data. The contracting officer must ensure that this process does not give any bidder an advantage over the others and in no event can this clarification alter the price quoted or any substantive element of a bid.

7D.390 (1994-06-23) In the event of errors in the mathematical extension of unit price items, the unit price prevails and the mathematical extension is adjusted accordingly. In the event of errors in the addition of lump sum prices or unit price extensions, the total is corrected and the corrected mathematical sum is reflected in the total bid price. The bidder must be advised immediately of the corrected total bid price and must confirm or withdraw the bid.

7D.391 (1994-06-23) When a contracting officer identifies an unusually low price, the bidder must be given the opportunity to either confirm or withdraw it in writing. The contracting officer must not divulge the difference in price between that bid and the next lowest bid. In no event will the bidder be permitted to increase the price.

Client Review

7D.395 (1998-02-16) Clients are responsible for the evaluation of the technical portion of the bids. They are normally not provided with price information. When referring bids to the client during the evaluation process, the following cautionary note must be included:

> "Bid information is to be divulged only to government officials authorized to participate in this procurement. None of this information is to be divulged to, or discussed with, the trade."

It is desirable, particularly in complex procurements, to use a team approach for technical

evaluations. If PWGSC considers it necessary to refer bids to the client for other purposes, the cautionary note above should be used.

In accordance with the Guiding Principle of Accountability (see 1.001), procurement officers are responsible for ensuring that, when the technical evaluation has been carried out by the client department, the evaluation process was conducted in a fair and transparent manner, in accordance with the criteria set out in the bid solicitation document.

Taxes and Duties

7D.396 (2004-05-14) Customs duties must be considered in the evaluation of bids when bids are received from both Canadian-based and foreign-based bidders, since foreign-based bidders exclude duties in their proposals. When rates of duties or exemption status need to be verified, the contracting officer may:

(a) obtain from the client the information on the rate of duty applicable to the goods being imported and add the estimated amount of duties to the price quoted by the foreign-based bidder; or

(b) verify with the Canada Border Services Agency (CBSA) the application of customs duty to the goods being imported.

The tariff and value administrator at the CBSA will provide a written ruling to any request for rate of duty, tariff classification, or customs value. Importers or their agents who wish a written ruling must send their request to the nearest CBSA Office.

7D.397 (1998-02-16) Contracting officers are responsible for verifying the application of excise taxes and the amount and specific rate(s) set out in bids. Contracting officers must evaluate bids exclusive of the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST), as applicable. For the list of goods on which excise tax is payable, see Annex 6.11.

7D.398 (2004-05-14) Clients may require or be entitled to exemption from taxes or duties. They should, in such cases, refer to a certificate of exemption or remission or drawback Order in Council. Issues relating to such remissions should be resolved between the client and CBSA.

Financial Security

7D.402 (1997-09-15) If a bidder submits a bid which includes insufficient security, i.e. less than the exact financial security stipulated, or none at all, the bid will be considered non-responsive.

7D.405 (2000-12-01) PWGSC will hold any bid bond, payment bond, performance bond, non-negotiable security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) until the terms of the security are fulfilled. For detailed instructions on the safekeeping of these instruments, refer to Annex 7.4, Handling, Custody and Safekeeping of Financial Security.

Transportation Costs

7D.409 (2005-06-10) Subject to the exceptions of 6E.621, for goods requirements with an estimated expenditure of $25,000 (including GST/HST) or more, and anticipated transportation costs of $1,500 or more, transportation costs of the best bid based on the stated selection criteria must be evaluated by Traffic Management Division (TMD), Services and Technology Acquisition Management Sector. Bids should be solicited on an FOB Destination basis, and transportation charges should be identified as a separate cost item. Where transportation charges exceed $1,500, the contracting officer must refer the bid to TMD for analysis. TMD will provide an analysis and recommendations regarding the proposed transportation method(s) and costs, within two working days, or advise the contracting officer of any delay.

Exchange Rate Issues

7D.413 (2003-05-30) Unless the bid solicitation specifically requires bids to be made in Canadian currency, bids that are made in a foreign currency must be converted to Canadian currency for evaluation. The rate given by the Bank of Canada in effect on the bid closing date, or on another date specified in the bid solicitation, must be applied as a conversion factor to the bids made in foreign currency.

If a bidder that requests the exchange rate adjustment uses a foreign exchange rate other than that specified in the bid solicitation, the price is adjusted based on the rate stipulated in the Request for Proposal and confirmed with the bidder.

For bids submitted by Canadian-based suppliers that request the exchange rate adjustment on the FCC identified in the Claim for Exchange Rate Adjustments, form PWGSC-TPSGC 9411, the contracting officer will show in Column 3 of the form, the Bank of Canada rate in effect on the bid closing date, or on another date specified in the bid solicitation. This rate will be reflected in the resulting contract and will establish the conversion rate against which claims for adjustment will be calculated.

The Bank of Canada rate may be obtained by visiting the Bank of Canada Website, or by calling (613) 782-7506.

Procurement Business Number

7D.415 (2001-12-10) After bid closing, contracting officers should consider advising all Canadian bidders who have not supplied a Procurement Business Number of the requirement to do so prior to contract award (see 5.123). Contracting officers may, at their discretion, decide to contact only the successful bidder or the top ranked bidders. *This option should be exercised with caution*.

Controlled Goods

7D.416 (2002-05-24) Even if there are no controlled goods in a bid solicitation, there may be situations where proposals submitted by bidders could contain controlled goods. Controlled goods cannot be released to persons that are not registered, exempt or excluded under the Controlled Goods Program.

Identical Low Bids

7D.418 (2002-12-13) "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 officer:

(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."

Treasury Board Contracting Policy
Subsection 10.8.17

7D.419 (1994-06-23) If there are two identical bids, and provided that the bid selected would still be considered the most advantageous to the Crown, preference should be given to the bidder who assumes all or part of the exchange rate adjustment risk over a bidder who does not assume any of this risk. Furthermore, preference should be given to the bidder who assumes all of the exchange rate adjustment risk over a bidder who assumes only part of this risk.

7D.420 (2001-05-25) If none of the above apply, a method of tie breaking which is mutually acceptable (Crown and bidders with identical bids) can be used. As an example, a simple coin toss could be agreed upon. The mutually agreed solution should involve legal advice.

Multi-Item Bids

7D.425 (1994-06-23) Where the standard terms and conditions, which provide for the acceptance of a bid in "whole or in part", have been included, the evaluation of multi-item bids should be governed by cost-benefit considerations.

The savings generated from the split of a requirement into more than one contract should be compared with the additional costs usually associated with the award of multiple contracts or creation of multiple standing offers:

(a) costs to PWGSC, i.e. the costs of issuing, administering and closing-out contracts;

(b) costs to the client, i.e. extra billing, extra inspection and other related administrative costs;

(c) costs to the contractor, i.e. transportation costs, price per unit.

Sectors/regions should determine their own administrative premiums for costs such as those identified in paragraphs (a) and (b) above.

The potential savings from issuing more than one contract may be offset by other considerations, such as:

(a) difference in delivery times for components provided by different suppliers;
(b) compatibility of items supplied by different suppliers;
(c) service or maintenance of items after delivery.

Bid Rigging/Collusion/Fraud

7D.430 (1994-06-23) The contracting officer must notify Legal Services and the director whenever there is an indication of possible bid-rigging activities, collusion or fraud. Legal Services will assist in subsequent discussions with the Bureau of Competition Policy pursuant to the "*Competition Act*."

The following are examples of possible bid-rigging activities:

(a) where bid rates/prices are much higher than published price lists, engineering cost

estimates, or previous bid rates/prices by the same suppliers, for no apparent reason;

(b) where the successful bidder usually subcontracts work to suppliers submitting higher bids on the same project;

(c) where bidders use identical wording to describe non-standard items, or submit identical bids for non-standard items;

(d) where there are indications of unusual communications among suppliers prior to submitting the bids with regards to bid prices, or allocation of clients, or references to "standard industry prices," "industry self-regulation," etc.;

(e) where the same supplier wins bids for specific clients, or in specific geographic locations, or for specific sizes or types of work, and loses most other bids on a regular basis; or

(f) where a recognizable pattern of systematic or random low bid rotation exists.

Non-Standard Terms and Conditions

7D.435 (1994-06-23) When bidders propose terms and conditions that conflict with those normally accepted by PWGSC, or include deviations from PWGSC policies or procedures, and the contracting officer is prepared to evaluate using them, the proposed terms and conditions must be submitted to Legal Services for review prior to awarding a contract or placing a Standing Offer.

No Responsive Bid

7D.438 (1996-12-02) When no responsive bid is received in response to a competitive bid solicitation, the bid solicitation must be cancelled. (See 7D.470)

One Responsive Bid

7D.440 (1994-03-23) When only one responsive bid is received in response to a competitive bid solicitation, and if the Crown is obtaining fair value, the contract may be awarded using competitive authorities to the single responsive bidder without obtaining additional price support or a price certification.

7D.441 (1996-12-02) Where the contracting officer is not satisfied that the bid represents fair value, price support should be requested from the bidder. If this does not show that the price is fair and reasonable, the contracting officer may consider negotiating or cancelling and reissuing the bid solicitation. (See 7D.445, 7D.455 and 7D.468)

Price support can take the form of comparing the proposed prices to the current market prices and/or to previous prices paid, taking into account the reasons for any increase.

Negotiations

7D.445 (1996-12-02) When two or more responsive bids, are received in response to a competitive bid solicitation, and if no responsive bid represents fair value, contracting officers should examine the solicitation to determine possible causes. Subsequently, the contracting officer may consider negotiating with all responsive bidders or cancelling and reissuing the bid solicitation. (See 7D.455 and 7D.468.)

7D.447 (2002-12-13) “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."

Treasury Board Contracting Policy
Section 10.6.6

7D.448 (1994-06-23) All negotiations must be conducted by the contracting officer or, if of a technical nature, by the contracting officer in conjunction with the client. A negotiation report must be placed on the contract file.

7D.449 (2004-12-10) For all procurements that are subject to the North American Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement (WTO-AGP), or the Canada-Korea Telecommunications Equipment Agreement (CKTEA), the contracting officer may only enter into negotiations if one of the two conditions specified in NAFTA or the WTO-AGP is present (conditions under the WTO-AGP apply to CKTEA-covered procurement). Negotiations must proceed in accordance with the steps outlined in these agreements. (Refer to NAFTA, Article 1014 or WTO-AGP, Article XIV, as appropriate. When both agreements apply, refer to NAFTA Article 1014.)

7D.450 (2001-12-10) For procurements that are not subject to NAFTA, the WTO-AGP or the CKTEA,

(a) when a Request for Proposal (RFP) was used, negotiations may be entered into

(i) prior to the completion of proposal evaluation, provided that they are held with all bidders that submitted responsive bids; or,

(ii) after the proposal evaluation, with only one bidder, provided that the bidder submitted the only responsive proposal, or the bidder was selected after evaluating more than one responsive proposal and it can be demonstrated that if the negotiations had been held with all of the bidders that submitted responsive proposals, there would have been no change in the firm selected;

The ability to prove that the same supplier will be selected regardless of whether negotiations are conducted with all responsive bidders presupposes that the requirement (e.g. technical specifications) will not change during negotiations, and, therefore, that other bidders given the same opportunity, could not submit different, and, perhaps, better offers.

(b) when an Invitation to Tender (ITT) was used, where there is more than one responsive bid, but neither the lowest bid nor the other bids represent fair value, the contracting officer must have determined before considering entering into negotiations, that it would not be more effective to cancel the solicitation and meet the requirement using another supply method. When urgency is a major factor, the results of the original ITT might be capable of being used as the basis for entering into negotiations with bidders;

(c) when an RFQ was used, negotiations should be avoided, with the exception that some negotiations may be necessary if the requirement was not adequately defined originally.

Bypassing a Supplier

7D.455 (2005-06-10) If it is proposed to bypass the supplier who would be awarded a contract based on the published evaluation criteria and selection method, approval to enter into the proposed contract must be sought at the appropriate non-competitive level. The award must be fully justified and documented on file.

This procedure is not permitted for procurement subject to the North American Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement,

the Canada-Korea Telecommunications Equipment Agreement or the Agreement on Internal Trade. For example, Article 1015, 4(c) of NAFTA states that "unless the entity decides in the public interest not to award the contract, the entity shall make the award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either the lowest-priced tender or the tender determined to be the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation". Provisions with the same effect exist in the other three agreements.

Extending the Bid Validity Period

7D.460 (2004-05-14) The standard period for acceptance of bids is sixty (60) days, unless otherwise indicated in the bid solicitation (see 9403, Standard Instructions and Conditions, of the *Standard Acquisition Clauses and Conditions* Manual). Occasionally, circumstances delay award of the contract, such that it is known prior to bid solicitation that award cannot be made within the standard bid acceptance period. Contracting officers must carefully assess the potential for extended bid evaluation periods and, where necessary, indicate in the bid solicitation, the modified period for bid acceptance. Contracting officers must also carefully monitor events during the bid evaluation period and contract approval process, in order to be able to respond before the bid acceptance period has expired. Expiry of bid acceptance periods before contract award should thus become an exceptional circumstance.

7D.461 (1997-03-31) If the bid acceptance period has expired, and the contract has not been awarded, the requirement must be retendered.

Any contract awarded to a respondent to the expired bid solicitation must be considered a sole-source contract, and must be justified accordingly.

7D.462 (1997-03-31) If the evaluation is incomplete, and is unlikely to be complete within a reasonable period of time, and the bid acceptance period will expire before the evaluation is complete, the process should be halted, an assessment made to identify the cause of the extraordinary delay, corrections to the solicitation or evaluation made, and the requirement retendered.

7D.463 (2004-05-14) If the bid acceptance period has not yet expired and the evaluation of bids is near completion, and can be completed within a reasonable period of time, requests to extend the bid acceptance period maintaining the terms and conditions and prices originally offered, must be sent to all responsive bidders within a minimum of three (3) days prior to the end of such period, referencing the relevant article of standard instructions and conditions (9403 series) which allows Canada to exercise the right to seek an extension of the bid validity period. If any of the responsive bidders decline to extend the bid acceptance period, Canada may, pursuant to the standard conditions and instructions: proceed to award to the “best assessed” among the bidders that have extended their bid, to the exclusion of those that have declined; or cancel the solicitation; or, cancel and reissue the solicitation.

If the best assessed bidder, or more than one bidder does not agree to the extension, serious consideration should be given to re-tendering the requirement.

Where a bidder does not agree to the extension and it is clear that this particular bidder has no chance of being recommended for award, (because its ranking is beyond a reasonable range) then it may be appropriate to exercise Canada’s right to proceed to award with only those bidders that have agreed to an extension.

Legal Services may be consulted in instances where a bidder does not agree to the extension, particularly in the case of a trade-covered procurement.

Cancelling and Reissuing a Bid Solicitation

7D.466 (2004-12-10) If a bid solicitation is cancelled before the closing date, contracting officers must

issue a cancellation notice through the Automated Buyer Environment (ABE) for transmission to the Government Electronic Tendering Service (GETS) (MERX). For those contracting officers not on ABE, functionality has been added to GETS (MERX) which allows the contracting officer to cancel its bid solicitation directly on GETS (MERX). For cancelled opportunities, GETS (MERX) will then automatically send to all suppliers who have ordered the bid solicitation, a notification of opportunity cancellation by e-mail, facsimile, mail, or courier, based on the supplier's preference indicated in their supplier profile. The contracting officer must also notify the Bid Receiving Unit of the cancellation and provide instructions regarding the disposal of any responses to the original bid solicitation.

The contracting officer is responsible for internal distribution of bid solicitation documents and updates within PWGSC and to the clients.

7D.467 (1994-06-23) If the cancellation takes place after the closing date has passed, suppliers who have submitted bids should be advised of the cancellation of the requirement.

7D.468 (2004-12-10) Contracting officers may reissue a bid solicitation, with the approval of the director (headquarters)/manager (regions) or above, where:

(a) a significant change has occurred in a requirement before a contract is awarded;

(b) all bids are non-responsive or do not represent fair value; or

(c) the bid acceptance period has expired before a contract is placed.

For procurements that are subject to NAFTA, the WTO-AGP, CKTEA or the AIT, when there are no responsive bidders or the procurement is substantially modified, the bid solicitation must be cancelled.

Contracting officers may reissue a bid solicitation, with the approval of the manager (headquarters)/division chief (regions) or above, where no bids were received in response to a competitive solicitation.

7D.469 (1996-01-01) Whenever a solicitation is issued to replace an earlier one, the contracting officer must insert the following as the first statement in the reissued solicitation and new NPP:

> *"This cancels and supersedes the previous _____ (Request for Proposition/Request for a Quotation/Invitation to Tender) _____ no. _____, dated _____ which was due at _____ p.m. on _____."*

7D.470 (2004-12-10) For procurements that are subject to GETS (MERX) or any of the trade agreements, a new Notice of Proposed Procurement (NPP) must be published when a bid solicitation document is cancelled and reissued, with the following exception. If there were no responsive bids received in response to the original competitive solicitation and the requirement is not being changed significantly, contracting officers may use source lists and send bid solicitations directly to suppliers without publishing a new NPP.

7D.471 (1994-06-23) When a bid solicitation list was used to invite bidders, all suppliers who bid on the original solicitation must be requested to bid on the reissued solicitation, except those who have declined in writing. Other suppliers not included in the original solicitation who requested to bid or who were added to the source list will be considered.

7D.472 (1994-06-23) Where source lists are used, the bid solicitation will not normally be reissued if a qualified supplier has been inadvertently omitted from the firms requested to bid. Should it be necessary to reissue a bid solicitation because a qualified supplier was not requested to bid, approval at the director level must be obtained prior to reissuing the bid solicitation.

A qualified supplier omitted from the bid solicitation list may be given an opportunity to bid before a bid closing time is reached provided that sufficient time is available for such action.

Notification to Unsuccessful Bidders

Ship Construction and Refit

7D.478 (1994-06-23) For new ship construction and ship refit contracts issued by Public Works and Government Services Canada headquarters, contracting officers will notify bidders whether their bid is among the two most favourable (lowest priced) and compliant bids when:

(a) there are more than two compliant bidders;

(b) a lengthy approval process is anticipated (generally for contracts requiring approval above the director general level); and,

(c) none of the following circumstances apply:

(i) the lowest bidder is declared non-compliant; or,

(ii) all bids received are extremely close; or,

(iii) the manager feels that notifying bidders of bid status would not be in the Crown's best interests.

7D.479 (2005-06-10) For shipbuilding or ship refit contracts that do not fall within the normal criteria, contracting officers should consult with the Senior Director, Marine Systems Directorate (MSD), Land, Aerospace and Marine Systems & Major Projects Sector.

7D.480 (2005-06-10) Notification should be made after the Senior Director, MSD, has recommended the "Contract Request" (form PWGSC-TPSGC 1151-2).

7D.481 (1994-06-23) Bidders will be advised of the circumstances under which notification of their status may be withheld.

7D.482 (1994-06-23) Bidders whose offers are clearly not the two most favourable compliant bids will be permitted to withdraw their bids upon written application to the contracting officer.

Other Requirements

7D.486 (1994-06-23) For all other requirements, notification to unsuccessful bidders prior to contract award should only take place in unusual situations. Contracting officers may only notify unsuccessful bidders prior to award of the contract for contracts within their own contract approval authority and only after consideration of risks, such as:

(a) delays which could be encountered due to an unsuccessful bidder attempting to contest the proposed award;

(b) complications if the proposed contractor attempts to take advantage of the situation by revising its original offer;

(c) unforeseen circumstances which could make it necessary to reconsider the selection of the successful bidder, in which case previously notified unsuccessful bidders might not sustain their original offers.

Particular care is required where bid validity periods may require extension. (See 7D.460.)

Section 7E: Contract Award

Forms of Contract Award

7E.500 (2003-12-12) Contract award may take place at any time following bid closing. The contract document will depend on the type of bid requested and received.

(a) A "purchase order" will be issued when quotations are requested. This is normally placed by telephone and confirmed in writing.

(b) A "Your Tender/Proposal is Accepted" document will be issued when tenders/proposals are requested and the accepted tender/proposal is received in writing. This type of document will be used only when the proposed contract reflects those terms and conditions proposed or agreed to in writing by the selected supplier. The document should make reference to the tender/proposal and any amendments to it.

(c) A "You are Requested" document is issued when proposals are requested and the accepted proposal is received by telephone, or in any circumstances where the proposed contract may reflect a term or condition not agreed to in writing by the successful contractor. This type of document constitutes a counter-offer by Public Works and Government Services Canada (PWGSC) which must be accepted by the successful supplier.

"You are Requested" documents, and in some cases purchase orders, are not contracts but only offers by PWGSC to potential contractors. Although a legal contract does not exist, such offers usually reflect the contracting officer's understanding of the terms and conditions which are agreeable to the successful contractor. If the successful contractor does not accept the PWGSC offer, or proposes modifications (see 7D.345) to the contract, the matter should be referred to Legal Services.

Performance of the terms of a contract, in common law, constitutes acceptance of the offer by the contractor.

A Call-up Against a Standing Offer, form PWGSC-TPSGC 942, which accepts a supplier's offer and becomes the contract, is the standard document for identified users to make call-ups against a standing offer. PWGSC-TPSGC 944 or 945 is used for call-ups against multiple standing offers.

(d) For Supply Arrangements, see Section 9J.

7E.501 (1994-06-23) Whatever the form of contract document, the contracting officer must ensure that a contract is with a supplier which has the legal capacity to contract, and that the supplier's full legal name is used.

For example, a contract may not be entered into with a division of a corporation, unless the division is a separate legal entity. Computerized source lists may include an abbreviated name for a supplier.

7E.502 (2004-12-10) Contracts awarded on the basis of the bid having met the definition of Canadian or Korean content under the Canada-Korea Telecommunications Equipment Agreement will include *Standard Acquisitions Clauses and Conditions* (SACC) Manual clause K5100C.

7E.503 (2001-12-10) Contracts awarded on the basis of the bid having met the definition of Canadian content under the Canadian Content Policy will include SACC Manual clause K4100C.

Qualified Suppliers

7E.507 (1994-06-23) Treasury Board (TB) Policy states that "firms considered qualified are those which have the technical, financial and managerial competence to discharge the contract. Contracting officers are responsible for verifying this information prior to entering into a contract."

7E.508 (2000-12-01) As part of the contract award process, the contracting officer will normally obtain an opinion about a successful contractor's capability to finance a requirement through to completion.

If the selection of the supplier is in a fully competitive environment and the contract is for generally available commercial products or services, the risks of financial loss to the Crown are minimized because of the ability to find alternate sourcing. However, under any other circumstance, resourcing can be costly both in terms of performance delays and monetary risk (e.g. the possible risk inherent in advance and/or progress payments).

Assessing the financial capability of potential and existing suppliers is not normally required for:

- *assistance contracts on behalf of Industry Canada (IC), (determination of a contractor's financial capability in these cases is the responsibility of IC);*
- *contracts with universities and colleges, Crown corporations, government departments and agencies*;
- *contracts for the services of individuals;*
- *contracts for generally available commercial products or services from suppliers selected by competition*.

7E.509 (1994-06-23) A financial analysis of a potential supplier may be warranted at the time of source listing.

7E.510 (1994-06-23) A financial review of a supplier can be initiated at any stage of the contracting process when considered necessary by the contracting officer. The contracting officer should arrange for ongoing financial capability analysis by a cost analyst during contract performance, when necessary.

When PWGSC must deal with a financially-weak supplier, the risk to the Crown must be reduced as much as possible through contract financial security, based on recommendations by a cost analyst.

7E.511 (2000-12-01) For contracts requiring a director general's approval, a condition of exercising delegated authority is that the cost analyst and legal officer be given the opportunity to review the contractual documents and to provide comments. For contracts above a director general's approval level, these comments should be included as supporting data in Part 2, Section F of the Contract Request, form PWGSC-TPSGC 1151-2 (see Annex 7.7).

Business Credit Services

7E.516 (2005-06-10) Business credit services companies provide both general credit ratings and comprehensive credit reports on individual firms. Their comprehensive reports generally include: simplified financial statements; details of maximum credit obtained from the firm; promptness of payments made; banking information; firm's history and some information into the firm's operations.

Contracting officers are not to contact a business credit services company directly, but rather must send all requirements for business credit services to the Director of Cost and Forensic

Accounting Directorate (CFAD).

7E.517 (2005-06-10) Business credit services reports are considered commercially confidential. The information is not to be disclosed outside the government, and is only disclosed within the government on a "need to know" basis.

Copies of these reports are available for use only within PWGSC. The reports are retained by CFAD .

Accounts of Contractors - Assessment of Adequacy

7E.521 (2005-06-10) An examination of the adequacy of a contractor's accounts is to be performed by Consulting and Audit Canada or other qualified personnel, as approved by the Director of CFAD , if one or more of the following conditions apply:

(a) The Contractor has been selected for the first time for the award of a cost reimbursable type contract. This does not apply to assistance-type agreements on behalf of Industry Canada for the acquisition of equipment.

(b) The contractor has been selected for the first time for the award of a competitive or negotiated fixed time rate contract with a value of $100,000 or over, including multiple bases of payments involving $100,000 fixed time rate value.

(c) The contractor has been selected for the first time for a negotiated firm price contract valued at over $500,000, or the cumulative value of the negotiated firm price contracts awarded to a new contractor during a government fiscal year exceeds $500,000.

(d) The contract is placed on behalf of the Canadian Commercial Corporation and is awarded to a new contractor for any of the following types, regardless of value:

(i) cost reimbursable;
(ii) negotiated firm price with progress payments;
(iii) fixed time rate.

(e) The contractor's cost accounting system has changed, or is likely to change for any reason, e.g. a major corporate reorganization, new owners, or major changes in the production process or product mix.

7E.522 (1994-06-23) Assessments should be performed before awarding a contract to a new supplier. They should be requested at the same time as a request is made, if required, for a general assessment of the company's facilities. Otherwise, the examination should be performed as soon as possible after contract award, generally within two (2) months after the date of contract.

7E.523 (1994-06-23) If the examining authority finds inadequate records, the contracting officer should advise the contractor of the deficiencies or inadequacies and obtain a commitment to an agreed plan of corrective action.

When the contractor refuses to do so, or fails to meet commitments, the sector/region will decide on the appropriate course of action to follow.

Among the various options are:

(a) withholding future contract awards;

(b) negotiate special terms and conditions after taking into account the known deficiencies, e.g., negotiation of a larger holdback on progress claims, negotiation of a firm pricing basis to replace a proposed cost reimbursable basis for which adequate substantiation

of costs would not be available; or

(c) fully or partially terminate the contract for breach of contractual provisions relating to maintenance of proper accounts and records.

7E.524 (2005-06-10) The contracting officer must advise the Director of CFAD of the assessment results and any options exercised.

Statement of Cost Accounting Practices

7E.528 (2005-06-10) CFAD has a comprehensive program to ensure that contractors' cost accounting practices comply with the Contract Cost Principles 1031-2 and related Cost Interpretation Bulletins.

Contracting officers should inform Cost, Policy and Financial Review Division (CPFRD) within CFAD when a Contractor or subcontractor has negotiated contracts with Canada and meets the following criteria:

(a) the supplier's divisions/entities previous fiscal year and/or current fiscal year forecasted negotiated Canada business volume exceeds $5 million, or

(b) the supplier's divisions/entities previous fiscal year and/or current fiscal year forecasted negotiated Canada business volume exceeds $2 million, and represents more than half of that division's/entities total business volume.

The Statement of Cost Accounting Practices (SCAP) is a form used as a management representation that describes the cost accounting practices of a supplier. CPFRD will determine whether the supplier must complete a SCAP.

Verifying Compliance that Personnel and an Organization's Security Status meet Security Requirements

7E.534 (2005-06-10) If the proposed contract contains personnel, information technology and/or physical security requirements, **before** it is awarded, a copy of the appropriate contractual documentation must have been forwarded to the Canadian and International Industrial Security Directorate for verification that all necessary security measures have been addressed. (See 3.009 and 6C.270.)

Finalizing Elements of the Contract

Handling Contract Security

7E.547 (1994-06-23) If contract security is obtained, it is to be held until the terms of the security are fulfilled, including termination that is not due to a fault of the contractor.

Verifying Contract Security

7E.550 (1994-06-23) Surety bonds furnished by contractors must be examined by the contracting officer, with advice from Legal Services as necessary, to ensure that they are correct in all respects, including: the contractor's legal name and address; the date of the contract; the contract serial number; the affixing of the seals of the contractor and the surety company; and the description of the "Obligee," which is "Her Majesty the Queen in right of Canada." Surety bonds requiring correction are returned to the contractor and not to the surety company.

7E.551 (1994-06-23) Security deposits in the form of government guaranteed bonds with coupons attached shall not be accepted unless all coupons that are unmatured at the time the security

deposit is provided are attached to the bonds.

7E.552 (1994-06-23) The contracting officer must request written instructions from the contractor concerning the action to be taken with respect to any coupons attached to the bonds that will mature while the bond is pledged as security, and must forward the instructions to the Financial Services Division, Financial Operations Directorate.

7E.553 (1997-09-15) Letters of credit furnished by contractors must be examined by the contracting officer, with advice from Legal Services as necessary, to ensure that they are correct in all respects, including:

(a) the face amount which may be drawn against it;

(b) its expiry date;

(c) provision for sight payment to the Receiver General for Canada by way of the financial institutions's draft against presentation of a written demand for payment signed by the authorized departmental representative identified in the letter of credit by their office;

(d) provision 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) provision that it is subject to the International Chamber of Commerce (ICC) Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500;

(f) clear specification that it is irrevocable or deemed to be irrevocable pursuant to article 6c) of the International Chamber of Commerce (ICC) Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500;

(g) that it has been issued or confirmed, in either official language, by a financial institution which is a member of the Canadian Payments Association and shall be on the letterhead of the Issuer or Confirmer. The format is left to the discretion of the Issuer or Confirmer.

Transportation Instructions

7E.556 (1998-11-23) For requirements other than those for food and bulk fertilizer for external aid, and where delivery points are known, when a contract is awarded on the basis of Free on Board (FOB) origin, the following applicable standard clauses should be included in the contract:

(a) for material to be shipped from a point in Canada: *Standard Acquisition Clauses and Conditions* (SACC) Manual clause C5200C. Obtain shipping instructions from Traffic Management Directorate (TMD) and insert as fill-in.

(b) for material to be shipped from a point in the United States: SACC Manual clause D6000D. When requests for routing instructions are received from the supplier, refer such requests to TMD to obtain details of shipping instructions.

7E.557 (1998-11-23) For requirements other than those for food and bulk fertilizer for external aid, and where delivery points are not known, when a contract is awarded on the basis of FOB origin, the following applicable standard clauses should be included in the contract:

(a) for material to be shipped from a point in Canada: SACC Manual clauses C5201C and D6000D.

(b) for material to be shipped from a point in the United States: SACC Manual clause

D6000D.

Insufficient Funds on Requisitions

7E.561 (1994-06-23) Bid assessment may reveal that the costs of a requirement will exceed the funds provided in a requisition.

7E.562 (2002-12-13) If the client has not constrained the cost, PWGSC may make commitments in excess of the estimated funds shown on the requisition excluding the Goods and Services Tax (GST), and/or the Harmonized Sales Tax (HST) as applicable, within the following limits, without referral to the client:

(a) if the estimated amount of the requisition is $1,000 or less, contracts may be awarded involving an expenditure of up to 100 percent in excess of the amount of the requisition.

(b) if the estimated amount of the requisition is over $1,000 but does not exceed $3,000, contracts may be awarded involving expenditures of up to 50 percent in excess of the amount of the requisition.

(c) if the estimated amount of the requisition is over $3,000 but does not exceed $7,500, contracts may be awarded involving expenditures of up to 25 percent in excess of the amount of the requisition.

(d) if the estimated amount of the requisition is over $7,500, contracts may be awarded involving expenditures of up to 15 percent or $50,000, whichever is less, in excess of the amount shown on the requisition.

These limits apply to original requisitions, not requisition amendments.

In case of Canadian Commercial Corporation financial authority forms CCC 747A and CCC 747AA, no commitment in excess of the estimated funds is permitted.

7E.563 (1994-06-23) Where the client has specified that the estimated cost is not to be exceeded, the contracting officer will notify the client of the extra cost involved. If the client indicates that the cost is acceptable, and provided it does not exceed PWGSC allowable over commitments, the contracting officer will proceed with procurement action including award of a contract on written agreement from the client.

7E.564 (1999-12-13) For requirements where the total cost exceeds PWGSC allowable over commitments, the contracting officer must obtain written client agreement to proceed.

Intellectual Property

7E.570 (2001-05-25) Unless there has been a change in the client department's Intellectual Property (IP) position from the bid solicitation, contracting officers must use, in the contract, the identical clauses used in the bid solicitation, **with the exception of clause K3200T, which is needed only at the bid solicitation stage** (see Annex 7.5).

7E.571 (2001-05-25) Starting January 1, 2001, each department will have to maintain a record of all contracts valued over the threshold for solicitation of bids as set out in the *Government Contracts Regulations*. Each department will have to specify the contracts that are contractor-owned IP and that are Crown-owned IP and the exception(s) invoked (the same reason used in clause K3200T). The report will be rolled up with the Treasury Board report on contracting.

Exchange Rate Adjustments

7E.574 (2004-05-14) Standard clauses setting out the options, payment terms and invoice procedures

relating to exchange rate adjustments and other foreign currency considerations are detailed in the SACC Manual, subsection 5-C. The method of payment and the exchange rate adjustment formula to be applied must be specified in the contract. Where the method of payment for the exchange rate adjustment is:

(a) Payment on Delivery - the conversion factor is based on the date of importation. SACC Manual clause C3015C is used.

The date of importation may be found on the Customs Import Entry Form which also shows the exchange rate applied by Canada Border Services Agency at point of entry into Canada.

(b) Milestone Payments - the conversion factor is either the date of importation, if the item in question has been imported into Canada, or the rate given by the Bank of Canada on the date the milestone becomes due and payable. SACC Manual clause C3020C is used.

The term "due and payable" is either specified in the contract or is in accordance with the government's 30-day payment policy.

(c) Progress Payments - the conversion factor is the actual rate used, or "cost incurred" by the contractor when remitting payment to its foreign supplier or subcontractor. SACC Manual clause C3030C may be employed.

Currency of Payment

7E.578 (1994-06-23) The Basis of Payment section of the contract must clearly state whether the price is payable in Canadian or foreign funds, or both and, where applicable, whether it is subject to an exchange rate adjustment.

7E.579 (1994-06-23) If bids provided a choice between payment in a foreign currency or in Canadian currency, but with an exchange rate adjustment provision, the contracting officer may select the payment method most advantageous to the Crown in the resulting contract.

7E.580 (1994-06-23) If any part of the contract price is payable in foreign funds, the estimated value in Canadian funds should be included in the Estimated Expenditure block on the front page of the contract.

Unscheduled Contractor Overtime

7E.588 (1994-06-23) If unscheduled contractor overtime appears likely, the contracting officer must ensure that proper provisions concerning authorization, rates and dollar limits are included in the contract.

7E.589 (1994-06-23) The contracting officer should consult with the cost analyst to ascertain whether the contractor's cost system includes overtime premium costs in the overhead account or as a direct charge to the particular contract.

7E.590 (1994-06-23) The PWGSC contract approval authority may delegate authority to the client for approval of a specified number of overtime hours. Any such delegation should be precisely spelled out in the contract. If the delegation is exercised, the contracting officer should receive a copy of the authorization from the client for any applicable contract amendment action.

Advance/Progress Payments

7E.594 (2005-06-10) Advance or progress payments must be specified in the contract, since under section 34 of the *Financial Administration Act* a payment, before completion of the work, can

only be made after certification by the client "that the price charged is according to the contract." The advance or progress payment must also be detailed in the Contract Request. Payments can only be made for goods or services received in the same fiscal year. Funds must be spent in the fiscal year for which they are appropriated and cannot be carried forward by means of advance payments. (See 6E.585.)

NOTE: The requirement that payment be made only for goods or services received in the same fiscal year may require modification of the Method of Payment for requirements whose period of delivery or service spans fiscal years. Specifically, it may be necessary to provide for multiple payments, at the appropriate point in the contract period.

7E.595 (1994-06-23) Advance payments in contracts must be specifically approved by the contract approval authority.

For example, where Treasury Board (TB) approval is required for entry into a contract, the amounts and the times of the advance payments must be approved by TB (refer to sections 8 and 9 of the Government Contract Regulations).

7E.596 (1994-06-23) To protect the Crown's interests in the goods being procured in contracts involving progress or advance payments, contracting officers must include in the contract SACC Manual clause H4500C relating to liens under section 427 of the *Bank Act*. (See 11.095.)

Taxes and Duties

Export Drawbacks

7E.602 (1994-06-23) Contracts for goods to be exported from Canada shall not contain any element representing refundable duties. The exporter is usually entitled to export drawbacks, i.e., the return of duties and/or taxes paid upon imported goods that are subsequently exported from Canada. Special procedures apply to government contracts. The right to drawback accruing to the client or the agency (exporter) in connection with a transaction must be waived to the contractor. Therefore, the contract must contain SACC Manual clause C2001C, which is the waiver of rights to drawbacks by the Canadian government acceptable to customs authorities.

Goods and Services Tax and Harmonized Sales Tax

7E.606 (2003-12-12) The Goods and Services Tax or Harmonized Sales Tax (GST/HST) must be included in the price for the purposes of approval levels. The total estimated cost on the front page of the contract will include the amount of GST/HST estimated to be payable on the contract. The basis of payment in all contracts shall state that GST/HST is extra.

7E.607 (1998-02-16) Contracts must state whether the supplies provided are subject to GST/HST. Where items vary in GST/HST treatment, the contract must show which items are taxable, zero-rated or exempt. Contracts must state that the contractor will show separately on invoices, by item, any applicable GST/HST that applies.

7E.608 (1998-02-16) If a taxable supply is purchased from a non-resident GST/HST non-registrant, GST/HST should not be included in the contract. If the taxable good or service is purchased from a non-resident GST/HST registrant, GST/HST will be included in the contract and paid by the client to the contractor. In this case, invoices should include the contractor's GST/HST registration number.

7E.609 (2004-05-14) For all Department of National Defence (DND) contracts, GST/HST is to be reimbursed for non GST/HST registrants. DND will reimburse prime contractors only the actual GST/HST that is paid to the Canada Revenue Agency (CRA), not a flat 7 percent that can be invoiced by a GST registrant.

In DND contracts, the prime contractor cannot transfer the import responsibility to a subcontractor who is also a non-registrant. The prime contractor can, however, transfer the import responsibility to a GST registrant, but a drop-shipment process must then be implemented. DND would provide a drop-shipment certification to the GST registrant indicating that DND will self-assess the GST/HST. *This removes the requirement for the GST/HST registrant to invoice the prime contractor and eliminates the third party tax costs.*

7E.610 (2004-05-14) The CRA has special rules for software imported in a physical medium. It collects the GST/HST at the border on the declared value, including the value of the physical medium and the value of the software. An exception is where a registrant charges the software licence fee but has the software delivered to the recipient from outside Canada. In that case, the recipient pays the GST/HST, on the value of the software only, to that registrant. The importer must provide the CRA with proof that it will pay the GST/HST to the registrant. The CRA will still collect GST/HST on the value of the physical medium.

Provincial Taxes

7E.613 (1994-06-23) All contracts issued by PWGSC on behalf of federal government departments must include a statement informing the contractor not to invoice PWGSC or collect any ad valorem sales tax levied under provincial general retail sales tax statutes. By quoting the provincial sales tax (PST) number or certificate on federal contracts, PWGSC indicates that PST is not to be collected by the contractor on the goods or services being supplied under the contract.

This exemption cannot be used by the contractor to avoid paying provincial sales taxes on goods or services purchased, by the contractor, in order to fulfil the contract.

State Sales and Use Tax (United States of America)

7E.617 (2002-12-13) Bid solicitations where there is a possibility that suppliers in the United States of America (U.S.A.) may be submitting bids and contracts placed with U.S. firms must specify that prices are not to include any State Sales or Use tax, from which exports are exempted, by including clause C2000D of the SACC Manual.

Since items exported from the U.S.A. are entitled to exemption from State Sales and Use Tax, the contracting officer shall obtain advice from Legal Services if the contractor insists that contract prices must include payment of state taxes. (See 6D.456.)

State of California

7E.621 (1994-06-23) Contracting officers must ensure that goods purchased in California are not taxed by clearly indicating in the contract that the goods are an export as defined under California law. (See 6D.457.)

7E.622 (1994-06-23) Contracting officers should obtain advice from Legal Services if the contract provides for progress or advance payments or if the supplies are to be left in the State of California for a period of time. The normal contract provisions would cause California Sales and Use Tax (Cal Tax) to be payable since title would pass to the Crown before delivery. Such contracts should provide that title will not pass to the Crown until the goods are delivered.

7E.623 (1994-06-23) When title is not taken by the Government of Canada until delivery, in order to obtain tax exemption as indicated above, the formal contract or purchase order with suppliers located in California must include:

(a) in the Delivery and Consignment section, SACC Manual clause D4003C;

(b) in the Price or Basis of Payment section, SACC Manual clause C2002C.

When progress or advance payments form part of the contract, contracting officers must add SACC Manual clause K9010C, Passage of Title, which modifies the standard terms and conditions.

When progress or advance payments are provided for in the contract, and the contract postpones taking title until delivery, the risk incurred by the Crown (such as heavy fire loss or bankruptcy of the contractor) should be covered by:

(a) instructing the contractor to insure the materials, work-in-process and finished goods, with loss payable to the Crown as its interests may appear; and/or

(b) obtaining a performance bond from the contractor.

7E.624 (1994-06-23) Government-supplied materiel, spare parts, etc., purchased outside California and sent to a contractor in California for incorporation into an end product being purchased by PWGSC in California, are not subject to Cal Tax. The same items purchased in California and delivered to another contractor in California for incorporation into an end product being purchased by PWGSC, are subject to Cal Tax.

7E.625 (1994-06-23) Tooling and test equipment purchased by PWGSC outside California, furnished to a contractor in California and reshipped outside California, on completion of the contract (title having remained with PWGSC throughout), are not subject to Cal Tax. However, if such tooling and test equipment are left in California, they will be subject to Cal Tax.

7E.626 (1994-06-23) Tooling and test equipment purchased by PWGSC in California and delivered to another PWGSC contractor in California are subject to Cal Tax. Tooling and test equipment purchased or manufactured by a contractor in California for use in a production contract which the same contractor is performing for PWGSC, and paid for by PWGSC as part of the cost of the work, are also subject to Cal Tax.

7E.627 (1994-06-23) On completion of the contract, if Canada is to take title to and possession of the tooling and test equipment, Legal Services must be consulted as to the procedure for not paying further tax.

Tax exemption depends on what disposition Canada makes of the tooling and test equipment at that time. Unless the tooling and test equipment is to be shipped to Canada at the completion of the contract and before any further use in California, it is very likely that Cal Tax will be payable.

7E.628 (1994-06-23) California Personal Property Tax is normally treated by the contractor in California as an indirect cost and charged to overhead. However, a California contractor may treat the Personal Property Tax on a Canadian contract as a direct charge, based on contracting and billing practices with the U.S. government. Contracting officers should check to ensure that no indirect charges are made to the contract in respect of such Personal Property Tax and that no overhead is applied to the direct charge.

Treasury Board Approval

7E.635 (1994-06-23) If the proposed value of a contract exceeds the departmental approval level and has not previously received Treasury Board (TB) approval, the proposed award should be referred to the TB.

Contract Requests and Contract Approvals

7E.636 (1994-06-23) For contracts not pre-approved through the Contract Planning and Advance Approval process, before accepting an offer from a bidder or requesting a potential contractor to carry out specific work, a Contract Request for authority to enter into or amend a contract must

be prepared. The Contract Request must give an accurate description of the terms and conditions requiring approval and must reflect, and be supported by, data contained in the applicable files. Each Contract Request must identify and explain any proposed deviations from applicable policies and procedures. (See 6E.655.)

7E.637 (1994-06-23) Details of the proposed contract must be recorded clearly and briefly on the Contract Request. The signed Contract Request must be submitted for review to the Contract Quality Assurance (CQA) office of the appropriate sector/region. The Contract Request is to be supported by a copy of the proposed contract and the applicable files. After any CQA concerns are dealt with, the Contract Request will be submitted for approval.

7E.638 (2004-05-14) The contracting officer is responsible for:

(a) preparing the recommendation, either on a Contract Request or a Request for Authority Summary form, and certifying the accuracy of all the information contained therein;

(b) obtaining policy interpretations from the Acquisition Policy and Process Directorate and opinions from departmental specialists (e.g. Legal Services) on the consequences of any proposed deviations from general conditions, policies and regulations;

(c) obtaining the client's agreement for any deviations from specifications, standards and delivery requirements;

(d) highlighting in the recommendation the facts surrounding any proposed deviations and their negative consequences to the Crown;

(e) including a full report on the reasons, the managerial responsibilities involved and corrective actions taken, when TB approval is being sought for work already commenced for whatever reason (retroactive approval) or for incidents of cost overruns; and

(f) attaching the client's certification that the minister concerned has agreed to the commencement of work before receiving TB approval for entry into contract, when retroactive approval is being requested.

7E.639 (1994-06-23) The CQA officer is responsible for reviewing the accuracy and adequacy of the Contract Request and the Request for Authority Summary forms, as appropriate. The CQA provides observations on a "Comments Sheet" to the contracting officer.

7E.640 (2004-05-14) The Risk and Quality Management Directorate (RQMD) must conduct a pre-award review of all proposed contracts above the Director General (DG) approval level.

7E.641 (2004-05-14) Regardless of value, recommendations involving deviations from government contracting policies must be submitted to RQMD for review. After considering the advice of the Director, RQMD, the DG will recommend the Contract Request to the Assistant Deputy Minister, Acquisitions Branch, for approval.

7E.642 (1994-06-23) The sector's legal counsel shall review all Deputy Minister (DM), Minister and TB submissions and provide a legal risk assessment.

7E.643 (1994-06-23) For proposed contracts requiring TB approval, the Contract Request is to include a statement that the client project manager's certification of agreement with the submission has been obtained. Certifications should not be attached to the submission. When certifications cannot be obtained, this must be noted.

7E.644 (2004-05-14) Contracting officers are to prepare Contract Requests as outlined in Annex 7.7.

It is a good practice for contracting officers to obtain a copy of the most recently approved Contract Request in their area to make sure they have all the latest policies and procedures adequately covered.

7E.645 (1994-06-23) For information pertaining to Contract Amendment Requests, see 11.D4D and Annex 11.1.

7E.646 (1994-06-23) The first page of all TB submissions and any accompanying documents shall be stamped "Protected" indicating whether it is level A, B or C. All submissions to TB shall be prepared in both official languages, presented side by side.

When translation services are required for a technical or specialized document, it is helpful to send the translators a copy of an early draft so that any required terminology research may commence in order to expedite translation.

Letter of Intent

7E.652 (1994-06-23) When the timely delivery of goods or services would be jeopardized by lengthy negotiations, a Letter of Intent authorizes commencement of the work before the contract is issued. It is a binding commitment to place a contract with a designated supplier.

A Letter of Intent is issued subsequent to approval of those terms and conditions which have been already agreed to, but before obtaining approval of all appropriate terms and conditions of the proposed contract.

Letters of Intent must be prepared by Legal Services with the cooperation of the contracting officer.

7E.653 (1994-06-23) Letters of Intent shall be used only in exceptional circumstances, and shall not be issued without prior approval of the DM.

No contractual commitment shall be made which constitutes the first step of a project that may require subsequent TB approval.

7E.654 (1994-06-23) The Letter of Intent shall accurately describe the work authorized, state the maximum liability of the Crown, expressed as funds to be spent by the contractor, and specify how payment will be made. The contract serial number that will be assigned to the subsequent contract is incorporated in the Letter.

7E.655 (1994-06-23) A proposal to issue a Letter of Intent, together with a copy of the Letter, shall be presented to the Departmental Executive Committee before it is submitted to the DM for approval.

7E.656 (1994-06-23) After approval is received, the original of the Letter will be signed by the appropriate contract signing authority and distributed in the same manner as contracts.

7E.657 (1994-06-23) On completion of negotiations for all appropriate terms and conditions of the proposed contract, the pre-award contract submissions will be submitted for review and approval at the appropriate level.

Go-Ahead Letters

7E.663 (1994-06-23) Go-ahead Letters may be issued after obtaining final approval of the contract submission, provided all appropriate terms and conditions of the proposed contract are known and acceptable to the potential contractor. Go-ahead Letters are subject to the appropriate signing authorities.

Section 7F: Completing the Contracting Process

Completing Client Inappropriately Initiated Procurement Process

7F.690 (2001-12-10) Public Works and Government Services (PWGSC) is asked, from time to time, to process requisitions, which may be viewed as “difficult or sensitive”, where the procurement process was initiated by client departments, i.e. (sourcing, bidding, evaluation, selection etc.) and then PWGSC is asked to endorse the process and award a contract. PWGSC is accountable for the integrity of the completion of the procurement process including all actions within the process: this also applies to actions originating from the client that may or may not be in compliance with Treasury Board or PWGSC policies or applicable legislation. To reduce the risk of undefendable complaints and challenges associated with these procurements, the following procedures shall be followed:

(a) Upon receipt of a requisition for a contract or contract amendment, where the client has already taken certain steps in the procurement process, the contracting officer shall alert the Manager to the situation.

(b) The contracting officer will review the procurement process already initiated by the client, to identify any deviations from normal practice or policy and to determine whether PWGSC can endorse the procurement process. The contracting officer must develop a clear understanding of all procurement related activities that have been completed, including whether a contract has been awarded or the supplier has been given the go-ahead to commence work. Where a contract has been awarded, or the supplier authorized to proceed with the work, the procedures in 7F.692 shall apply.

(c) In the event that some of the actions of the procurement process, initiated by client departments, do not adhere to the established supply policy guidelines, PWGSC may have to reinitiate the procurement process. Whenever a PWGSC contracting officer must act in a way not clearly set out in this Manual, integrity and its supporting principles provide necessary guidance. (See 1.001)

Ratification by Treasury Board

7F.691 (2002-12-13) "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."

TB Contracting Policy
Subsection 4.1.11

In a case where contract approval is being sought for work already commenced for whatever reason, the contracting officer must include with the request for Treasury Board (TB) approval the client's certification to the effect that the minister concerned had agreed to the commencement of work before the receipt of TB approval.

Confirming Orders and Contracts Involving Pre-contractual Work

7F.692 (2005-06-10) Public Works and Government Services Canada (PWGSC) is not in the business of placing contracts to confirm the actions of client departments. The practice of providing such service to client departments should be discouraged to the maximum extent practicable. However, acknowledging that in some instances it may be necessary for PWGSC to become involved because of its exclusive goods procurement authority, and that PWGSC may have some value to add in processing confirming orders where the work is complete or contracts where the work is incomplete, the following procedures will apply:

(a) Requests for confirming orders and contracts involving pre-contractual work must be evaluated and processed on the basis of the circumstances surrounding each instance. Where the request is the result of attempts to circumvent normal procurement procedures, return of the request to the client department should be a prime consideration.

(b) Where the work has been completed, a confirming order will be prepared by Legal Services and will only contain the information necessary to document the transaction (the parties, the work performed, the dates, the amount, a release and, if required, a transfer of intellectual property rights). Confirming orders processed by PWGSC are to be approved by the appropriate director or higher authority, as determined by the contract value and non-competitive contract approval authority limits. These limits are reduced by 50 percent below the Assistant Deputy Minister (ADM) level as per Annex 6.1.2.

(c) Where the work has not been completed, a contract will be prepared by the contracting officer. This contract should only include work that was not subject to proper contract authorization. Even though the work started prior to required contract authorization, the contract should not be backdated. The date (including the date in the Period of the Contract clause) of the contract must be the date of issuance of the written contract. To ensure that the work done prior to the contract date will be covered by the contract, a Pre-contractual Work clause (*Standard Acquisition Clauses and Conditions* Manual clause A9120C or A9094C as appropriate) indicating the date the work has started must be included in the contract to pay the contractor for any work performed prior to the issuance of the written contract. Contracts processed by PWGSC are to be approved by the appropriate director or higher authority, as determined by the contract value and non-competitive contract approval authority limits. These limits are reduced by 50 percent below the ADM level as per Annex 6.1.2.

7F.693 (2005-06-10) When the client department's activities prior to PWGSC's involvement have created an exposure, consideration must be given to obtaining an indemnification from a senior official of the client department before processing begins. Such consideration will assess the probability and impact of potential negative events (e.g. Canadian International Trade Tribunal complaint) that may occur as a result of the exposure.

Coding

7F.694 (1994-06-23) Statistical information pertaining to PWGSC contracting activities is required to meet corporate and parliamentary needs. Contracting officers are responsible for ensuring the complete and accurate recording of all contracts.

Contracting officers must follow the coding procedures in the Contract Coding Reference Guide.

Debriefings

7F.698 (1998-11-23) Debriefings should be made available to unsuccessful bidders on request, **but** only after contract award. A debriefing should include an outline of the reasons the bid was not successful, making reference to the evaluation criteria. In addition, unsuccessful bidders must be informed of the recourse mechanisms available to them, should they feel that despite the information provided during the debriefing, they are still dissatisfied with the handling of a particular procurement. In the case of procurements subject to trade agreements, unsuccessful bidders shall be informed that they have the right to file a complaint with the Canadian International Trade Tribunal; in the case of procurements not subject to trade agreements, unsuccessful bidders shall be informed that they have the right to bring action in Federal Court.

Care must be taken to protect the confidentiality of information relating to other bids. **The release of information relating to other bids by contracting personnel must comply with**

procedure 7F.706 below.

Disclosure of Information

7F.705 (1997-02-31) To ensure a consistent approach to the public release of information, Public Works and Government Services Canada (PWGSC) has agreed to release the unit prices contained in goods and services standing offers on a routine basis. However, it was determined necessary for bidders to be informed of PWGSC's intention to disclose their unit prices, in the event of a resultant standing offer. Contracting officers must therefore incorporate clause M0090T of the *Standard Acquisition Clauses and Conditions* (SACC) Manual to all requests for standing offers pertaining to goods and services requirements, and clause M0090C in the subsequent standing offer.

There may be rare circumstances where the policy as set out in 7F.705 above cannot be applied. Such situations shall be handled on a case by case basis and shall require the approval of the manager or higher, depending on the approval authority, following consultation with the Access to Information and Privacy (ATIP) office as appropriate, prior to the issuance of a solicitation document.

7F.706 (2004-12-10) PWGSC has determined that the following requests for bid, contract or standing offer information can be handled by contracting officers on a routine basis, **after** a contract or standing offer has been awarded:

(a) for all goods and services requirements, the name of the successful bidder and unsuccessful **corporate** bidders, responsive and non responsive, together with the total amount of their bid and total score if applicable. (Since information on bidders who are **individuals** may qualify for exemption under the *Privacy Act*, such requests should be directed to the ATIP office as indicated in 7F.707 (a) below.)

(b) for all goods and services requirements subject to public opening, information which was released at the public opening of bids (i.e. name and address of each bidder and the total amount of each bid); and

(c) individual unit pricing information contained in standing offers only, whenever the bidder has been notified of the Department's intent to disclose such information by incorporating clause M0090T of the SACC Manual to the request for standing offer.

7F.707 (2002-12-13) The following types of requests for bid, contract or standing offer information must be referred to:

Access to Information and Privacy Office
Portage III, 5C1
Gatineau, Québec K1A 0S5

Telephone: (819) 956-1820
Facsimile: (819) 994-2119.

Requestors should be advised that to be processed by the ATIP office, their requests must be submitted in writing, and be accompanied by an application fee in the amount of $5 either by cheque or debit to a credit card.

(a) names of bidders who are **individuals** and the content of their bids, including prices, as such information may qualify for exemption under the *Privacy Act*;

(b) copies of bids, including any accompanying catalogues, handbooks or pricing guides;

(c) copies of contracts, purchase order or standing offer documents, including any

accompanying PWGSC-produced catalogues, handbooks, or acquisition guides;

(d) bid and contract information pertaining to classified requirements;

(e) information contained in bids that have been cancelled or superseded by later bids;

(f) **individual pricing** information pertaining to contracts and purchase orders for goods and services and construction;

(g) any information not covered herein.

Notification to Unsuccessful Bidders

7F.710 (1997-03-31) Contracting officers must notify unsuccessful bidders as soon as possible **after contract award** where large expenditures are involved or when considerable professional, technical or production resources or equipment, e.g. charter aircraft, must be marshalled and held in reserve by bidders pending a contract award decision. (Notification to unsuccessful bidders **prior** to contract award is covered in procedures 7D.47B to 7D.4B6.)

It is a good practice to notify unsuccessful bidders as soon as possible after contract award.

Posting of Award Notices

7F.717 (2004-12-10) For all publicly advertised procurements, award notices are generated automatically through the Automated Buyer Environment (ABE) and published on the Government Electronic Tendering Service (GETS) (MERX). However, where the procurement is not advertised for reasons related to national security, an Award Notice will not be posted. Contracting officers must identify the appropriate Goods and Services Identification Number, to the eight-character level, for each contract.

Contracting officers who do not use ABE are responsible for creating an award notice using the GETS (MERX) on-line notice creation tool, as MERX will not create this notice automatically.

7F.718 (2004-12-10) For procurements that are subject to North American Free Trade Agreement and World Trade Organization Agreement on Government Procurement, an Award Notice must be published on GETS (MERX) **as well as** in the *Government Business Opportunity* within seventy-two (72) days of awarding the contract. For procurements that are subject to the Canada - Korea Procurement Telecommunications Equipment Agreement, an Award Notice must be published on GETS (MERX) within seventy-two (72) days of awarding the contract. Although there are no minimum time periods identified for the Agreement on Internal Trade, the seventy-two (72)-day limit applies for reasons of consistency.

Award notices are generated by ABE and sent to GETS (MERX) once the contracting officer releases the procurement summary with the electronic coding sheet. An Award Notice will be generated for all solicitations that have been publicly advertised on GETS (MERX), regardless of the value of the resulting contract.

Industrial Security Requirements

7F.724 (2002-05-24) If the contract contains security requirements, a copy of the contract must be forwarded to the Canadian and International Industrial Security Directorate.

Release of Bid Security

7F.726 (1997-09-15) Surety bonds lapse automatically and must be destroyed on expiration of the purpose or period for which they were required. Security deposits (government guaranteed

bonds, bills of exchange, irrevocable standby letters of credit) must be returned to bidders. Letters of credit must be returned by the bidder to the issuer to complete the discharge.

7F.727 (1997-09-15) Lapsing of surety bonds, or return of security deposits (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) shall occur:

(a) for all bidders, at the expiration of the bid validity period, either as originally set or as extended;

(b) for unsuccessful bidders, prompt notification or return of a security deposit, immediately after a contract is issued, is essential in such cases so as not to constrain the unsuccessful bidder's ability to make new bids;

(c) for a successful bidder, immediately upon award of a contract, once the contract security has already been received or immediately if no contract security is required.

Mandatory Registration of Interest in Crown Goods

7F.733 (1994-06-23) Measures may be required to guard against the possibility that unpaid suppliers, contractors or lenders will attach liens to goods to which the Crown has taken title through full or partial payment. In provinces other than Quebec, the Crown can register notice of its interest in the goods with a view to protecting itself against the risk of liens. The registration requirements differ for each province.

In practical terms, because of the complexities involved, this action is appropriate only on high dollar value contracts. Contracting officers must register notice of the Crown's interest in the goods deliverable in the following cases:

(a) PWGSC goods contracts valued at $50 million or over, with registration effected promptly after contract award.

(b) PWGSC goods contracts valued at $10 million or over, awarded to a contractor found, after detailed financial analysis, to have weak financial capability.

Registration is to be performed promptly after the receipt of the financial opinion.

(c) Other PWGSC goods contracts valued under $10 million and awarded to a contractor found, after detailed financial analysis, to have weak financial capability, if registration is recommended by Legal Services.

In all provinces, for contracts relating to ships, Crown interests can be registered under the *Canada Shipping Act*.

7F.734 (1994-06-23) All registration procedures will be executed in consultation with, and as directed by, Legal Services. (See 11.106.)

Annex 7.1: Bid Bond

No._____
$_____

KNOW ALL MEN BY THESE PRESENTS, that _____ as Principal, hereinafter called the Principal, and _____ as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto _____, hereinafter called the Crown, in the amount of _____ Dollars ($_____), 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 _____ 19 ___ .

WHEREAS, the Principal has submitted a written tender to the Crown, dated the _____day of _____, 19___, for _____.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if:

(a) the Principal, should his tender be accepted within the period be specified by the Crown, or, if no period be specified, within sixty (60) 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 first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

_____
Principal

_____
Surety

_____
Witness

NOTE: Affix Corporate seal if applicable.

Annex 7.7: Preparation of a Contract Request
(2003-12-12)

Contract Requests can be presented for Deputy Minister/Minister approval in either French or English, however, Treasury Board (TB) submissions must be in bilingual side-by-side format.

Part 1 - Submission Data

Contract Request - form PWGSC-TPSGC 1151-1

The key elements of a Contract Request which a contracting authority needs to know include the following:

(a) the requirement and its end use;
(b) the supplier and how the selection was made;
(c) cost, the basis of payment and cash flow.

The preparation of Part 1 should focus on these general key elements. The following sections provide additional considerations that should be brought to the contracting authority's attention when applicable.

1. Priority Attention

If priority consideration is requested because of delivery requirements or for any reason, including expiry of price validity, state the consequences of not meeting the expiry date.

2. Subject

State whether this is a request for Authority to enter into contract or Authority to utilize a standing offer method of supply.

3. Proposal

(a) State action proposed (e.g. To contract with; for standing offers). Identify the contractor by correct legal name and give its location (e.g., city, town or village; province; country if other than Canada). Briefly describe the goods or services being supplied and their end use. Part numbers and specification numbers should be referred to in Part 2 of form PWGSC-TPSGC 1151-2 only. State the delivery point (e.g., city, town, etc.). If there are numerous delivery points, state "Delivery to various destinations" but do not list them in this section. Refer to an appendix.

(b) Specify any proposed deviations from Cabinet or TB contracting policies.

(c) When certain terms or certain deviations from departmental policies are being recommended in the Contract Request, creating a financial obligation for the Crown, request authority for the monetary obligation in this section and, in the Remarks section, explain why it is recommended that the Crown be responsible in this case.

(d) If any advance payments are being proposed, specify in this section and describe in the Basis of Payment section.

(e) If there is an option to be exercised by the Crown by a specific date, and the pricing is known or pricing formula agreed upon and the funds for the option are available in the requisition (or expected to be provided in the future), request approval to exercise the option in this section. Provide the option pricing or pricing formula and the final date for exercise of the option in the Basis of Payment section.

(f) Indicate in a separate paragraph when approval is being requested for an additional estimated amount so that provision may be made for unscheduled work such as work arisings, design changes or escalation.

(g) In the case of a proposed contract for a specified term or period only, or of a proposed standing offer, state whether the expiry date is for ordering or delivery.

4. Cost

(a) Show the total estimated cost to the Crown to complete the proposed contract, Goods and Services Tax/Harmonized Sales Tax (GST/HST) included. When the price to be paid is in a foreign currency, the estimated Canadian equivalent, based on the conversion rate currently in effect, should follow in brackets. Identify the funding source (vote and requisition number) and name the certifying department or agency. For standing offers which are not funded, state that the amount is chargeable to the client.

(b) "Total estimated cost," in the first line of the preceding paragraph, refers to the total amount payable to the contractor, GST/HST included, under the terms of the contract, including payment for all supplies or services plus any options for which funds are available (or expected to be provided in the future) and any additional estimated amount for foreseeable subsequent amendments covering unscheduled work, etc., for which approval is being sought.

(c) Include a schedule of cash flow, providing a distribution by year of the funds expected to be disbursed during the course of the contract.

5. Basis of Payment

(a) Summarize all factors which have a bearing on the proposed purchase, such as (details of major elements of cost should be provided in an appendix):

(i) price to be paid;

(ii) method of pricing:

- firm lot price
- firm unit price,
- target price, ceiling price and incentive fee formula,
- target price and incentive fee formula without ceiling price,
- fixed time rate, or
- price-to-be-negotiated (PTBN) - include a formula for determination of firm basis of payment, or provide an explanation as to why inclusion of a formula is not possible, and why PTBN is not to a ceiling, if this is the case;

(iii) audit or verification provisions;

(iv) customs duty;

(v) goods and services tax:

- included,
- extra,
- exempt or zero-rated (indicate reason for exemption), or
- not applicable;

(vi) other taxes;

(vii) delivery terms, for example:

- FOB (free on board) destination,
- FAS (free alongside ship),
- FAF (free alongside flight),
- F0B common carrier, contractor's plant,
- CIF (cost, insurance, freight);

(viii) exchange escalation provisions, if applicable. Identify the amount of foreign currency which is subject to escalation and any special conditions;

(xi) any other escalation provisions except those provided for in the General Conditions forming part of the contract (e.g. sales tax, excise tax, customs duties);

(xii) option - pricing or pricing formula plus final date for exercise of option.

(b) Describe any advance payment requirements.

(c) Provide the proposed Basis of Payment for any unscheduled work (introduced in the Proposal section and included in the Cost section as an estimated amount).

(d) If a large number of items and/or destinations are involved, make the following statement under Basis of Payment: "Unit (and/or Lot) prices totalling $ _____, sales tax _____, F0B _____, as detailed in the attached appendix or in an appendix attached to the proposed contract."

6. Remarks

Ensure that source and price are adequately justified, by using the following criteria:

(a) Indicate how many suppliers were requested to bid and the method of soliciting bids. State the number of bids received and the relative standing of the recommended bidder with regard to price, e.g., "the lowest being recommended."

(b) If other than the lowest responsive bid is recommended, explain clearly why any lower bid is not acceptable.

(c) If a bid is considered non-responsive because it does not meet the mandatory requirements of the solicitation but is lower in price than the lowest responsive bid, concisely describe the major deficiencies.

(d) If two bids have an identical price and one of the two is recommended for acceptance, detail the governing selection criteria.

(e) If selection is not made by competitive bid, provide sufficient support for the choice made. In the absence of competition, quote the price certification obtained and explain why the price is considered to be fair and reasonable. Include a brief summary of Part 2, Section F2, Previous Price, of form PWGSC-TPSGC 1151-2.

(f) If deviations from Cabinet or TB contracting policies are recommended, quote opinions given by the functional branches, specifying any financial or other consequences, and give reasons for such recommendations. Whenever possible, express the Crown's proposed obligations in monetary terms.

(g) If deviations from the provisions of the World Trade Organization - Agreement on Government Procurement, the North American Free Trade Agreement, the Canada-Korea Procurement of Telecommunications Equipment Agreement or the Agreement on Internal Trade are recommended, provide reasons for the deviation.

(h) If approval is being requested for any estimated amount for unscheduled work arisings, design changes or escalation, as introduced in the Proposal section, estimated in the Cost section and substantiated in the Basis of Payment section, provide support in this section.

(i) Describe any options in this section and include the criteria that will be used for determining whether the option should be exercised.

(j) If the proposed contract is of a value in excess of $2 million for goods and services or of any value with a socio-economic impact judged to be significant, include a section dealing with the socio-economic considerations, including any funding implications. Attach the recommendations of the dedicated management committee or of the Procurement Review Committee.

(k) If advance payments are recommended, explain why and state the benefits to the Crown.

(l) Include a statement on the amount of Canadian content and the creation/maintenance of jobs in Canada and their location.

(m) Describe briefly the profit calculations.

(n) State the dates for commencement and completion of deliveries included in the offer being recommended for acceptance. Do not include all of the delivery details.

(o) Whenever possible, give the TB number which grants the client program approval.

(p) Submissions seeking TB approval of contracts should address compliance with the Federal Contractors Program for Employment Equity (FCP-EE). It is recommended that the contracting officer verify the Certificate of Commitment number by comparing it with the number listed for that organization/bidder in the List of Certified Employers. (**NOTE: Only federal government employees can access the site**.)

7. Certifications

(a) For TB submissions, indicate that the manager's statement that the current estimate of total cost of the project does not exceed the approved project budget, that the manager's identification of the source of funds to cover the requirement if the contract price for a given element of the project budget should exceed the estimated cost and the manager's certification of agreement with the submission have been received. Do not attach the certifications. While PWGSC has the sole responsibility for requesting contract approval from TB, in situations where a certification cannot be obtained or only a qualified certification can be obtained from the client, annotate the submission with an observation stating the diversity of opinion.

Note: When approval is sought to exercise options which are not yet funded, the project manager must certify agreement with the submission and state that the total estimated cost does not exceed the project budget for the complete requirement, including unfunded options.

(b) Where retroactive contract approval is being sought for work already commenced for whatever reason, client certification must be attached to the effect that the minister

concerned has agreed to the commencement of work before the receipt of TB approval.

8. Expiry Date

State the expiry date of the offer.

Note: If genuine urgency exists, the reason should be stated in Part 1, PRIORITY ATTENTION section.

Part 2 - Supporting Data

Contract Request - form PWGSC-TPSGC 1151-2

This part is to be completed to provide all of the supporting information requested on the form. It consists of two pages, both of which must be completed. To the extent possible, there should be no repetition in Part 2 of the information given in Part 1 of form PWGSC-TPSGC 1151-1. In particular, note the following:

Section A - Details of Contract Demand or Requisition

1. If all of the supplies or services requisitioned by the client are not in the proposed contract for which approval is being sought and Part 1 of form PWGSC-TPSGC 1151-1 did not make this clear, briefly summarize, for the understanding of the approval authority, the total number of items on the requisition and the number included in the proposed contract. If there is not enough space because of the size of the summary explanation, refer to the appendix or document on file which provides the details.

2. If the goods and/or services requisitioned are the same as those being recommended for acceptance from the proposed supplier, describe them in this section or refer to the work specifications.

3. When the funds available are less than the estimated costs of the contract and advantage is being taken of the allowable PWGSC over commitment, state it in this Section A.

Section B - Special Terms not Included in Part 1

1. Detail any special terms which will have an effect on the proposed contract which are not included in Part 1 of form PWGSC-TPSGC 1151-1, such as financial security, royalty payments, etc. Address conformance with the following policies *(some sectors/regions may prefer to address these policies in Section F, either location is acceptable)*:

   (a) International Sanctions,
   (b) Employment Equity Program (Quote Certification No.), and
   (c) Conflict of Interest.

2. It is not necessary to refer to normal escalation provisions contained in General Conditions.

Section C - Delivery

State the delivery requirements specified by the client and promised by the supplier and the acceptability of delivery if not in accordance with the delivery specified.

Section D - Type of Contract Document

State the type of contract document, e.g. Your Tender is Accepted; You are Requested; Standing Offer; Your Proposal is Accepted; Formal Agreement.

Section E - Bids Received

State if there was a public opening of tenders.

Section F - Basis of Recommendation

F1 Price support for negotiated cases

In the absence of competition, detail the price support which has been obtained, if this was not provided in Part 1 of form PWGSC-TPSGC 1151-1. State reasons why the various price elements are considered to be fair and reasonable. Substantiate the profit or mark-up factor being recommended.

F2 - Previous Price

Provide details of previous prices for negotiated cases when available, including the percentage of increase or decrease, and an explanation for any substantial increases. Provide this information also for competitive cases unless the number of small-dollar-value items makes the comparison too complex to serve a useful purpose.

F3 - Discrepancies, if any, between bid solicitation and bid recommended

Provide details and reconcile amounts, when discrepancies occur between bid solicitation and bid recommended.

F4 - Support for deviations from departmental policy, changes or deletions in General Conditions and Supplemental General Conditions

Support deviations from departmental policy in this section.

F5 - Acceptability of supplies if not in accord with specifications

Support acceptability of supplies if not to specifications.

F6 - Method of Payment

1. Detail the Method of Payment. If progress payments are being proposed, fully describe them, including any holdbacks.

   Note: If there are numerous items, and items and unit prices are not detailed in Part 1 of form PWGSC-TPSGC 1151-1, or in an Appendix to Part 1, make reference in Section F to the specific document on the file which details the information.

2. Other data, if applicable, should be stated under Section F, such as:

   (a) Add list of suppliers who were invited to bid and their ownership.

   (b) Attach financial officer's opinion on supplier's financial status.

   (c) Attach legal counsel's opinions on the legal nature of the case and on the contract submission, including its consistency with the contract.

   (d) If not previously mentioned in Section B, address the contractor's compliance with:

   - International Sanctions;
   - Employment Equity Program (Quote Certification No.); and
   - Conflict of Interest provisions

Annex 7.6: Sample Covering Letters
(2004-12-10)

Version 1: To be used for procurement that are advertised on GETS (MERX)

The attached notice describes a procurement opportunity as advertised on the Government Electronic Tendering Service (GETS), which is provided through MERX. GETS (MERX) is the only source for the bid solicitation documents.

Therefore, it is important to contact GETS (MERX) to order a copy of the bid solicitation document(s) if you are interested in bidding. Public Works and Government Services Canada (PWGSC) will not send a copy to you directly.

GETS (MERX) charges a fee for this service. If you are already a paid GETS (MERX)subscriber, then ordering bid solicitation documents in electronic download format is free. Otherwise, for other formats, you will be charged the applicable fees for each document that you order. If you are not a GETS (MERX) subscriber, you must pay a one-time Non-subscriber order user fee per order basket when you order bid solicitation documents, plus the applicable cost of the document(s). The total cost of the associated bid solicitation document is based on its format (e.g. PDF downloadable - free, hard copy paper - order fee), size of the document (e.g. number of pages, etc.) and, the delivery method that you choose (i.e. electronic download, facsimile, e-mail, pick-up, regular mail or courier).

To find out how to subscribe to GETS (MERX) or to request a bid solicitation document, please contact the MERX Call Centre at telephone number 1-800-964-6379 or visit the MERX Website.

For more information on the attached procurement opportunity, call the specified contracting officer.

Version 2: To be used for public advertising other than GETS (MERX)

The attached notice describes a procurement opportunity publicly advertised by PWGSC. For more information on the attached procurement opportunity or to request bid solicitation documents, call the contracting officer identified in the Notice.

Annex 7.5: Intellectual Property
(2005-06-10)

Structure for Use of IP Terms:

General Conditions, Supplemental General Conditions, Clauses

1: Research and Development Contracts		
1A: Client Decision: CONTRACTOR to own Foreground Intellectual Property (IP)		
Number	**Title**	**Comments**
General & Supplemental General Conditions		
9624	General Conditions - Research and Development	Broader background license
Optional Clauses:		
K3005D	Protection of Intellectual Property	
K3015D	Foreground Information - Confidentiality	
K3020D	Licence to Canada's Information	
K3415D	Commercialization in Canada	
K3420D	Liquidated Damages	To enforce K3415D
1B: Client Decision: CROWN to own Foreground IP		
Number	**Title**	**Model Clause(s)**
General & Supplemental General Conditions		
9624	General Conditions - Research and Development	IP Terms replaced by K3410D
K3410D	Canada to Own Intellectual Property Rights in Foreground Information	Broader background license
Mandatory Fill-in Clause		
K3200T	Basis for Canada's Ownership of Intellectual Property	
Optional Clauses		
K3305D	License to Intellectual Property Rights in Foreground Information (Royalty Free)	
K3306D	License to Intellectual Property Rights in Foreground Information (Possible Royalty)	
K3310D	No Right for Contractor to Sub-license	
K3315D	License to Intellectual Property Rights in Canada-owned Information	

2: Goods Contract with associated Research and Development

2A: Client Decision: CONTRACTOR to own Foreground IP		
Number	**Title**	**Model Clause(s)**
General & Supplemental General Conditions		
9601	General Conditions - Long Form	IP Terms replaced by 9601-6
9601-6	Contractor to Own Intellectual Property Rights in Foreground Information	Narrower background license
Optional Clauses		
K3005D	Protection of Intellectual Property	
K3015D	Foreground Information - Confidentiality	
K3020D	Licence to Canada's Information	
K3025D	License to Intellectual Property Rights in Background Information (Contractor Owns)	Broader background license
K3415D	Commercialization in Canada	
K3420D	Liquidated damages	To enforce K3415D
2B: Client Decision: CROWN to own Foreground IP		
Number	**Title**	**Comments**
General & Supplemental General Conditions		
9601	General Conditions - Long Form	IP Terms replaced by 9601-7
9601-7	Canada to Own Intellectual Property Rights in Foreground Information	Narrower background license
Mandatory Fill-in Clause		
K3200T	Basis for Canada's Ownership of Intellectual Property	
Optional Clauses		
K3305D	License to Intellectual Property Rights in Foreground Information (Royalty Free)	
K3306D	License to Intellectual Property Rights in Foreground Information (Possible Royalty)	
K3310D	No Right for Contractor to Sub-license	
K3315D	License to Intellectual Property Rights in Canada-owned information	
K3320D	License to Intellectual Property Rights in Background Information	Replaces narrower background license in 9601-7 if needed.

3: Goods Contract with no Research and Development expected		
3A: Client Decision: CONTRACTOR to own all Foreground IP, including Copyright		
Number	**Title**	**Comments**
General & Supplemental General Conditions (Alternatives)		

9601	General Conditions - Long Form	Copyright (Re: Treasury Board Policy on IP, Section 6.5, Exceptions to Contractor Ownership)
2010	General Conditions - Goods or Services (Low Dollar Value)	Copyright (Re: Treasury Board Policy on IP, Section 6.5, Exceptions to Contractor Ownership)
Note: The above terms provide Canada with ownership of Foreground IP that is subject to Copyright, other than software and its associated documentation. Contract is silent on other IP.		
Clause Needed to effect Client's Decision		
K3002D	Contractor to Own IP: No Explicit License Rights for Canada	
Optional Clause		
K3030D	License to Material Subject to Copyright	For use with K3002D
3B: Client Decision: CROWN to own Foreground IP (Copyright)		
Number	**Title**	**Comments**
General & Supplemental General Conditions (Alternatives)		
9601	General Conditions - Long Form	Copyright (Re: Treasury Board Policy on IP, Section 6.5, Exceptions to Contractor Ownership)
2010	General Conditions - Goods or Services (Low Dollar Value)	Copyright (Re: Treasury Board Policy on IP, Section 6.5, Exceptions to Contractor Ownership)
Note: The above terms provide Canada with ownership of Foreground IP that is subject to Copyright, other than software and its associated documentation. Contract is silent on other IP.		
Mandatory Clause		
K3200T	Basis for Canada's Ownership of Intellectual Property	

4: Services Contract with no Research and Development expected		
4A: Client Decision: CONTRACTOR to own all Foreground IP, including Copyright		
Number	**Title**	**Comments**
General & Supplemental General Conditions (Alternatives)		
9676	General Conditions - Services	Copyright (Re: Treasury Board Policy on IP, Section 6.5, Exceptions to Contractor Ownership)
2010	General Conditions - Goods or Services (Low Dollar Value)	Copyright (Re: Treasury Board Policy on IP, Section 6.5, Exceptions to Contractor Ownership)

Note: The above terms provide Canada with ownership of Foreground IP that is subject to Copyright, other than software and its associated documentation. Contract is silent on other IP.		
Clause Needed to effect Client's Decision		
K3002D	Contractor to Own IP: No Explicit License Rights for Canada	
Optional Clause		
K3030D	License to Material Subject to Copyright	For use with K3002D
4B: Client Decision: CROWN to own Foreground IP (Copyright)		
Number	**Title**	**Comments**
General & Supplemental General Conditions (Alternatives)		
9676	General Conditions - Services	Copyright (Re: Treasury Board Policy on IP, Section 6.5, Exceptions to Contractor Ownership)
2010	General Conditions - Goods or Services (Low Dollar Value)	Copyright (Re: Treasury Board Policy on IP, Section 6.5, Exceptions to Contractor Ownership)
Note: The above terms provide Canada with ownership of Foreground IP that is subject to Copyright, other than software and its associated documentation. Contract is silent on other IP.		
Mandatory Clause		
K3200T	Basis for Canada's Ownership of Intellectual Property	

Annex 7.4: Handling, Custody and Safekeeping of Financial Security (2000-12-01)

Guidelines applicable to the handling, custody and safekeeping of bid and contract financial security are the following:

Handling of bills of exchange

1. A bill of exchange tendered as a security deposit in connection with a bid for a contract shall be held uncashed in a secure and fireproof place until the successful bid is selected or for up to one year, whichever occurs first. (If at the end of one year the contract still has not been awarded, the contracting officer must exchange the bill of exchange for a current-dated one.) Security deposits received with Headquarters bids are sent by the Bid Receiving Unit to the Finance Sector, PWGSC, for safekeeping. The Bid Receiving Unit sends three copies of the list together with the deposits to the Finance Sector, showing opposite the name of each bidder the amount and nature of the deposit (e.g. certified cheque, bonds). The Finance Sector signs and returns two copies of the list to the Bid Receiving Unit. The Bid Receiving Unit sends one copy to the contracting officer.

2. When a bid is accepted and the bill of exchange is then required as security until completion of the contract, a contractor may request the Department to hold and not cash the bill of exchange. It should be stored by the directorate in approved security equipment (see paragraph 8 below) or, where the directorate does not have adequate facilities, it should be sent to the Financial Services Division (FSD), Financial Operations Directorate, who will arrange for storage. If the contractor makes no such request, the bill of exchange is to be forwarded to the FSD for deposit in the Consolidated Revenue Fund (CRF).

3. When a bid is rejected, or accepted and the bill of exchange submitted in connection with the bid is not required as security until completion of the contract, the bill of exchange is returned to the contractor.

4. Bills of exchange received as contract security shall be forwarded immediately to FSD for deposit in the CRF, in accordance with the Receipt and Deposit of Public Money Regulations.

5. A security deposit provided as collateral for the return of plans and specifications will be forfeited if those plans and specifications are not returned in time and in satisfactory condition. Furthermore, the contracting officer shall so inform the Manager, FSD.

Government guaranteed bonds, bills of exchange and letters of credit

6. The Finance Sector shall ensure that the receipt of bills of exchange and/or government guaranteed bonds and/or irrevocable standby letters of credit is recorded in the accounting records of the Department and that it is also appropriately recorded in the Accounts of Canada as an asset and a liability. Directorates shall promptly notify the Finance Sector of all such receipts, regardless of whether they are held by the directorate.

Safekeeping of bonds, negotiable instruments and letters of credit

7. There are three acceptable methods for the safekeeping of government bonds, negotiable instruments and letters of credit:

   (a) custody by FSD which was established to provide a safekeeping service for securities and any other valuable assets requiring theft-proof storage; or

   (b) storage by the directorate in approved security equipment, in accordance with Part II of the Government Contracts Regulations; or

(c) storage by the Security Deposit Division, 350 King Edward Ave, Ottawa.

8. The adequacy of departmental security equipment can be assessed by referring to the PWGSC Security Equipment Catalogue, which lists equipment that is approved for the storage of negotiable. Industrial and Corporate Security Directorate assistance is also available on this subject.

9. Where proper security equipment is not available, all security deposits (government guaranteed bonds, bills of exchange, irrevocable stanby letters of credit) shall be forwarded to FSD for safekeeping, using a PWGSC deposit form entitled "Contractor's Security Deposit."

10. To lessen the risk of loss, bonds should be transmitted directly to FSD from wherever the contracting authority first receives the security (e.g. if a bond is received in a regional office, it should not be routed to Headquarters, but sent directly to FSD).

11. When transmitting bonds from the Department to FSD (or to the owner when the securities are held by directorates), registered and hypothecated bonds are to be transmitted by registered mail. Bearer bonds may be transmitted by "money packet" or bonded courier, armoured car service or a courier provided from within departmental resources.

12. When bearer bonds are transmitted by the "money packet" system, the maximum indemnity from the Post Office is $100 and, thus, appropriate additional insurance should be considered. (For the examination and management of risks, directorates should refer to the Treasury Board Manual entitled Materiel, Services and Risk Management.)

13. While coupon-bearing bonds are in its custody, FSD is responsible for their security and for clipping matured coupons and remitting them as directed by the contracting authority.

Annex 7.3: Performance Bond
(2004-05-14)

No. _____
$ _____

KNOW ALL PERSONS BY THESE PRESENTS, That _____ as Principal, hereinafter called the Principal, and _____ as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto _____ as Obligee, hereinafter called the Crown, in the amount of _____ Dollars ($_____), 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 _____ 20____.

WHEREAS, the Principal has entered into a Contract with the Crown, dated the _____ day of _____, 20____ for _____ which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS BOND 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 that 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:

_____
Principal

_____ _____
Witness Surety

NOTE: Affix Corporate seal if applicable.

Annex 7.2: Labour and Material Payment Bond
(2004-05-14)

No. _____
$_____

KNOW ALL PERSONS BY THESE PRESENTS, that _____ as Principal, hereinafter called the Principal, and _____ as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto _____ as Obligee, hereinafter called the Crown, in the amount of _____ Dollars ($_____), 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 _____ 20 ____

WHEREAS, the Principal has entered into a Contract with the Crown, dated the _____ day of _____ 20_____ for _____ which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS BOND 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:

1. For the purpose of this Bond, a Claimant is defined as one having a direct contract with the Principal or any Subcontractor 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.

2. 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.

3. The Principal and the Surety hereby jointly and severally 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.

4. 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.

5. 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.

6. 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 Subcontractor of the Principal under either the terms of the Claimant's Contract with the Principal or the Claimant's Contract with the Subcontractor 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 Subcontractor 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.

7. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

8. 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.

9. 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:

_____

Principal

_____ _____

Witness Surety

NOTE: Affix Corporate seal if applicable.

Annex 7.8: (2001-05-25) **Determination of Canadian Content for a mix of Goods and/or Services**

There is a Public Works Government Services Canada (PWGSC) solicitation for: 100 wooden office desks; 100 electric space heaters with maintenance and repair included; 100 telephone sets with maintenance and repair included; and, 100 metal swivel chairs.

The bidder will provide:

- unfinished wooden office desks which are imported into Canada and finished in Canada;
- electric space heaters which were constructed using domestic labour/materials and imported parts. The maintenance/repair of the electric space heaters is being done by Canadian-based personnel.;
- telephone sets which were constructed using domestic labour/materials and some imported parts. The maintenance/repair of the telephones is being done by U.S.-based personnel;
- metal swivel chairs which were constructed using domestic labour/materials and some imported parts.

Below are the prices for the goods and services offered in the bid:

100 Wooden Office Desks @ $150 each	$15,000
100 Electric Space Heaters @ $200 each	$20,000
Maintenance/Repair for Heaters	$5,000
100 Telephone Sets @ $50 each	$5,000
Maintenance/Repair for Telephone Sets	$1,000
100 Metal Swivel Chairs @ $25 each	$2,500
Total Bid Price	$48,500

Determination whether individual goods and services are Canadian (using NAFTA Chapter 4 - Rules of Origin)
(You may wish to refer to Annex 5.5 for The Rules of Origin Determination.)

Wooden Office Desks:

Unfinished wooden office desks (HS 9403.30) were imported and finished in Canada. The final good (finished wooden office desks) falls in same the subheading (HS 9403.30) as the unfinished good.

The NAFTA rules of origin covering HS 9403.30 (wooden office desks) require a change from another chapter, or a change from parts heading 9403.90, provided there is sufficient regional value content. These rules are not satisfied.

Therefore, the wooden office desks are **not** considered Canadian goods.

Electric Space Heaters:

Electric space heaters (HS 8516.21) were constructed using domestic labour/materials and imported

parts (HS 8516.90).

The NAFTA rules of origin covering HS 8516.21 (electric space heaters) allow a change from subheading 8516.90, provided there is a regional value content of not less than 60% where the transaction value method is used or 50% where the net cost method is used..

After calculations are done, the regional value content is found to be 65% using the transaction value method.

Therefore, the electric space heaters are considered Canadian goods.

Telephone Sets:

Telephone sets (HS 8517.11) were constructed using domestic labour/materials and some imported plastic tubes (HS 3917).

The NAFTA rules of origin covering HS 8517.11 (telephone sets) require a change to subheading 8517.11 from any other subheading, except 8517.90.11, 8517.90.12, 8517.90.13, 8517.90.14 or 8517.90.41.

Therefore, the telephone sets are considered Canadian goods.

Metal Swivel Chairs:

Metal swivel chairs (HS 9401.30) were constructed using domestic labour/materials and some imported parts (HS 9401.90).

The NAFTA rules of origin covering HS 9401.30 (metal swivel chairs) allow a change from subheading 9401.90, provided there is a regional value content of not less than 60% where the transaction value method is used or 50% where the net cost method is used.

After calculations are done, the regional value content is found to be 37% using the transaction value method.

Therefore, the metal swivel chairs are **not** considered Canadian goods.

Maintenance/Repair of Telephones:

The maintenance/repair of telephones is being done by U.S.-based personnel. Therefore, this service is **not** considered a Canadian service.

Maintenance/Repair of Electric Space Heaters:

The maintenance/repair of electric space heaters is being done by Canadian-based personnel. Therefore, this service is considered a Canadian service.

Calculation of Percent of Bid Price Considered Canadian

Canadian Goods and Services

100 Electric Space Heaters		$20,000
100 Telephone sets		$5,000
Maintenance/Repair of Heaters		$5,000

	Total Canadian Goods and Services	$30,000

Non-Canadian Goods and Services

100 Wooden Office Desks		$15,000	
100 Metal Swivel Chairs		$2,500	
Maintenance/Repair of Telephone		$1,000	
	Total non-Canadian Goods and Services	$18,500	
		Total Bid Price	$48,500

Percent of the Bid Price that is composed of Canadian goods and services = $30,000/$48,500 = 62%

Conclusion

The Supplier has **not** met the Canadian Content requirement that "no less than 80 percent of the bid price consists of Canadian goods and Canadian services".

Chapter 8 - ACAN/Negotiated Procurement

Advance Contract Award Notice

8.001 (2001-05-25) An Advance Contract Award Notice (ACAN) allows departments and agencies to post a notice, for no less than fifteen (15) 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 this posting period, a Statement of Capabilities that meets the requirements set out in the ACAN, then 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 electronic bidding authorities.

8.002 (2001-05-25) If other potential suppliers submit Statements of Capabilities during the posting period which meet the requirements set out in the ACAN, (i.e. considered valid) then the contracting authority must proceed to a full tendering process (electronic or traditional).

The objectives of posting an ACAN are to: a) enhance transparency in government procurement; b) support the Government's objective of enhanced competition; c) provide potential suppliers the opportunity to submit a statement of capabilities to a proposed directed procurement if they believe they have the capability and capacity to provide the good, service or construction requirement; and, d) meet the government's and suppliers need for an efficient and cost-effective government procurement system.

(The above statements are based on TBS Guide for Managers - Best Practices using ACANs.)

Policy Requirement

8.005 (2004-12-10) ACANs are required for each proposed procurement of goods and services estimated at $25,000 and over; for each proposed contract of construction estimated at $60,000 and over and architectural engineering services estimated at the North American Free Trade Agreement (NAFTA) threshold and over, and, for proposed contracts subject to the trade agreements, subject to the exclusions in 8.010 to 8.012 below. ACANs must be published on the Government Electronic Tendering Service (GETS), and in the case of procurements subject to NAFTA and/or the World Trade Organization Agreement on Government Procurement (WTO-AGP), they must also be published in the *Government Business Opportunity* (GBO).

8.006 (2001-05-25) ACANs are not required for amendments to contracts.

8.007 (2001-05-25) ACANs must clearly state that the proposed procurement meets one of the exceptions to solicit competitive bids under the Government Contracts Regulations (see 5.001) and one of the limited tendering reasons, or the exceptions set out in the applicable trade agreements (see 5.031 to 5.038). Such exceptions shall be fully and clearly justified in writing on the contract file.

8.008 (2001-05-25) ACANs shall not be used to circumvent the competitive process or be structured in a way that discourages possible submissions of Statements of Capabilities. (For example, one should not say, "this is not a competitive solicitation...", or any words to that effect.)

Exceptions

8.010 (2001-05-25) ACANs must not be posted where the competitive process using electronic or traditional bidding cannot be used. Examples include:

(a) confirming orders;

(b) Corps of commissionaires if right of first refusal applies;

(c) government direction such as Munitions Supply Program;

(d) works of art;

(e) where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures (see 5.031 *c*)); (CAP Code 81)

(f) tobacco products purchased for inmates by Correctional Service Canada;

(g) regulatory body determined sole-source service contracts (e.g. National Transportation Agency, Canadian Radio-Television and Telecommunications Commission*)*

(h) consolidated announcements that advertise a program consisting of several non-competitive standing offers/contracts. (Pharmaceutical and medical supplies are the only products currently eligible for this exclusion.)

(i) when, for security/public interest reasons, the information contained in an ACAN cannot be provided to the public.

(j) when 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. (CAP code 23)

8.011 (2001-05-25) An ACAN is not required in the following circumstances, however, one can be posted, at the discretion of the contracting officer.

(a) in the absence of valid tenders in response to an open or selective tender; (see 5.031(a)); (CAP Code 05)

(b) 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. 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. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be competed, where applicable (see 5.031 (e)). (CAP Code 72)

(c) the purchase of commercial off-the-shelf proprietary software from the software developer/exclusive licence holder, when it can be demonstrated to the satisfaction of the contracting officer that the specified commercial software is the only product capable of meeting the stated requirement and competing commercial software is unavailable;

(d) formal advisory committee determined sole source contracts arrived at through interdepartmental arrangements (e.g. Advisory Committee on Repair and Overhaul);

8.012 (2001-05-25) It is recognized that other circumstances exist where challenges cannot be considered and where the posting of an ACAN might be inappropriate. In such circumstances, the decision not to publish an ACAN must be approved by the Director General or Regional Director General.

Publicly Advertised Procurement (posting process)

8.015 (2001-05-25) Contracting officers are responsible for preparing an ACAN for publication on GETS and if applicable, in the GBO. Before publishing the ACAN on GETS, the contracting officer must have ready any supporting documentation. A copy of the proposed solicitation document may be used as supporting documentation.

A model ACAN is provided in Annex 8.1.

Time Limits

8.017 (2004-12-10) ACANs shall be posted for a minimum of fifteen (15) calendar-days on GETS. Where the procurement is subject to either the NAFTA or the WTO-AGP, the fifteen (15) calendar days shall commence on the date the ACAN is published in the GBO. For procurements covered by the Canada-Korea Telecommunications Equipment Agreement and the Agreement on Internal Trade, the publishing period commences with the publication of the ACAN on the GETS. (See 7B.183)

If there are no challenges within this fifteen (15) calendar-day period, the contracting officer may proceed with the award.

Notwithstanding the above, when a Statement of Capabilities is received after the specified date but before the award of the contract, the contracting officer must nevertheless consider the statement of capabilities prior to proceeding with the procurement. To do otherwise would contravene the Government Contracts Regulations.

Statements of Capabilities (Challenges)

8.020 (2001-05-25) Statements of Capabilities submitted by suppliers shall:

(a) be provided in writing within the specified time-frame indicated on the ACAN (within the fifteen calendar day posting period); and,

(b) include documentation demonstrating that the interested supplier meets the requirements as set out in the ACAN.

Review of Supplier's Statement of Capabilities by Contracting Officer

8.021 (2001-05-25) Once a Statement of Capabilities is received:

(a) There must be a fair review of all Statements of Capabilities.

(b) In instances where a Statement of Capabilities may be rejected, a separate review of the rejection is required. This Review shall be made at one level higher than the original approval authority, but not lower than that of Manager and not higher than the Assistant Deputy Minister.

(c) When additional information not specifically set out in the ACAN is provided on the requirements it shall be provided equally to all interested parties. If the information provided is considered a significant clarification to the information provided in the ACAN, an amended ACAN should be issued. Extending the closing date would be appropriate in such cases.

(d) Contracting officers may request additional information from suppliers or third parties, as appropriate, to ensure the interested supplier has the capability to meet the requirements of the ACAN.

(e) When a supplier's Statement of Capabilities provides sufficient information to indicate that a supplier has the capability to meet the requirements, it should be advised in

writing of the decision to accept its Statement of Capabilities before proceeding to a full tendering process (electronic or traditional). The recommended supplier must also be notified of the decision to compete the requirement.

(f) There must be full documentation on the procurement file with respect to all decisions taken regarding Statements of Capabilities and resultant changes in the procurement action.

(g) Withdrawal/cancellation of Statements of Capabilities must be documented on file, and should be provided in writing from suppliers.

Statements of Capabilities that are not accepted

8.022 (2001-05-25) With respect to Statements of Capabilities that are not accepted in accordance with 8.021 (b) above:

(a) suppliers should be advised in writing of the decision to reject a Statement of Capabilities before a contract is awarded;

(b) the rationale for the decision to reject a Statement of Capabilities shall be included in the file;

(c) debriefings must be offered to these suppliers.

8.023 (2001-05-25) If the requirement subject to an ACAN is cancelled, suppliers that submitted Statements of Capabilities must be notified.

DND Requirements

8.025 (2003-12-12) Department of National Defence (DND) requirements which are successfully processed through the use of an ACAN can be awarded on a FCA Free Carrier (...named place) Incoterms 2000 basis. If the ACAN is successfully challenged and gives way to an open competitive process, the contracting officer shall consider what alternatives to use in lieu of FCA for the bid solicitation and resultant contract.

Approval Authorities

8.026 (2001-05-25) For the purposes of Contract approval authorities, ACANs are classified under the “electronic bidding” category.

The electronic bidding approval levels apply whenever an ACAN has been posted and no valid Statement of Capabilities was submitted. (See Annex 6.1.1.)

Award Notices

8.030 (2001-05-25) Award notices for all procurements published on the GETS through the ACAN process, are generated automatically through Automated Buyer Environment once the contracting officer releases the procurement summary with the electronic coding sheet. (See 7F.717 and 7F.718.)

8.031 (2001-05-25) For procurements that have not been published on the GETS through the ACAN process, the award notice will have to be generated manually by the contracting officer, particularly in the case of procurements subject to trade agreements where the award notice is mandatory.

Negotiated Procurement

Receiving Bids

8.033 (2001-05-25) Responses to bid solicitations from pre-selected suppliers should normally be received directly by the contracting officer.

Federal Contractors Program for Employment Equity

8.035 (2004-12-10) When it is proposed to award a contract to a contractor subject to the Federal Contractors Program for Employment Equity (FCP-EE) that is estimated over the threshold for soliciting bids (i.e. over $25,000 including all applicable taxes), contracting officers must ensure that the recommended bidder is eligible to receive government contracts. This can be done either by using the *Standard Acquisition Clauses and Conditions* (SACC) Manual clause K2000T for requirements estimated at $200,000 and over, or K2002T for requirements over $25,000 but below $200,000, in conjunction with K2003C, or by verifying the proposed contractor's eligibility by consulting the List of Ineligible Contractors on the Publiservice site. (**NOTE: Only federal government employees can access this site**).

For policy advice and guidance, contact the Workplace Equity Program Advisor directly at (819) 953-7495, or the PWGSC policy advisor at (819) 956-4744.

In exceptional circumstances where the only supplier capable of performing a goods and services contract does not conform to the FCP-EE requirements, the matter is to be referred to Senior Management for approval. Prior consultation with Human Resources and Skills Development Canada should take place to attempt to resolve the issue.

Exchange Rates

8.040 (1994-06-23) For negotiated requirements, bidders may include their own conversion factor or propose a specific exchange rate in the bid. Any currency conversion rate or factor proposed by the bidder should be checked and substantiated by comparing it with prevailing rates for the amount of currency transaction involved.

Negotiations

8.045 (1994-06-23) Negotiations with a proposed contractor are normally at the discretion of the contracting officer, in consultation with the client. However, negotiations relating to price are subject to the procedures in Chapter 10, Cost and Profit.

Price Certification and Discretionary Audit

8.050 (2001-05-25) All negotiated firm price contracts valued over $50,000, whether for the acquisition of commercial or non-commercial products and services, require the submission of a price certification. Contracting officers must include the appropriate price certification and corresponding discretionary audit clauses in procurement documents.

The price certifications submitted by a contractor should be as follows:

(a) negotiated firm price contracts for the acquisition of all products and services valued over $50,000 from foreign suppliers - Standard Acquisition Clauses and Conditions (SACC) Manual clause C0001T.

(b) negotiated firm price contracts for the acquisition of commercial products and services, other than petroleum products, from Canadian suppliers other than agency and resale outlets - SACC Manual clause C0002T.

(c) negotiated firm price contracts for the acquisition of non-commercial products and services from Canadian suppliers other than agency and resale outlets - SACC Manual

clause C0003T.

(d) negotiated firm price contracts for the acquisition of commercial products and services from Canadian agency and resale outlets, including subsidiaries of foreign manufacturers - SACC Manual clause C0004T.

(e) negotiated firm price contracts for the acquisition of non-commercial products and services from Canadian agency and resale outlets, including subsidiaries of foreign manufacturers - SACC Manual clause C0003T.

(f) negotiated firm price contracts for the acquisition of petroleum products from Canadian suppliers - SACC Manual clause C0006T.

The discretionary audit clauses included in the bid solicitation and contract should be as follows:

(g) negotiated contracts valued over $50,000 for the acquisition of commercial products or services where price certifications C0002T, C0004T, or C0006T are used - SACC Manual clause C0100D.

(h) negotiated contracts valued over $50,000 for the acquisition of non-commercial products or services where price certifications C0003T is used - SACC Manual clause C0101D.

Rate Certification and Discretionary Audit

8.055 (2001-05-25) All negotiated fixed time rate contracts valued over $50,000 require the submission of a rate certification by the contractor and shall have a discretionary audit clause included in the contract. The appropriate clauses, for the bid solicitation and contract, are:

(a) Rate Certifications:

(i) for commercial services - SACC Manual clause C0600T;
(ii) for non-commercial services - SACC Manual clause C0601T;

(b) Audit clauses:

(i) for commercial services - SACC Manual clause C0100D;
(ii) for non-commercial services - SACC Manual clause C0101D.

Annex 8.1: Model Advance Contract Award Notice (2001-05-25)

The following is a model Advance Contract Award Notice that contracting officers can use in their electronic notices.

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

1. **An explanation of what an ACAN is**. The following explanation must be included:

   An Advance Contract Award Notice (ACAN) allows departments and agencies to post a notice, for no less than fifteen (15) 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, on or before the closing date, a Statement of Capabilities that meets the requirements set out in the ACAN, the contracting authority may then proceed with the award. However, should a Statement of Capabilities be found to meet the requirements set out in the ACAN, then the contracting officer will proceed to a full tendering process.

2. **Definition of requirements or expected results**. Provide in sufficient detail, so that other potential contractors can determine if they possess the capabilities to satisfy them and the contracting officer will have an adequate basis for reviewing a potential supplier's Statement of Capabilities.

3. **Statement regarding applicability of trade agreements or other obligations**. Include, where applicable, a statement indicating if the proposed procurement is subject to one of the trade agreements, the Procurement Strategy for Aboriginal Business, or to one of the Comprehensive Land Claims Agreements. Include the following statement at the beginning, where the procurement is set aside under the Procurement Strategy for Aboriginal Business:

   "This requirement is set aside for an Aboriginal supplier in accordance with the government's Procurement Strategy for Aboriginal Business. Therefore, only firms which meet the definition of an Aboriginal Business as defined in the Strategy may submit a Statement of Capabilities".

4. **GCR exception and Limited Tendering Reason, if applicable**. The relevant exception to the Government Contracts Regulations and, if applicable, the limited tendering reasons in the trade agreements being invoked. Indicate the reason(s) for the proposed contract award. This should clearly demonstrate why this supplier has been identified as the only supplier capable of performing the work.

5. **Ownership of Intellectual Property**. Where intellectual property will be created during the course of the contract, a statement should indicate whether an exception set out in the Treasury Board's Policy on Title to Intellectual Property Arising under Crown Procurement Contracts is being invoked or if the ownership of intellectual property will rest with the contractor. (See Treasury Board Secretariat website: http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/tipaucpca_e.html)

6. **The period of the proposed contract or the required delivery**. Provide the period of the proposed contract or the required delivery, including potential renewal or option years.

7. **An estimate of the cost of the proposed contract**. This should be included, where appropriate, provided that it will not prejudice negotiations with the proposed contractor, or compromise the contractor's competitive position if the contract proceeds to a traditional or electronic bidding process. (could be provided as a range)

8. **Name and, usually, the address of the proposed contractor must be identified in the ACAN.**

9. **Suppliers' right to submit a Statement of Capabilities**. An explanation to suppliers of how they may proceed in responding to the ACAN.

"Suppliers who consider themselves fully qualified and available to provide the services/goods described herein, 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. **The closing date for a submission of a statement of capabilities**. Include the Day, Month and Year for the closing date for accepting statements of capabilities, i.e. fifteen (15) calendar day period.

e.g. , August 22, 2000

11. **Inquiries and Submission of Statements of Capabilities**. Include the name, position, address, phone, fax and e-mail address where suppliers may inquire or submit a statement of capabilities.

Chapter 9 - Special Procurements

Section 9A: Purchases from CORCAN

Requisition Receipt

9A.1 (2002-05-24) In compliance with Cabinet Decision 320-74RD, dated May 16, 1974, Public Works and Government Services Canada (PWGSC), along with other federal government departments will, whenever possible, provide CORCAN with stable market outlets for its goods and services. This policy was reviewed and confirmed by Treasury Board on July 25, 1995.

9A.2 (2004-12-10) Article 1018 2(d) of the North American Free Trade Agreement allows for the exemption of procurements relating to goods or services of prison labour. A similar provision exists in the World Trade Organization Agreement on Government Procurement, the Canada-Korea Telecommunications Equipment Agreement and in the Agreement on Internal Trade, Article 507 (c).

9A.3 (2003-12-12) When in receipt of a requisition for which the client has specified that CORCAN is the preferred source of supply, the contracting officer will support the award of the requirement to CORCAN and issue a Stores Transfer Order. The client need not provide justification for purchasing CORCAN goods and services (see 9A.8).

9A.4 (2002-05-24) When CORCAN has not been specified as a source of supply but can meet the requirement, the contracting officer, wherever possible and in recognition of the potential benefits to be derived, will recommend to the client that CORCAN be considered as a source of supply

9A.5 (2002-05-24) There are a number of procurement methods available to access goods and services from CORCAN including Supply Arrangement number E60PQ-000008/001/PQ.

9A.6 (2002-05-24) Goods and services acquired from CORCAN must be comparable in price, delivery, performance and quality to those that PWGSC would have received from private sector suppliers had they been awarded the same business.

Memorandum of Understanding

9A.7 (2002-05-24) Procurements from CORCAN are to be carried out in accordance with the Memorandum of Understanding (MOU) (see Appendix A) ratified on 2 January 2001, by the Deputy Minister, PWGSC, and the Commissioner of Corrections, CSC. The attached MOU outlines both PWGSC and CORCAN responsibilities.

Implementation

9A.8 (2003-12-12) Documentation of procurements from CORCAN will take the form of "Stores Transfer Orders", since these arrangements are not contracts within the meaning of the *Government Contracts Regulations* (GCR) and the Treasury Board (TB) Contracts Directive. Existing contract and amendment forms are to be employed, and will be processed in the normal manner, with the following changes:

(a) delete the word "CONTRACT" and substitute the words "STORES TRANSFER ORDER";

(b) insert the following as the first item in the contract under "Description of Supplies and/or Services":

"Stores Transfer Order

This is not a contract."

9A.9 (2003-12-12) Although arrangements with CORCAN are not governed by the GCR and the TB Contracts Directive, all existing departmental limits governing the approval of entry into and signing of contracts apply.

Appendix A
(2002-05-02)

Memorandum of Understanding Between

Public Works and Government Services Canada

and CORCAN

(SOA of the Correctional Service of Canada)

This Memorandum of Understanding (MOU) supersedes the PWGSC/CSC agreement ratified on June 14, 1988.

1. Purpose

The purpose of this memorandum is to record agreement between the Department of Public Works and Government Services (PWGSC) and CORCAN (SOA of Correctional Service of Canada (CSC) with respect to orders placed by PWGSC for goods and/or services from CORCAN.

2. Basis for Preferential Access

In May 1974, in recognition of the social value of the training and employment of federally incarcerated offenders, Cabinet directed that, whenever possible, DSS (now part of PWGSC) and other government departments should provide correctional industries with adequate, stable and continuing market outlets for their manufactured goods.

By buying manufactured goods (office furniture, workstations, filing cabinet, dormitory furniture and furnishings) from CORCAN, the Government is lowering the cost of incarceration, and providing offenders with work related training which is essential for becoming self sufficient, law abiding citizens upon their release. For departments and agencies procuring CORCAN products, they are indeed buying truly Canadian materials and services that are backed by a sister agency, and saving a significant amount of time and energy because of a much simpler procurement process.

3. Requisites for PWGSC Business with CORCAN

(a) PWGSC must maintain good customer and supplier relations. Therefore, in allocating business to CORCAN, PWGSC will consider the impact on customer departments and on Canadian suppliers likely to be affected, particularly small business.

(b) PWGSC recognizes that CORCAN has the mandate to provide employment and training to federal offenders in order to give offenders the skills and attitudes they will need when they return to society and become productive employees. CORCAN does this by marketing the products and services produced by federal offenders.

(c) PWGSC recognizes that the department should assist CORCAN with the promotion of CORCAN products.

(d) CORCAN recognizes that it is the one primarily responsible for marketing its products.

(e) Once business has been accepted, CORCAN must undertake to fulfill its obligations to PWGSC.

(f) For all business allocated by PWGSC to CORCAN, the quality standards and delivery performance must be comparable to those which PWGSC would have demanded and received from private sector suppliers.

4. Pricing Policy

CORCAN product prices are to be comparable to the most recent prices contracted for with private sector suppliers for like products, quality and quantity.

5. Determination of Allocation

On receipt of a requisition for which the client has specified that CORCAN is the preferred source of supply, the contracting officer will support the award of all or part of a requirement to CORCAN.

When CORCAN has not been specified as a source of supply but can meet the requirement, the contracting officer, wherever possible and in recognition of the potential benefits to be derived, will recommend to the client that CORCAN be considered as a source of supply.

Except where a PWGSC analysis can demonstrate a prohibitive impact on a given Canadian industry, the share assigned to CORCAN will normally be limited only by the volume which CORCAN is willing and able to provide.

6. Review Process

At the request of either party, PWGSC and CORCAN agree to conduct a review of this PWGSC/CSC Memorandum of Understanding.

7. Implementation

The CEO of CORCAN and the Director General, Supply Program Management Sector, PWGSC, are responsible for the review and implementation of this memorandum.

8. Term of Agreement

This Agreement is effective from date of signatures and will remain in effect until terminated by mutual agreement of both parties (see paragraph REVIEW PROCESS).

9. Signatures

Signed this ____2_____ day of __January__, _2001__ at __Ottawa__.

_____
Ranald A. Quail : Deputy Minister, PWGSC

_____
Lucie McClung: Commissioner of the Correctional Service of Canada

Section 9B: United States Foreign Military Sales

9B.1 (1994-06-23) The United States (U.S.) government "*Arms Export Control Act*" establishes the rationale for Foreign Military Sales (FMS) by recognizing that the U.S. and other countries continue to have a valid requirement for effective and mutually beneficial defence relationships.

9B.2 (1994-06-23) FMS shall be considered as a method of procurement when the goods or services required relate to military equipment of U.S. origin and when, on the basis of the information available at the time, those goods and services are available or can be made available from the U.S. Department of Defense (DOD).

Requisition Receipt

9B.3 (1994-06-23) When Public Works and Government Services Canada (PWGSC) headquarters determines that an entire requirement will be sole-sourced to the U.S. FMS Program, the requisition is to be reallocated to PWGSC Washington. For non-Co-Operative Logistics (COLOG) requirements, PWGSC headquarters will include in the reallocated file a statement confirming the sole source decision with applicable documentation, such as Procurement Review Committee (PRC) (Short Range Acquisitions Plan {SRAP}) decisions, and the client's justification. For COLOG requirements, PWGSC headquarters will include in the reallocated file the client's justification as indicated in the Procurement Strategy Committee record of decision resulting from SRAP.

When PWGSC headquarters determines that only part of the requirement will be sole sourced to the U.S. FMS Program, an extract file is to be processed. (See 3.005.)

9B.4 (1994-06-23) The PWGSC Washington Directorate (PWGSC[W]), in its capacity as the sole accredited Canadian Procurement Agency to the U.S. DOD, shall be the departmental agency responsible for dealing with the U.S. government on all contractual matters directly related to FMS and shall coordinate all pertinent contract and administrative arrangements in the U.S. on behalf of PWGSC and its clients.

Definitions

9B.5 (1994-06-23) **FMS** is a Security Assistance Program which is administered by the U.S. DOD and which allows eligible foreign governments and international agencies to purchase defense-related articles and services from the U.S. government.

9B.6 (1994-06-23) **Defined Order Cases** are used when the material supplied or the services provided are explicitly stated in the Letter of Offer and Acceptance. This includes the acquisition of major weapon systems and related requirements such as spares packages, technical data packages, controlled items and the applicable publications, etc.

9B.7 (1994-06-23) **Blanket Order Cases** are used when there is no definitive listing of items or of quantities required. These agreements which are similar to standing offers, allow clients to submit requirements directly to the identified U.S. military organization through the use of the Direct Requisitioning Procedures (DRP) with the U.S. Navy or Blanket Open End (BOE) with the U.S. Army. Support equipment including assemblies, components, special tools, test equipment, training aid devices, minor modifications performed at U.S. installations, repair and return services, training, etc., are usually the subject of Blanket Order Cases. This category of FMS cases (contracts) does not necessitate the purchase of an equity. For the purposes of sections 9B and 9C, this category shall be deemed to fall under the COLOG arrangement.

9B.8 (1994-06-23) **COLOG**: A supply arrangement, similar to Standing Offers, which is negotiated with the U.S. DOD under the auspices of FMS. It enables the Canadian Department of National

Defence (DND) to obtain directly from the supply systems operated by the U.S. DOD, spare parts and accessories needed for Crown-owned military equipment of U.S. origin. This category of FMS cases (contracts) necessitates the purchase of an equity in the supply system of the appropriate military organization.

9B.9 (16/02/98) **Trigger Price:** A price expressed in Canadian dollars representing the cost of articles offered by the U.S. DOD, increased by a factor representing administrative costs, foreign exchange, sales tax, transportation, duty, the Goods and Services Tax (GST), and/or the Harmonized Sales Tax (HST), contractor overhead and profit, etc. This price is intended as a reference point to assist DND and PWGSC contracting officers in determining whether it would be more advantageous for Canada to acquire an item from sources in Canada (i.e. item of Canadian manufacture) or from the U.S. government.

Planning

9B.10 (1994-06-23) Through its Security Assistance Policy, the U.S. government provides for various forms of security assistance to other nations.

9B.11 (1994-06-23) FMS is a large and complex program which is administered by the U.S. DOD. In Canada, PWGSC, as well as the client, plays an important role in the implementation and maintenance of this program.

9B.12 (1994-06-23) Transactions initiated within the FMS Program are covered under basic categories of contracts (known as cases in the U.S. military organizations). The main categories are:

(a) Defined Order Cases;

(b) Blanket Order Cases including Blanket Open End (BOE) arrangements through the U.S. Army and Direct Requisitioning Procedures (DRP) through the U.S. Navy; and

(c) Co-Operative Logistics Supply Support Arrangements, commonly referred to as COLOG in Canada and CLSSA in the United States.

9B.13 (2001-12-10) PWGSC headquarters shall determine, before procurement through FMS is initiated, whether the provisions of the North American Free Trade Agreement (NAFTA), the World Trade Organization - Agreement on Government Procurement (WTO-AGP) or the Canada - Korea Procurement of Telecommunications Equipment Agreement (CKTEA) apply and shall take action accordingly. When these provisions do not apply, PWGSC shall determine whether there is an existing or potential source of supply in Canada and after consultations with DND, or any other client, shall establish whether in the circumstances, it would be more advantageous for the Government of Canada to procure in Canada or directly from the original equipment manufacturer in the U.S. or from the U.S. DOD.

Contracting Protocol

9B.14 (1994-06-23) Contracting with the U.S. DOD for the supply of material or for the provision of services on a government-to-government basis, is effected through the exchange of a Letter of Request (LOR) prepared by Canada and of a Letter of Offer and Acceptance (LOA) prepared by the U.S.

Time Frames

9B.15 (1994-06-23) The standard period of time for a response from the U.S. DOD to an LOR submitted by PWGSC(W) on behalf of Canada, is as follows:

(a) 45 days from the date of receipt of the LOR for an official Price and Availability;

(b) 90 days from the date of receipt of the LOR for an LOA not requiring notification to Congress;

(c) 105 days from the date of receipt of the LOR for an LOA requiring notification to Congress (applicable to acquisitions of equipment valued at $14,000,000 or more);

(d) Up to nine months in the case of technical data packages due to special inquiries or studies to be carried out.

Procedures followed under Price Review

9B.16 (2001-12-10) PWGSC contracting officers shall determine the price and availability of material, which is reported by DND to be available through FMS/Defined Order and Blanket Cases and when the procurement in question is not subject to the procurement provisions of NAFTA, WTO-AGP or CKTEA.

9B.17 (1994-06-23) Items of material identified in requisitions/contract demands submitted by the client (i.e. DND) as being available through FMS shall be designated for procurement in Canada if the price offered for a domestic item through a source in Canada is below the trigger price and DND shall be so informed before a contract is awarded. Similarly, items of material identified in requisitions/contract demands as being available through FMS shall be recommended for procurement from foreign source(s) if the price offered is below that quoted from FMS and DND shall be so informed before a contract is awarded. In addition, PWGSC shall review with DND, before contract award, the business case for purchase in Canada of domestic items which may be available through FMS when the price offered through a source in Canada exceeds the FMS trigger price. Even if the price exceeds the FMS trigger price, procurement from Canadian manufacturers shall be considered when the appropriate authorities at PWGSC and at DND agree, before contract award, that it would be in the interest of the Government of Canada to procure in Canada.

9B.18 (1994-06-23) Regional offices shall refer to the applicable product manager at headquarters, for resolution, all cases of disagreement between the contracting officers of PWGSC and the designated supply officers at DND, regarding sourcing.

Pricing and Payment

9B.19 (1994-06-23) FMS agreements, in accordance with the "Arms Export Control Act," always contain a clause requiring full payment prior to the delivery of an end item.

9B.20 (1994-06-23) The FMS Program provides for an estimated case value and payment schedule. The case value includes all the additional charges, such as: packing and handling; and general and administrative costs. The item price includes the above charges and is the same that would be charged to any other purchaser, including the U.S. Armed Forces. PWGSC(W) ensures that actual payment schedule reflects actual work performance.

9B.21 (1994-06-23) Generally, the final price of material and services requested under FMS will not be known until the material has been delivered or the services provided. The final price is determined from the actual contract costs and other management costs which must be charged in accordance with U.S. laws and regulations.

9B.22 (1994-06-23) FMS agreements applicable to systems requiring a substantial production period may include a phased payment schedule.

Recoupment Charges on U.S. Government Designed Military Equipment

9B.23 (1994-12-16) Under the "*Arms Export Control Act*", the U.S. DOD must recoup a pro-rata share

of non-recurring costs (NRCs) funded by the U.S. government on the sale of Major Defense Equipment (MDE) sold via FMS procedures. An item is considered an MDE when it is identified as Significant Military Equipment (SME) on the U.S. Munitions List (USML) and when the U.S. government has incurred either a non-recurring research and development cost for the item of more than $50 million or the item has had a total production cost of more than $200 million.

9B.24 (1994-12-16) Effective June 27, 1992, NRCs must not be charged on either FMS or Commercial contracts for Non-Major Defense Equipment (NMDE).

9B.25 (1994-12-16) Effective October 8, 1992, NRCs must not be charged on Commercial contracts for MDE.

9B.26 (1994-12-16) Recoupment must be collected on all FMS contracts for MDE unless the Defense Security Assistance Agency (DSAA) waives the charges.

9B.27 (1994-12-16) U.S. law precludes blanket waivers for NRCs on FMS contracts. However, blanket waivers have been obtained for all assets use charges and for quality assurance/inspection and contract audit services. Exemption from all other recoupment charges must be sought on a case-by-case basis, before the contract is signed.

9B.28 (1994-12-16) If the proposal/offer contains an amount for rental/asset use charges or quality assurance/inspection and contract audit services, the contracting officer should request deletion of the amount, as Canada has been granted a waiver from all such charges. (Reference: DOD FAR Supplement 245.405[3] and the DOD Security Assistance Management Manual 5105.38-M, Section 1301-1 respectively.)

NRCs - Commercial Contracts

9B.29 (1994-12-16) When soliciting proposals from U.S. or Canadian contractors for defence supplies valued at over $500,000, contracting officers must request that the proposal clearly indicate the type and amount of recoupment charges, if any, which are payable to the U.S. DOD.

9B.30 (1994-12-16) The following clause must be used in bid solicitations and contracts for defence supplies issued directly to the U.S. or Canadian defence suppliers.

"The contract price to be paid shall not include any charges for recoupment of non-recurring costs (NRCs) payable to U.S. Department of Defense."

NRCs - FMS

9B.31 (1994-12-16) All FMS procurements are handled by the PWGSC(W) office in its capacity as the solely accredited Canadian Procurement Agency to the U.S. DOD.

9B.32 (1994-12-16) When soliciting proposals, an LOR to the U.S. DOD is generated by PWGSC(W) which includes a request for the U.S. Service to identify if NRCs are involved in this requirement. If the ensuing proposal/LOA from the U.S. DOD includes NRCs, then PWGSC(W) pursues a waiver. A request for waiver will be submitted to the Director, Defense Security Assistance Agency (DSAA), by PWGSC(W) prior to the signing of the LOA.

9B.33 (1994-12-16) Upon receipt, the request for waiver will reside on a pending list. PWGSC(W) will then work with the client to determine if there is adequate justification for submitting a standalone waiver or whether some other reciprocal arrangement can be exercised.

9B.34 (1994-12-16) When sufficient justification exists, a standalone waiver request will be submitted to DSAA by PWGSC(W). Responsibility for providing adequate justification resides with the client.

9B.35 (1994-12-16) Recoupment charges may be reduced or waived for sales that significantly advance U.S. interests in standardization with NATO, where additional or unusual benefits can be clearly identified and demonstrated. Such benefits must generally be attributable to a unique military, foreign policy, or economic advantage of the sale. Examples of specific grounds for submitting a standalone waiver request are when:

(a) Canada does follow-on development of a U.S. item of potential U.S. interest;

(b) an item is jointly developed by Canada and the U.S. and put into production in the U.S. and Canadian rights are involved;

(c) the item is a component or subsystem required for a joint Canadian/U.S. project;

(d) the inclusion of U.S. development charges is a major factor in a Canadian "make or buy" decision;

(e) a trade-off of development costs on dissimilar items may be appropriate, such as when both countries plan procurement of both items at the same time;

(f) Canadian procurement of a U.S. item can be expected to influence favourable decisions or third countries to buy the U.S. item;

(g) the size of the Canadian procurement is such that our share of the NRCs appears to be out of proportion;

(h) specific joint operational, maintenance or logistic benefits can be identified as resulting from the sale; and

(i) future Canadian repair capability may provide unique and joint benefits as a result of the sale.

Note: This list of examples is not exhaustive; clients must evaluate the potential justification on a case-by-case basis.

9B.36 (1994-12-16) When a standalone waiver is granted by the DSAA, the waiver request is removed from the pending list and the LOA amended to delete these charges.

9B.37 (1994-12-16) In the event a standalone waiver is not granted by the DSAA or it is not requested by PWGSC(W), the original request will remain outstanding on the pending list. These outstanding waiver requests are available for future consideration as non-standalone waivers, which may be granted as a method of providing funding for a specific purpose in furthering U.S. and Canadian interests.

Release of Information

9B.38 (1994-12-16) The U.S. government does not compete with U.S. industry for foreign sales and does not knowingly provide other governments with "comparison pricing information" especially when it is known that a commercial contract is being negotiated.

Processing of Documents

9B.39 (1994-12-16) When a decision is made to satisfy a requirement through FMS, the file is either wholly reallocated or extracted to PWGSC(W) after the procurement plan/contract planning and advance approval (CPAA) is prepared and the initial requisition review is carried out by the receiving PWGSC organization (headquarters or region).

9B.40 (1994-12-16) Material to be obtained through FMS must be identified by U.S. National Stock

Numbers. The second group of digits (country designator) must be 00 or 01. The designation 21, which indicates the presence of a Canadian number, is not acceptable and its use will cause the demand to be rejected.

9B.41 (1994-12-16) Each request will be reviewed by PWGSC(W) to ensure the adequacy and appropriateness of the information. If satisfactory, an LOR to the applicable U.S. Armed Forces organization will be prepared and submitted by PWGSC(W).

9B.42 (1994-12-16) Upon receipt of the LOA, PWGSC(W) will carry out a verification to determine whether the LOA corresponds to the LOR and, if satisfactory, will request funding from the main file holder in cases where the file at PWGSC(W) is an extract.

9B.43 (1994-12-16) Funds are transferred from the Canadian client to the U.S. government via a Canadian account at the Federal Reserve Bank in New York following the acceptance of the LOA by PWGSC(W). No action will be initiated by the U.S. DOD until the transfer of funds has been completed.

Contract Administration

9B.44 (1994-12-16) PWGSC(W) is responsible for contract administration including billing/payments and expediting delivery, except for COLOG.

9B.45 (1994-12-16) Program Management Reviews and/or Status Review meetings may be arranged by PWGSC(W) to allow clients to discuss related matters with representatives from the U.S. DOD.

Contract Amendments

9B.46 (1994-12-16) Contract amendments, when required, will be negotiated by PWGSC(W).

9B.47 (1994-12-16) When funds in certain contracts (cases) have not been fully expended, a case amendment extending the period of time to use up funding may be requested. This normally applies to arrangements where the scope of work is not affected.

Contract Closing

9B.48 (1994-12-16) When delivery is completed and final determination of cost is made, PWGSC(W) will initiate closing action and will seek finalization of accounts. If funds are due to Canada, a cheque payable to the Receiver General for Canada will be requested by PWGSC(W). If funds are owed to the U.S.A., funds will be requested from the Canadian client.

9B.49 (2001-12-10) Closure of FMS contracts involving procurement from commercial vendors may take place years after delivery of material because of the need to audit and renegotiate certain requirements peculiar to the U.S. DOD procurement process.

9B.50 (1994-12-16) At the time of closure, the estimated amounts in the LOA are changed to actual costs.

Section 9C: Co-Operative Logistics and Blanket Order Cases with the United States Department of Defense

9C.1 (1994-06-23) The Canada/United States of America Co-Operative Logistics (COLOG) Supply Support Arrangement was initially approved in 1965. Public Works and Government Services Canada (PWGSC) shall make the necessary arrangements to establish with the United States (U.S.) Government the contractual instruments such as COLOG arrangements or Blanket Order Cases (BOC), thus allowing the Canadian Department of National Defence (DND) to obtain directly from the U.S. Department of Defense (DOD), material and services, as required.

Requisition Receipt

9C.2 (1994-06-23) Contracting officers should refer to Chapter 9B.3 - United States Foreign Military Sales (FMS) for information concerning the requisition process of the U.S. FMS Program.

9C.3 (1994-06-23) The COLOG Operations Office in the Aerospace, Marine and Electronics Systems (AMES) Sector of the Supply Operations Services Branch shall review requisitions for COLOG and BOC and provide support to these activities as detailed under the Referral Program activities below on behalf of PWGSC.

Planning

9C.4 (1994-06-23) Under COLOG arrangements, a participating country is required to purchase an equity in the supply system of the appropriate service within the U.S. DOD, through a Stock Level Case, which is adjusted annually, up or down, depending on usage. Canada has purchased an equity in each of the three U.S. Forces supply systems, U.S. Army, Air Force and Navy, on an as required basis, and pays for only those items it actually draws out of the systems.

9C.5 (1994-06-23) Since U.S. law prohibits the U.S. DOD from expending its funds on speculative purchases for other than its own Forces, there is a requirement for deposits to be made usually quarterly, in advance, by participating foreign nations. The amount of the deposit should correspond to the anticipated delivery value in the succeeding quarter.

9C.6 (1994-06-23) A final accounting is carried out when all items have been delivered or cancelled and all discrepancies have been resolved. This accounting results in a contract amendment requiring either a final payment by Canada or a refund to Canada.

Establishment and Renewal of a Stock Level Case (FMSO I)

9C.7 (1994-06-23) It is necessary to establish a Stock Level Case, also referred to as Foreign Military Sales Order (FMSO I), to obtain COLOG support from the U.S. DOD. When the U.S. Air Force, U.S. Army or U.S. Navy, as applicable, agrees to supply, through COLOG, spare parts to the Armed Forces of a foreign nation, the U.S. material managers involved will take action to augment the U.S. DOD Supply Systems to correspond to the client's anticipated requirement.

9C.8 (1994-06-23) Stock Level Cases are negotiated annually.

Establishment of a Requisitioning Case (FMSO II)

9C.9 (1994-06-23) PWGSC establishes annually a Requisitioning Case, also known as a FMSO II, before DND is allowed to draw spare parts from the U.S. DOD supply systems.

9C.10 (1994-06-23) PWGSC has delegated to DND the responsibility for placing orders directly with the U.S. Navy, the U.S. Army and the U.S. Air Force, as applicable, once the appropriate Stock

Level Case (FMSO I) and Requisitioning Case (FMSO II) are in place. Requisitions for COLOG eligible items are transmitted directly by DND to DOD by means of a computer terminal linked to the U.S. Automated Digital Network which provides direct access to the U.S. military supply systems.

Referral Program

9C.11 (1994-06-23) There are three aspects to the Referral Program:

(a) Referral of items with an extended price of US$20,000 at the time of requisitioning.
(b) The Quarterly List of all items procured through COLOG.
(c) The Annual List of items procured through COLOG.

Note: This is not a part of the establishment of the contract but rather action that occurs after the contract is established and throughout the life of the contract as long as "call-ups" (COLOG Requisitions) are submitted against the case.

9C.12 (1994-06-23) The following summarizes the Referral Program:

(a) When the extended price of an item is US$20,000 or more, the DND COLOG office responsible for submitting demands through COLOG on the U.S. DOD systems, will pass information on the demand to the PWGSC COLOG Operations Office (AMES.)

(b) The purpose of this referral is to allow AMES to review the procurement to determine whether procurement through Canadian and/or other sources is more advantageous to Canada.

(c) The review is coordinated by the AMES COLOG office with input from the PWGSC product managers as required.

(d) If it is determined that the item is available from the Canadian industry, procurement action should be completed in Canada unless it is established that such action is not justifiable from a cost standpoint or that other conditions are unacceptable, particularly as they pertain to operational requirements. Similarly, if it is determined that the item is available at less cost from any other commercial source of supply, procurement action may be completed commercially unless it is established that such action is not justifiable from a total cost standpoint or that other conditions are acceptable, particularly as they pertain to operational requirement.

(e) If the item cannot be procured through the Canadian or foreign companies, DND will be advised to demand it from the U.S. DOD through COLOG.

(f) All referrals should be processed as expeditiously as possible. A full reply or at minimum, an interim reply will be provided to DND within 30 days of receipt of the referral.

(g) The second portion of the demand Referral Program is that the DND COLOG office responsible for the COLOG program, will forward quarterly to PWGSC, AMES, a printout which will list all procurement through COLOG over the last quarter, regardless of value or priority.

(h) The third portion of the Referral Program is similar to the second portion except that it is based on an annual list being provided by DND of all procurement through COLOG for the last fiscal year. A similar review as the one performed for the quarterly reports may be conducted.

(i) The purpose of these reviews is to provide an overview of procurement being done

through COLOG over a period of time. This would not be visible with only a review of procurement of individual items with a value over US$20,000. This review will allow PWGSC in Washington to seek sources based on requirements demanded over time. Often supply of an individual item may not be attractive to a supplier; however, when procurement of individual items over a period of time are collectively viewed, the combined value may be very attractive to a supplier.

COLOG Termination

9C.13 (1994-06-23) Should Canada decide to terminate COLOG arrangements, there is a process, that varies with the U.S. DOD service involved, which will identify those items that Canada is liable to procure from the U.S. DOD.

Section 9E: Use of the Defence Production Revolving Fund and Loan Account

9E.1 (1996-12-02) Under the *Defence Production Act*, section 16 in particular, the Minister of Public Works and Government Services (PWGSC) is authorized to acquire, utilize, store, maintain, transport, sell, exchange or otherwise dispose of defence supplies, services, projects, real or personal property. The Minister is also empowered to authorize loans or advances and loan guarantees. Expenditures incurred pursuant to the above authority are to be expended from the Consolidated Revenue Fund (CRF).

Program Description

9E.2 (1994-06-23) The Defence Production Loan Account (DPLA) provides PWGSC with an account to make loans or advances to aid in defence procurement such as working capital loans or advance payments on contracts and to make payment for such.

9E.3 (1994-06-23) Although the *Adjustment of Accounts Act* of 1980 eliminated the term Defence Production Revolving Fund (DPRF) from the *Defence Production Act*, PWGSC was advised by Treasury Board (TB) that it may continue to designate and operate the DPRF for other than loan transactions. Thus the DPRF provides PWGSC with a budgetary account to purchase defence supplies, to make payment for such and to get reimbursed out of an appropriation of a client (e.g. Department of National Defence [DND]) or by an agent of Her Majesty or by an associated government. The DPRF can be used for the following purposes:

(a) to finance the stockpiling of "essential" materiel or defence supplies;

(b) to advance production of defence supplies/materiel to permit workload smoothing of defence industrial facilities; and

(c) to temporarily fund the acquisition of defence supplies to meet urgent requirements pending appropriation of funds to finance unplanned requirements.

As stated in the Defence Production Act, associated governments are the governments of the British Commonwealth and of the North Atlantic Treaty Organization (NATO), or the government of any other country designated by the Governor in Council as being a country the defence of which is vital to Canada.

9E.4 (1994-06-23) The DPRF was established for interim financing purposes as it has to be reimbursed by a client or an associated government or whoever receives the finished product. As such, the DPRF can be used to make initial payments and subsequently recover such payments from the client. It is simply a temporary accommodation and it would be illegal and improper to use it for a permanent commitment of any kind. Although the use of the DPRF requires that money expended will be reimbursed at the time delivery is made to the client, such use does not preclude the making of progress payments to suppliers and the interim recovery of these progress payments from the client.

9E.5 (1994-06-23) Expenditures charged to the DPRF may be used for the following purposes:

(a) stockpiling of materials or substances, such as steel and oil, designated by the Governor in Council as essential to the needs of the community. In such cases:

(i) an Order-in-Council is required;

(ii) a client appropriation is not immediately required for stockpiling essential materials, but the cost of materials used must be recovered from the appropriation of the client.

(b) stockpiling of defence supplies which the Minister deems it advisable to maintain. (Certain defence supplies such as ammunition.) In such cases:

(i) an Order-in-Council is not required;

(ii) although an appropriation is not immediately required for stockpiling defence supplies, DND must reimburse the DPRF from an appropriation when the finished goods are delivered to DND.

(c) acquisition, storage or maintenance of defence supplies. In such cases:

(i) an Order-in-Council is not normally required;

(ii) a client appropriation is required.

9E.6 (1994-06-23) Loans or advances charged to the DPLA may be used for any purpose other than for capital assistance. When loans are involved:

(a) an Order-in-Council is not required;

(b) although an appropriation by the client is not immediately required, the liability for any loss must ultimately be covered from the appropriation of the client.

9E.7 (1994-06-23) Losses sustained pursuant to a loan or an advance made against the DPLA can only be credited pursuant to an appropriation by Parliament.

Utilization of the DPRF and the DPLA by the Canadian Commercial Corporation

9E.8 (1994-06-23) Canadian Commercial Corporation (CCC) has the power, by virtue of section 31 of the *Defence Production Act* to enter into contracts to which the *Defence Production Act* applies utilizing the DPRF or the DPLA provided that the Minister has authorized CCC to act on the Minister's behalf under section 6 of the *Defence Production Act*.

Limitation

9E.9 (1994-06-23) In accordance with section 19 of the *Defence Production Act*, the aggregate of expenditures charged to the DPRF and the DPLA shall not at any time exceed the receipts shown therein by more than $100 million.

9E.10 (1994-06-23) Financial control of the DPRF and the DPLA is the responsibility of the Finance Sector.

Planning

9E.11 (1994-06-23) Sectors/regions must ensure that utilization of the DPRF and the DPLA are in accordance with the *Defence Production Act*. More specifically, pursuant to section 19 of the *Defence Production Act*, sectors/regions must ensure that proposed expenditures are recoverable from an appropriation or are to be paid by an agent of Her Majesty or by an associated government.

9E.12 (1994-06-23) Sectors/regions must ensure that requisitions from clients or agents of Her Majesty and/or contracts, formal agreements or bona fide obligations from foreign governments have been received providing commitment authority for recovery of funds to be expended.

9E.13 (1994-06-23) The DPRF must not be used to circumvent Parliamentary Control of defence spending. As set forth in section 17 of the *Defence Production Act*, the Fund was established

"...to pay the cost of acquisition, storage or maintenance of defence supplies requisitioned for payment out of an appropriation...." As a direct consequence of this section, no requisition for defence supplies is acceptable which contemplates the use of the DPRF to supplement that appropriation. Similarly, in accordance with section 30 of the *Financial Administration Act*, the DPRF is not to be used to preclude the lapse of funds.

9E.14 (1994-06-23) When recommending the use of the DPRF, the sector/region recommendation will have to be supported by an assessment of the following factors which may change from time to time:

(a) stockpiling: determine if the material in question involves stockpiling of essential materials to be designated by the Governor in Council or stockpiling of defence supplies deemed necessary by the Minister;

(b) conservation and coordination of defence industrial facilities: the Minister may determine that stockpiling of defence supplies is required to conserve and coordinate certain defence industrial facilities particularly where a facility may be functioning on a cyclical basis that results in disruptive fluctuations in workload, manpower, output and quality. The use of a stockpile over a planned period of time (e.g. two to five years) not only permits workload smoothing to eliminate the excesses of attempting to meet variations in the size and timing of demands but allows PWGSC to plan for the provision and sourcing of defence requirements for periods longer than one year;

(c) economic considerations: better price considerations may be forthcoming as a result of using the DPRF. If price considerations are a factor, the basis of such assessment should be established using a present value or constant dollar approach, i.e. by removing the inflation factor when determining gain. To facilitate this approach, Request for Proposals should request price information on two bases in order to properly assess the economics of purchasing requirements individually or annually, as opposed to purchasing for the purposes of stockpiling. The economics of stockpiling should also take into consideration the additional costs of holding inventory such as storage and handling charges;

(d) Canadian industrial benefits: in the case of procurement from a foreign contractor, any offsets that accrue to Canada should be assessed in support of the recommendation for the use of the DPRF;

(e) administrative convenience: in certain cases, the use of the DPRF will facilitate the procurement function by reducing the number of contracts required. This is a particularly important factor for consideration when projects are jointly funded by more than one client or government.

Inventory Control

9E.15 (1994-06-23) When the DPRF is used for stockpiling, in accordance with section 15 of the *Defence Production Act*, the responsibility for inventory control and carrying out the physical inventory rests with PWGSC. Therefore, at the fiscal year's end, any residual inventories of stockpiled defence supplies or materials essential to the need of the community will appear on the DPRF annual financial statements.

Procurement Actions

9E.21 (1994-06-23) In addition to the issuance of a "supplies contract" for the acquisition of the goods or services, the contracting officer must prepare a "recovery contract" to recover the costs incurred on behalf of the client. The definition of these two types of contracts is as follows:

(a) recovery contract - this is a contract to reimburse the Revolving Fund for the total value

of the supplies procured on behalf of the client or foreign government. If more than one client is contributing to the total cost, e.g., Canada, the United States of America and Great Britain, then a separate contract is required for each client's share of the total cost. The recovery contract is the authority for CCSD to recover the costs incurred on behalf of the client.

(b) supplies contract - this is a contract to cover the supply of goods or services called for in the requisition. The total of all supplies contracts must not exceed the total value authorized by the Contract Demand.

Section 9G: Electronic Data Processing Buy for Lease Program

9G.1 (1994-06-23) The Electronic Data Processing (EDP) Buy for Lease (BFL) program is designed to allow Public Works and Government Services Canada (PWGSC) to operate as the lessee to clients in preference to clients leasing through a supplier. PWGSC recovers the cost of interest and related costs from the client, therefore, certain minimum savings to the Crown are required. PWGSC sets aside, each fiscal year, $7 million in the Office Automation Allotment for this purpose.

This program covers the full range of EDP equipment.

9G.2 (1994-06-23) The program is coordinated by the Operations Support Branch, BFL Coordinator, Science, Informatics and Professional Services Sector.

9G.3 (1994-06-23) A contracting officer should consider if a procurement would benefit from the BFL program, when they receive a requisition for a lease of EDP equipment and determine from the client that there are no capital funds to purchase the goods outright.

Each requirement should meet the following criteria:

(a) a proposed payback period of over 18 months;

(b) a saving of at least $10,000 (based on present value), and in excess of 10 percent of the purchase price. (Both figures are to either include or exclude maintenance.)

9G.4 (1994-06-23) The equipment may be purchased for subsequent lease if:

(a) sufficient funds are available in the Office Automation Allotment;

(b) the client is in agreement with the purchase and is willing to enter into an agreement sufficiently long to amortize total PWGSC costs;

(c) the Information Technology Management Division of the Treasury Board (TB) Administrative Policy Branch has been consulted prior to each proposed acquisition, regardless of the value, and provided with a certification from the client's senior financial officer that they do not have the required capital funds to purchase the equipment;

(d) the proposal includes a commitment to transfer title to the client after the expiry of the initial lease period; and

(e) when the transaction exceeds $1 million, a submission is made to TB, including a cost benefit analysis.

9G.5 (1994-06-23) Selection from a list of potential cases for the use of the BFL will generally be made by the BFL Coordinator on the basis of ranking such cases according to the probable savings (percentage-wise), until the total Office Automation Allotment is committed.

9G.6 (1994-06-23) Before entering into a lease arrangement with the client, the contracting officer must first determine, through the normal solicitation process, the efficiency of the BFL option. The approved format for determining savings is:

Present Value of Private Sector lease proposal	$___ (A)
Present Value Cost to the Crown under BFL	$___ (B)
Present Value Savings to the Crown	$___ (A-B)

The rate to be used for this calculation is the official rate applicable to the Supply Revolving

Fund for the current fiscal year.

9G.7 (1994-06-23) If the cost savings show that BFL is the most cost-effective approach, then the contracting officer will contact the BFL Coordinator to determine if the funds are available and to commit the necessary amount. Upon confirmation that the funds are committed, the contracting officer needs to obtain client verification of:

(a) the term of the requirement;
(b) that there are not sufficient capital funds with the client; and
(c) an Agreement in Principle that procurement through BFL is acceptable.

The contracting officer must forward one copy of the above, along with one copy of:

(d) the client request;
(e) the cost benefit analysis;
(f) the future use of the equipment; and
(g) any recommendations;

to the TB Administrative Policy Branch, for approval, and the EDP BFL Coordinator, for information.

9G.8 (1994-06-23) If TB agrees, and the procurement exceeds $1 million the contracting officer will prepare a TB submission. After all approvals are granted, the contracting officer, in conjunction with Legal Services, will draw up a Memorandum of Undertaking (MOU) (see sample at Exhibit A), which will include:

(a) name of client;
(b) name of supplier;
(c) detailed description of equipment;
(d) purchase price;
(e) interest rate;
(f) term;
(g) payment schedule;
(h) client requisition number;
(i) client consignee code;
(j) client fund code;
(k) client accounting office code;
(l) client financial code;
(m) client signature.

The contracting officer must forward the MOU to the BFL Coordinator.

9G.9 (1994-06-23) The contracting officer will raise a requisition for the EDP equipment, with requisition and financial code from BFL Coordinator. The BFL Coordinator will arrange commitment of funds.

9G.10 (1994-06-23) The contracting officer will identify themselves as the invoice, will proceed with the usual approvals, and will provide the BFL Coordinator with copies of the cost benefit analysis, the MOU, the contract and any subsequent amendments. After product acceptance by the client, the contracting officer will also provide the BFL Coordinator with a copy.

EXHIBIT A
(1994-12-16)

PWGSC Buy for Lease Program
Memorandum of Undertaking

1. **Parties**
The conditions outlined in the following constitute the basis of an agreement between the Department of Public Works and Government Services Canada hereinafter referred to as the "Purchaser", and_____ , hereinafter referred to as the "User", for the provision of the following equipment: _____

2. **Equipment Description**
The Purchaser will purchase, from _____ , hereinafter referred to as the "Supplier", the equipment as outlined in the Description hereto attached and referred to as Appendix "A".

3. **Payment**
In consideration for the use of said equipment and in accordance with TB738546 approved 2 March 1976 and TB753201 approved 2 February 1978, the purchaser is to recover full costs through periodic charges, including the purchase costs, the full interest costs, administration costs, and other related expenses through the series of payments outlined below:

Purchase Price -

Interest Rate -

TERM -

Date	Payment	Principal	Interest	Balance

In addition, a charge of _____ will be made to cover the Purchaser's administration costs.

The interest rate and charges shown are those currently in effect for the Supply Revolving Fund this year.

All of the above charges, including principal and interest, are due and payable on the dates shown.

The charge for Administration Cost will be billed in accordance with normal Cost Recovery Procedures of the Purchaser.

The User is expected to follow the Payment Schedule outlined above whether or not the Purchaser formally bills the User for each individual payment.

All bills and relevant Interdepartmental Settlement Advice (ISA) must display the following details:

Customer Requisition No:
Consignee Code:
Customer Fund Code:
Accounting Office Code:
Financial Code:

4. **Acceptance**

The User will provide written certification to the Purchaser of the former's acceptance of the equipment in accordance with the terms and conditions of the contract between the Purchaser and the Supplier. Expressed and/or implied warranties in the agreement between the purchaser and the Supplier shall be treated as if they were mutually in the name of both parties to this agreement.

5. **Maintenance**
The payments required by this agreement do not include the cost of maintenance. The User agrees to provide any repair and maintenance necessary and to retain the equipment in proper operating condition throughout the period of this agreement.

6. **Damages**
The User will ensure that environmental conditions suitable for the operation of the equipment are maintained throughout the duration of this agreement. After acceptability has been certified by the User, the User is obligated to make all payments for the equipment as set out herein regardless of any damage or loss which may later occur to the equipment.

The Purchaser will assist the User in any claim which might be made against the Supplier under warranty or otherwise. The Purchaser assumes no obligation to repair any damage or replace any equipment destroyed. In the event of loss or damage, the Purchaser will make no claims on the User beyond payment of the full costs set forth herein.

7. **Title**
Title to this equipment will remain with the Purchaser until all payments are made under the terms of the MOU. Upon discharge of the User's financial obligations under the terms of this agreement, title to the equipment will be automatically transferred to the User.

8. **Asset Control**
If, during warranty or maintenance satisfaction, an exchange of equipment is made, the User is expected to notify the Purchaser of what has taken place.

Until such a time as title to the equipment is transferred to the User, the User must provide to the Purchaser, in the last month of each fiscal year, a list of the equipment held under this agreement and their physical location.

9. **Termination**
This agreement shall not be terminated except by the consent of both parties. Termination charges shall not exceed the balance of those payments outlined in paragraph 3.

Accepted:	Accepted:
Public Works and Government Services Canada	(Name of User Department)
Per_____	Per_____
_____	_____
Director	Title
_____	_____
Date	Date

Section 9H: Contracting for Temporary Help Services

9H.1 (2001-12-10) Temporary help services 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.

9H.2 (2001-12-10) Public Works and Government Services Canada (PWGSC) issues regional master standing offers to provide for qualified personnel for temporary assignments.

9H.3 (2001-12-10) Regional Master standing offers for temporary help services are requested and authorized by the PWGSC's regional offices.

9H.4 (2001-12-10) Contracting officers are to keep clients informed of contracting processes, procedures and definitions of categories of service with respect to temporary help services.

9H.5 (2004-12-10) There is a temporary help contracting officers' network which has been working with functional guidance from the Science and Professional Services Procurement Directorate, Services and Technology Acquisition Management Sector.

For additional information, contact the Supply Specialist for Temporary Help Services, at telephone number (819) 956-6007.

Section 9J: Supply Arrangements

9J.1 (1994-06-23) A Supply Arrangement (SA) is a method of supply where the client, under the framework of the Arrangement, may solicit bids from a pool of prescreened vendors. An SA is not a contract and neither party is legally bound as a result of the signing of this document alone. The intent of the SA is to establish a framework to permit the expeditious processing of legally binding contracts for goods or services. SAs include a minimum set of terms and conditions which would apply to each contract and they are issued by Public Works and Government Services Canada (PWGSC).

9J.2 (2004-12-10) Solicitations made under an SA, depending on the circumstances, may be subject to all North American Free Trade Agreement (NAFTA), World Trade Organization Agreement on Government Procurement (WTO-AGP), the Canada-Korea Telecommunications Equipment Agreement (CKTEA) and the Agreement on Internal Trade (AIT) procedures (see Chapter 4). An SA solicitation meeting the NAFTA, WTO-AGP and/or CKTEA requirements would be considered Selective Tendering not involving the use of a permanent list of qualified suppliers (see 5.050 (b)) and a solicitation meeting the AIT requirement would be considered as using a source list (see Article 506, AIT). For procurements covered under NAFTA, WTO-AGP, CKTEA and AIT, the following procedures should be modified, if necessary, to take into account the obligations of the Agreements.

9J.3 (1994-06-23) An SA should be considered if:

(a) a commodity is procured on a regular basis (goods or services); and

(b) a Standing Offer is not suitable, due to variables in resulting call-ups (e.g. varying methods/bases of payment, statement of work or commodity cannot be adequately defined in advance); and

(c) the commodity or service value is best expressed as a ceiling price; and

(d) clients can negotiate price reductions from the ceiling price; and

(e) it is most efficient for PWGSC to operate as the provider of the framework, and not as the contractual authority.

9J.4 (1996-06-03) Prior to establishing an SA, the contracting officer will prepare and issue a competitive Request for Supply Arrangement (RFSA), which will allow for a suitable pool of suppliers under the stated evaluation criteria. Industrial Security requirements (i.e. Personnel, Physical and Information Technology security) should be identified at this time, when any or all of these security aspects will be applicable to all clients of the SA.

9J.5 (1994-06-23) After the RFSA evaluation has been completed, the qualified suppliers' ceiling prices, and contact information are collected, and published along with a complete guide for the use of the SA by the clients.

9J.6 (1994-06-23) The client's use of the SA is monitored by the contracting officer, and the suppliers are subject to an audit.

9J.7 (2000-05-12) Supply Arrangement Solicitation/Contract for Non-consulting Services, form PWGSC-TPSGC 9200-11, is designed to form both the Request for Proposal and the contract for the client.

The contracting limits for services (including the Goods and Services Tax, and/or the Harmonized Sales Tax) are contained in the Treasury Board (TB) Contracts Directive:

The contracting limits for goods are outlined in the TB Contracts Directive but are subject to delegation from the Minister of PWGSC.

These are the maximum limits, which may be limited under the SA, by PWGSC.

9J.8 (1994-06-23) Clients are free to negotiate a lower price or rate (from the stated ceiling prices), according to the work required.

9J.9 (1994-06-03) Clients are responsible for determining and arranging for security requirements, at all times when these requirements differ from the SA.

9J.10 (2000-05-12) A legal contract does not exist between the Crown and the supplier until the Supply Arrangement Solicitation/Contract for Non-consulting Services has been fully completed as an offer by the supplier and accepted by the client.

Section 9K: Ontario Labour Legislation

9K.1 (1996-12-02) On November 5, 1992, Ontario Bill 40 received royal assent. Included in the legislation were certain amendments to the *Employment Standards Act* intended to protect the jobs and the level of benefits of workers who work primarily at one specific site to provide building cleaning, food and security services.

Although the federal government is not bound by provincial legislation, contractors bidding on federal government work are subject to the Act and amendments thereto. The Crown, as building owner, has an information handling role under this legislation.

Treasury Board Contracting Policy requires departmental contracting authorities to observe the intent of the Ontario Labour Legislation, and, in practice, to follow its provisions.

9K.2 (2002-12-13) In November 1995, Ontario Bill 7 received royal assent. It amended Ontario Bill 40 by repealing Part XIII.2, "Successor Employers", of the *Employment Standards Act* (ESA) and adding section 13.1 "Successor Employers". The Ontario Regulation (138/96) sets out successor employer exemptions from compliance with Part XIV of the ESA (termination and severance provisions) and the type of information that building owners or managers may obtain from incumbent contractors and provide to prospective bidders or successor employers. The *Employment Standards Act*, R.S.O. 1990, c. E14, was repealed and replaced by the Employment Standards Act, 2000 (ESA 2000) and the Ontario Regulation 138/96 has been superseded by Ontario Regulation 287/01. ESA 2000 came into force on September 4, 2001, and governs employment standards entitlements arising out on or after that date.

9K.3 (2002-12-13) ESA 2000Section 77(1) applies to contracts for building cleaning, food and security services which are provided at a specific premises directly or indirectly by or to a building owner manager in the province of Ontario, and which commenced on or after 31 October 1995. Not included are construction, maintenance, such as snow removal, lawn care, window cleaning, and the production of goods, other than goods related to the provision of food services at the premises for consumption on the premises.

Expiry of Existing Contract

9K.4 (2002-12-13) Contracting authorities must obtain from the outgoing contractor the following information as set out in Ontario Regulation 287/01 for each employee providing services at the premises, preferably four (4) months prior to the completion date of the existing contract:

(a) the name, address, and telephone number;

(b) the classification, wage rate, benefits, average weekly hours and initial hire date (including employment with previous employers under Bill 40);

(c) the number of weeks worked in the preceding 26 weeks (or a longer period if services were temporarily discontinued or an employee was on pregnancy or parental leave);

(d) a statement indicating whether the 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.

The contracting authority may also request a copy of any applicable union agreement.

9K.5 (2002-12-13) That information should be obtained by filling out form PWGSC-TPSGC 5116, Information on Incumbent Employees. Copies of the form could be attached to the letter proposed for obtaining information from the existing contractor. Where contracts contain a provision for obtaining information, a suggested letter is provided for this purpose at Exhibit A. If

contracts do not contain a provision for obtaining this information, the suggested letter at Exhibit B should be used.

Bid Solicitation

9K.7 (2000-05-12) Except for information on the name, address and telephone number of each employee, information received from the outgoing contractor should be conveyed in the bid solicitation document to potential bidders. The solicitation clause K9015T of the *Standard Acquisition Clauses and Conditions* (SACC) Manual shall be included in applicable documents. It informs bidders of the requirements of Bill 7 and the purpose to which information required under Bill 7 should be used.

Contract Award

9K.8 (1994-12-16) Names, addresses and telephone numbers of an outgoing contractor's employees shall be given to the new contractor only.

9K.9 (2002-02-12) Contracting authorities should ensure that contract terms include special conditions which require the contractor to keep its employees' records up to date and, upon request, submit them to the contracting authority. Contract clause K9015C of the SACC Manual informs the contractor of its obligations to keep employee information up to date and to make it available upon request by the Crown.

9K.11 (2004-12-10) It is important to remember that there is no onus on the Department to mediate between the outgoing and incoming contractors in the event that the information provided is incomplete or erroneous. If there are any difficulties, enquiries should be referred to the local Ontario Ministry of Labour offices for resolution.

9K.12 (1994-12-16) Performance problems require prompt follow up action and reporting, preferably in writing, to the contractor. Written reports should identify the location, date, situation or circumstances surrounding the performance difficulties. The contractor is responsible for remedying the situation or improving the performance as required.

Exhibit A - Proposed letter when requesting information from an outgoing contractor where there IS a clause in the contract to that effect.

(2002-12-13)

Dear _____ (*Name of Contractor*),

As you are aware, contract _____ (*Serial No*.) for the provision of _____ *(Type of building-related services*) will expire on _____ (*Date*).

Pursuant to the clause included in the above-noted contract, you are hereby required to provide, within seven (7) days of the date of this letter, the following information with respect to your current employees at these premises and providing the services performed under this contract:

(a) each employee's name, residential address and telephone number;

(b) his or her job classification or job description;

(c) the wage rate actually paid to the employee;

(d) a description of the benefits, if any, provided to the employee including the cost of each benefit and the benefit period to which the cost relates;

(e) the number of hours that the employee works in a regular non-overtime work week; or if hours vary from week to week, the number of the employee's non-overtime hours for each week that the employee worked during the 13 weeks preceding the date of the request for information;

(f) the date on which the employer hired the employee;

(g) any period of employment attributed to the employer under Section 10 of the Act;

(h) the number of weeks that the employee worked at the premises during the 26 weeks preceding the date on which the request was made for the information (the 26 week period shall be calculated without including any period during which the provision of services at the premises was temporarily discontinued, or during which the employee was on a leave under Part XIV of the Act);

(i) a statement indicating whether the employee

1. is actively employed in providing services at the premises but whose job duties were not primarily performed at the premises during the 13 weeks immediately preceding the date on which the request was made for the information;

2. is employed, but not actively employed, in providing services at the premises but whose job duties were not primarily performed at the premises during his or her most recent 13 weeks of active employment.

In addition to the above information, you are required to provide an up-to-date copy of the collective agreement regarding the employees at the premises, or, if no collective agreement exits for these premises, a copy of the union certificate regarding these employees or, if no union certificate was issued, a copy of any pending union application, if it exists.

Between the date you provide the above information and the completion date of this contract, you shall also provide the Contracting Authority with updated information immediately as any changes to said information occur.

All information shall be provided on the prescribed form of which copies are attached herewith. With the exception of (a), this information will be provided to prospective bidders for a future contract for these services relating to the premises. The name, address and telephone number of each employee shall only be given to the successful bidder.

Signed by: _____
Contracting Authority

Exhibit B - Proposed letter when requesting information from an outgoing contractor where there is NO clause in the contract to that effect

(2002-12-13)

Dear _____(*Name of Contractor*),

As you are aware, contract _____ (*Serial No*.) for the provision of _____ *(Type of building-related services*) will expire on _____ (*Date*).

Pursuant to the laws of the province of Ontario, you are hereby requested to provide the following information with respect to your current employees at these premises and providing the services performed under this contract:

(a) each employee's name, residential address and telephone number;

(b) his or her job classification or job description;

(c) the wage rate actually paid to the employee;

(d) a description of the benefits, if any, provided to the employee including the cost of each benefit and the benefit period to which the cost relates;

(e) the number of hours that the employee works in a regular non-overtime work week, or if hours vary from week to week, the number of the employee's non-overtime hours for each week that the employee worked during the 13 weeks preceding the date of the request for information;

(f) the date on which the employer hired the employee;

(g) any period of employment attributed to the employer under Section 10 of the Act;

(h) the number of weeks that the employee worked at the premises during the 26 weeks preceding the date on which the request was made for the information (the 26 week period shall be calculated without including any period during which the provision of services at the premises was temporarily discontinued, or during which the employee was on a leave under Part XIV of the Act);

(i) a statement indicating whether the employee

1. is actively employed in providing services at the premises but whose job duties were not primarily performed at the premises during the 13 weeks immediately preceding the date on which the request was made for the information;

2. is employed, but not actively employed, in providing services at the premises but whose job duties were not primarily performed at the premises during his or her most recent 13 weeks of active employment.

In addition to the above information, you are required to provide an up-to-date copy of the collective agreement regarding the employees at the premises, or, if no collective agreement exits for these premises, a copy of the union certificate regarding these employees or, if no union certificate was issued, a copy of any pending union application, if it exists.

With the exception of (a), this information will be provided to prospective bidders for a future contract for these services relating to the premises. The name, address and telephone number of each employee shall only be given to the successful bidder.

Your reply is requested no later than _____ (*Date*).

Signed by: _____
Contracting Authority

Section 9L: Set-aside Program for Aboriginal Business - Conducting Set-aside Procurements

9L.010 (1997-03-31) In accordance with the Procurement Strategy for Aboriginal Business (PSAB) and the Set-Aside Program for Aboriginal Business (SPAB) announced on March 27, 1996, requirements designated by client departments as set aside will be restricted to qualified Aboriginal businesses. (See 5.066)

Decision to Set Aside

9L.020 (1997-03-31) **The decision to set aside a procurement is the responsibility of the client department.** Public Works and Government Services Canada (PWGSC) will not unilaterally declare a procurement set aside. However, when a requisition is received which is not designated as a set-aside, and the recipients of the goods, services or construction to be contracted are for an Aboriginal population, the contracting officer should contact the client department and draw their attention to the potential omission. When the client indicates that the procurement is not to be set aside, the file should be annotated accordingly, and the procurement may then proceed.

9L.030 (1997-03-31) Contracting officers should assist client departments in meeting their performance objectives under the program, by drawing their attention to opportunities for voluntary set-asides, when qualified Aboriginal suppliers are known to exist in the marketplace.

Set-Asides and Comprehensive Land Claims Agreements

9L.040 (2004-12-10) Requirements subject to the SPAB may also be subject to the requirements of Comprehensive Land Claims Agreements (CLCA). To the extent that the application of a set-aside for Aboriginal business does not interfere with Canada's obligations under the CLCA, then both the CLCA and SPAB procedures may be applied, but where the two are in conflict, the requirements of the CLCA take precedence. In many instances the requirement of the CLCA is limited to providing notification to the claimant group of the upcoming procurement. In other instances, the requirement under the CLCA may be more extensive. Contracting officers should consult with Acquisition Policy and Process Directorate (819-956-4744), regarding procurement obligations under CLCAs. (See 4.002)

Set-Asides and Trade Agreements

9L.050 (2004-12-10) Procurements set aside for Aboriginal business are not subject to the provisions of either the North American Free Trade Agreement (NAFTA), Annex 1001.2b, Article 1.(d) or World Trade Organization Agreement on Government Procurement (WTO-AGP), Appendix I, article 1.(d), or the Canada-Korea Telecommunications Equipment Agreement (CKTEA), Article 1, part 5 (see Annex 4.2), or Agreement on Internal Trade (AIT), Article 1802.

9L.060 (1997-03-31) When a requirement has been carried out under a set-aside and the results have not produced a responsive Aboriginal business, the requirement must be re-tendered, either as a set-aside once again (after the necessary adjustments to the bid have been made), or under the procedures for the applicable trade agreement(s), taking into account the relevant thresholds, etc., which apply to the requirement, in the absence of a set-aside. This will also apply when the contract will not be awarded to an Aboriginal business because the contract award would conflict with sound contracting principles - value for money, prudence and probity, etc. (See 9L.120)

Set-Asides and Canadian Content

9L.070 (1997-03-31) Set-aside procurements and the Canadian Content Policy may be applied simultaneously.

9L.080 (1997-03-31) In applying the Canadian Content Policy under a set aside procurement, it must be recognized that there are two levels of certification. The first level of certification will be to qualify the bidder(s) as eligible for consideration, i.e. bidders must provide a certification that they are an Aboriginal business.

9L.090 (1997-03-31) Having established that the procurement will be conducted as a set-aside, contracting officers must then apply the Canadian Content Policy, in the same manner as any other procurement, in the context of the supplier community which is eligible to respond: the Aboriginal business community. Contracting officers must determine, on the basis of their knowledge of this community, whether there are sufficient eligible firms to carry out the procurement as Solely Limited (three or more Aboriginal firms exist which are able to provide Canadian goods or services), Conditionally Limited (there may be three or more Aboriginal suppliers of Canadian goods or services), or Open (there is an insufficient number of Aboriginal businesses able to provide Canadian goods or services; the procurement is open to all Aboriginal businesses regardless of the origin of the good and services supplied). (See 5.070)

9L.100 (1997-03-31) Bids for set aside procurements which include the Canadian Content provision must be reviewed initially to determine that the bidder has provided the necessary certificate that they are an Aboriginal business. Bids meeting this basic certification are then assessed according to the stated Canadian Content criteria.

Subcontracting Plans

9L.110 (2001-12-10) In support of the PSAB, departments may designate that a proportion of subcontracts on projects be reserved for Aboriginal business, or that bidders are to be encouraged through the use of incentives - e.g. additional evaluation points to engage Aboriginal businesses as subcontractors. The inclusion of Aboriginal businesses as subcontractors as an evaluation criterion must be clearly identified in the bid solicitation. This is not permitted for procurements subject to either NAFTA (Article 1006 - Prohibition of Offsets), WTO-AGP (Article XVI - Offsets) or CKTEA (Article 3- Procurement Procedures). (See 9L.050)

Sound Contracting Principles

9L.120 (1997-03-31) Fundamental to all SPAB procurements is the need to adhere to sound contracting principles. Contracting officers must always be cognizant of the principles of best value, prudence, probity, and operational requirements, in planning their procurement strategy for set aside requirements.

Notification to DINA

9L.130 (1999-06-21) Upon receipt and acceptance of a requisition for a set aside procurement, contracting officers are to inform the Department of Indian and Northern Affairs (DINA), Access to Federal Procurement Directorate.

9L.140 (2004-05-14) Notification to DINA is to be sent prior to the release of the solicitation to:

Director
Access to Federal Procurement Directorate
Department of Indian and Northern Affairs
Fax: (819) 994-0445

and must include the following information:

- Estimated Dollar Value;
- Description of Goods/Services/Construction;
- Solicitation Number;
- Closing Date; and
- Buyer (name, and phone/fax numbers).

In instances of single-source procurements, the notice to DINA must also include the name and address of the proposed contractor.

9L.150 (1997-03-31) After the contract has been awarded, contracting officers must advise DINA, Access to Federal Procurement Directorate, of the name of the contractor, the contract number, and the total estimated value of the contract, within fifteen (15) working days.

Sourcing of Requirements under the Set-Aside Program for Aboriginal Business

9L.160 (1997-03-31) Requirements subject to the set-aside program may be sourced competitively or non-competitively according to current established government sourcing policies (see 5.002). Bids may be solicited from Aboriginal business in accordance with Public Works and Government Services Canada (PWGSC) policies and procedures.

9L.170 (2002-12-13) PWGSC's Vendor Information Management (VIM) system is being modified, and SELECT has been created, to allow for identification of firms that have self-declared as being Aboriginal. As data is collected from supplier registrations and contract awards, the information in VIM and SELECT will be useful in identifying potential Aboriginal businesses for sourcing purposes, and establishing source lists, regardless of commodity (goods, services, or construction) which would be subject to rotation regimes such as Automated Vendor Rotation System (AVRS) or SELECT. (See 5.117)

9L.190 (1997-03-31) Businesses placed on "Aboriginal" source lists must also be placed on non-Aboriginal source lists.

9L.200 (1999-06-21) Contracting officers may also access other sources - e.g. DINA Internet database (currently being developed). Until the service has been established, DINA may be contacted directly via the Access to Federal Procurement Directorate - fax: 819-994-0445, for information on Aboriginal suppliers), to identify potential Aboriginal businesses which may be invited to bid. When such sources have been used, consideration should be given to inclusion of Supplier Registration forms with the bid set, to allow new bidders to register with PWGSC. Regardless of information contained within PWGSC or other vendor information databases, all bidders competing in a set-aside, must certify at the time of bidding, that they meet the definition of an Aboriginal business. Inclusion of the firm on an "Aboriginal" source list is not sufficient. (See 9L.220)

9L.210 (1997-09-15) When bids are solicited via the Government Electronic Tendering Service (GETS), notices (NPP or ACAN) must contain the following statement, prominently positioned - i.e. one of the first statements in the notice:

> *"This procurement has been set aside under the federal government's Set-Aside Program for Aboriginal Business (SPAB). In order to be considered, firms must certify that they qualify as an Aboriginal business as defined in the SPAB and that they will comply with all requirements of the SPAB." (NPP);*

or

> *"This procurement has been set aside under the federal government's Set-Aside Program for Aboriginal Business (SPAB). Only Aboriginal businesses as*

defined in the SPAB are eligible to challenge the proposed procurement strategy to award the contract to the named Aboriginal business." (ACAN)

Agreement Type codes have been added to the GETS to allow identification of solicitations as subject to the set-aside program. Contracting officers must ensure that the appropriate Agreement Type has been selected for set-asides. Similar modifications have been made to the Automated Buyer Environment (ABE) to allow recording of set-aside procurements at the applicable stages in the procurement cycle.

Legal Entity

9L.220 (1997-03-31) The description of a business as an Aboriginal business does not affect the fact that in order to create an enforceable contract with Canada, the contract must be signed between Canada and a legal entity which has the capacity to contract. In the event any uncertainty exists concerning the legal status of an Aboriginal business, contracting officers must consult with legal counsel to ensure that the proposed contractor is capable of signing an enforceable agreement.

Certification by Bidders

9L.230 (1997-03-31) There will be no permanent list of pre-certified Aboriginal businesses. For each procurement under the SPAB, bidders will be required to provide, with their bid, a certificate stating that they meet the definition of an Aboriginal business, according to the definition provided, on the date that the bid was submitted, and an undertaking that the firm will continue to meet this definition throughout the life of the contract.

9L.240 (2000-12-01) To enable bidders to complete the certificate each bid set must include a copy of the *Requirements for the Set-Aside Program for Aboriginal Business* document (Annex 9.1) which sets out the definitions of an Aboriginal business and an Aboriginal person also, and which contains the certificate which bidders must sign and submit with their bid, in order to be considered eligible for set-aside contracts.

9L.250 (2004-05-14) Solicitation documents are to include clause K9025T for procurements subject to set-asides. Resultant contracts awarded to firms on the basis of their being Aboriginal must include clause K9025C. Clause K9026D must also be used where the general conditions do not include an Entire Agreement provision - e.g. general conditions 9601, section 36.

9L.260 (1997-03-31) Bidders who fail to complete and return the certification with their bids shall be considered non-responsive. A clear statement of this fact must appear in the bid solicitation document.

9L.270 (1999-06-21) It is not the responsibility of the contracting authority to verify the bidder's certification. In instances where the contracting authority questions the validity of a certificate, the particulars are to be referred to DINA, Access to Federal Procurement Directorate, for audit by Consulting and Audit Canada (CAC). (See 9L.300)

9L.280 (1999-06-21) Bidders' certifications include provision for remedies should either the certificate be shown to be invalid prior to award of a contract, or the contractor fail to continue to meet the definition of an Aboriginal business. Remedies range from declaration of the bidder non-responsive to termination of the contract or taking the work out of the hands of the contractor. Remedies may also include suspension of the supplier's bidding privileges as an Aboriginal business, or other corrective measures provided for in the contract or under the Vendor Performance Policy. Contracting officers should consult with assigned Sector or Region legal counsel, and DINA, Access to Federal Procurement Directorate, in determining the appropriate action to be taken.

9L.290 (1997-03-31) When the contract has been awarded, and it is found that the contractor has not maintained their status as an Aboriginal business during the life of the contract, contracting officers must consider whether the provisions of the Vendor Performance Policy apply in addition to, or instead of, the specific provisions set out in the certificate of eligibility.

Audits of Bidders Certification

9L.300 (2004-05-14) Bidders are required to certify in their bids that they are an Aboriginal business, as defined in the PSAB (see Annex 9.1). The certification includes an undertaking that the business will continue to meet the criteria which define it as Aboriginal throughout the performance of the contract. Bidders certifications that they are Aboriginal are subject to audit, both prior to and subsequent to contract award.

9L.305 (2004-05-14) Consulting and Audit Canada (CAC) is the auditing authority under Memorandum of Understanding with DINA and will receive its instructions from DINA. CAC will contact the contracting officer for further information when an audit is required.

9L.310 (2004-05-14) Pre-award auditing is mandatory for requirements valued at, or in excess of, $2M. To ensure that the mandatory requirement for pre-auditing is met, it is essential that the contracting authority properly notify DINA of such requirements, as per 9L.140 above, and that the two best-assessed bids be submitted to DINA as per 9L.340 below. The contracting officer must not award contracts of $2M or more until DINA has confirmed eligibility of the proposed contractor.

9L.320 (2004-05-14) Pre-award audits of bidders' certifications will be conducted on a random basis for requirements under $2M. DINA will advise the contracting officer whether a requirement is subject to pre-award audit no later than the date of bid closing (see 9L.130). Audits of bidders' certifications are expected to require approximately ten (10) working days to be completed. When timing of contract award is an issue, this should be indicated in the notification to DINA, so that it may determine whether the auditing process can be expedited or the procurement excluded from the random selection.

9L.330 (2004-05-14) Pre-award audits may be requested either by the requisitioning authority, the contracting officer, or DINA, whenever there is a doubt regarding the validity of bidders' certifications, regardless of the total estimated expenditure of the procurement. (See 9L.270.)

9L.340 (1999-06-21) When DINA has advised that the requirement will be subject to a pre-award audit, the evaluation of bids will continue up to the point that the two "best assessed" bids have been identified. This information is to be provided to DINA, minus any pricing information, who will request CAC to undertake the pre-award audit of the bidders' certification. Upon receipt of the results of the audit, DINA will advise the contracting officer. If the audit confirms the validity of the bidders' certifications, award of the contract may proceed. If the audit determines that one or more of the certificates are invalid, the subject bidder(s) whose certifications have been declared invalid, must be declared non-responsive, and the next-ranked bidder becomes the "recommended bidder". If the audit reveals that both certifications are invalid, the next-ranked bidder's certification must be referred to DINA for audit until either a bid with a valid certificate is obtained, or no bidders remain. In the event that all bidders are eliminated on the basis of invalid certifications, the requirement must be re-tendered, either as a set-aside once again, or not set-aside, after consultation with the client department. Whether, the next-ranked bidder should be awarded the contract or the requirement re-tendered, is a decision that must be made on a case by case basis, in keeping with sound contracting principles.

9L.350 (1999-06-21) After the contract has been awarded, the contractor's certification is subject to audit to confirm their status as an Aboriginal business (see 9L.130) during the life of the contract. Audits following contract award will normally be done on a random basis, however where contracting officers believe it to be necessary, audit of the contractor's continued status as an

Aboriginal business may be requested of DINA.

9L.360 (1999-06-21) Contracting officers should note that the bidders' certification regarding their status as an Aboriginal business contains provisions for remedies should it be determined that either the certificate is invalid, or that the contractor has not completed their undertaking to continue to qualify as an Aboriginal business. It may be necessary to implement certain of the remedies, upon advice that an audit has revealed the invalidity of the certificate, or a failed undertaking. Contracting officers should consult with assigned Sector or Region counsel, and DINA, Access to Federal Procurement Directorate, in determining the appropriate action to be taken.

Bid Challenge

9L.370 (2004-05-14) Bid challenges should be dealt with according to established internal supplier complaint response procedures for procurements not subject to trade agreements.

Set-Aside Procedures Checklist

1. Has the client indicated that the requirement has been set aside. If no, process requirement according to standard procurement policies and procedures. If yes, see below.

2. If requirement is subject to CLCA, determine extent to which CLCA and set-aside do not conflict. In cases of conflict, CLCA takes precedence (See 9L.040).

3. Has the client indicated a requirement for sub-contracting to Aboriginal business? (See 9L.120)

4. Notify DINA, Access to Federal Procurement of receipt of set aside requirement. (See 9L.130)

5. Bid solicitation document includes *Requirements for the Set-Aside Program for Aboriginal Business* document and clause K9025T (and K9026D - Entire Agreement, if applicable). (See 9L.250)

6. Source requirement according to established policies and procedures - source list, GETS, etc. (See 9L.170)

7. NPP/ACAN (GETS) contains a clear statement that requirement has been set aside and that only Aboriginal businesses will be eligible. (See 9L.210)

8. Has DINA advised that the requirement is/is not subject to pre-award audit of certifications before bid closing? (See 9L.340)

9. Have all bidders provided signed certificate of eligibility with their bids? (See 9L.260)

10. Evaluation of bids according to established criteria.

11. Advice to DINA of 2 "best-assessed" responsive bidders (without financial information) if requirement subject to pre-award audit. (See 9L.340)

12. Has DINA advised re: results of pre-award audit of certificates of eligibility? (See 9L.340)

13. Award contract in accordance with established evaluation criteria and result of pre-award audit, if applicable.

14. Advise DINA of contract award within fifteen (15) working days. (See 9L.150)

15. Contract management including advice to DINA regarding changes in contractor's status as an Aboriginal business, or requests to DINA to verify continued status (post-award audit). (See 9L.360)

Section 9M: Land Claims Set-aside Policy

Introduction

9M.010 (2004-12-10) The Land Claims Set-aside Policy establishes procedures for setting aside procurements covered by the North American Free Trade Agreement (NAFTA) and the World Trade Organization Agreement on Government Procurement (WTO-AGP) that are subject to Comprehensive Land Claims Agreements, National Park Agreements, or Department of National Defence (DND) Co-operation Agreements. For procurements covered by the Canada-Korea Telecommunications Equipment Agreement (CKTEA), the procedures for procurement covered by the WTO-AGP should be followed.

Policy

9M.020 (1999-06-21) A set-aside policy has been developed for each Comprehensive Land Claims Agreement, National Park Agreement, and DND Co-operation Agreement (referred to herein collectively as land claims agreements) based on the TBS Contracting Policy Notice 1997-8. The extent of preferences to the claimant group is restricted to the Federal government's obligations under the applicable land claims agreement(s). This policy does not apply when a procurement has been set aside under the Set-Aside Program for Aboriginal Business - a procurement can not be set aside more than once.

Determine Coverage

9M.030 (2003-05-30) Determine whether a procurement is covered by both a land claims agreement and NAFTA, the WTO-AGP and/or the CKTEA. (See 4.002, 4.009, 4.010 and 4.011 respectively.)

If a procurement is subject to NAFTA, the WTO-AGP and/or the CKTEA, and one or more of the land claims agreements, the portion for delivery within the Comprehensive Land Claims Settlement Areas (CLCSA) should be procured separately from the portion for delivery outside of the CLCSA, where this is feasible.

The portion of the procurement for delivery outside of the CLCSA will continue to be procured according to the provisions in the NAFTA, the WTO-AGP and/or CKTEA.

The procurement (or portion of the procurement) for delivery within the CLCSA is to be set aside from NAFTA, WTO-AGP and the CKTEA. The provision for "set-asides for small and minority businesses" is found in NAFTA, Annex 1001.2b, Article 1.(d), the WTO-AGP, Appendix I, Article 1.(d) and the CKTEA, Article 1, Part 5 (see Annex 4.2). In order to effect that set-aside, specific references from the applicable land claims agreements must be inserted into the NPP and the bid solicitation document. This procurement will be known as a “Land Claims Set-Aside" or "LCSA".

Determine Obligations

9M.040 (1999-06-21) The Treasury Board of Canada Secretariat Contracting Policy Notice 1997-8 identifies Canada's contracting obligations under each land claims agreement. The Chart, entitled “*Summary of Benefits from Treasury Board of Canada Secretariat Contracting Policy Notice 1997-8*", was derived from this Notice. Using this Chart, determine which provisions in the applicable land claims agreements apply. Ensure that only the relevant provisions are selected. For example, provisions related to silviculture would not apply to a procurement for food services.

Notice of Proposed Procurement

9M.050 (2004-12-10) Insert the following information (*Standard Acquisition Clauses and Conditions* (SACC) Manual clause A9110T) at the beginning of the text box in the NPP for the procurement which is being set aside.

"*This procurement is set aside from _____ (Insert as applicable: the North American Free Trade Agreement, Annex 1001.2b, Article 1.(d); the World Trade Organization Agreement on Government Procurement, Appendix I, article 1.(d) or the Canada-Korea Telecommunications Equipment Agreement, Article 1, part 5, and/or the Agreement on Internal Trade, Article 1802.*

Insert the following information at the end of the text box in the NPP, indicating the applicable section, corresponding land claims agreement, and clause numbers from the Treasury Board of Canada Secretariat Contracting Policy Notice 1997-8. Refer to the Chart for this information. Do not include the text of the provisions in the NPP. For procurement covered by the CKTEA, the procedures for procurement covered by the WTO-AGP should be followed.

"The benefits that apply to this procurement are contained in: ... ."

For example, a procurement that is subject to the Inuvialuit Final Agreement might read as follows:

"The benefits that apply to this procurement are contained in: Section 2, the Inuvialuit Final Agreement, clauses 16(8), (b), (c)."

Bid Solicitation Document

9M.060 (2004-12-10) Insert the following information (SACC Manual clause A9110T) at the beginning of the bid solicitation document.

"*This procurement is set aside from _____(Insert as applicable: the North American Free Trade Agreement, Annex 1001.2b, Article 1.(d); the World Trade Organization Agreement on Government Procurement, Appendix I, article 1.(d) or the Canada-Korea Telecommunications Equipment Agreement, Article 1, part 5, and/or the Agreement on Internal Trade, Article 1802.*

Insert the applicable SACC clause(s) at the end of the bid solicitation document, but before any annexes or appendices. Refer to the Chart for the list of SACC clauses.

Delivery Clauses

9M.070 (1999-06-21) Special clauses have been developed for use in solicitations and contracts or standing offers which involve or could involve deliveries to locations inside land claims settlement areas. These clauses, numbers W0001T, W0002D and W0003D, are in the SACC Manual. The Remarks section of each clause details its use.

Coding

9M.080 (2001-12-10) Procurements to which NAFTA, the WTO-AGP and/or the CKTEA are applied must be coded accordingly; procurements which were set-aside under this Land Claims Set-Aside Policy must be coded as LCSA and identified as a "set-asides for small and minority businesses" derogation.

When a procurement has been divided and the same supplier is successful on both solicitations,

separate contractual documents must be issued in order to satisfy system coding requirements for the respective agreement types.

Enquiries

9M.090 (2004-12-10) Questions about this policy may be directed to Acquisition Strategy and Relations Directorate, (819) 956-0919.

Summary of Benefits from Treasury Board of Canada Secretariat Contracting Policy Notice 1997-8

Table Headings

Legend

Notification - This is a list of the general notification provisions contained in the individual land claims agreements. It is required to notify all land claimant groups of potential contracts in their settlement area/region. When a procurement is subject to a land claims agreement include in the NPP and bid solicitation the mandatory notification provisions listed under "Bid Solicitation". Provisions in the "As applicable" column are to be included where appropriate. In addition, include the notification provisions listed under "Creation of a List" when an NPP is being used to advertise the existence of a list which will be used to notify suppliers of actual requirements.

General Evaluation - This is a list of provisions that allow for evaluation preferences. It is necessary to include these provisions only when the procurement plan and bid solicitation document include the evaluation preferences set out in the applicable land claim agreements.

Entity, Area & Commodity Specific - This is a list of the provisions that require the federal government to give preference, as defined in the individual land claims agreements, for a procurement by a specific entity, for a specific commodity or for delivery within a specific area. Include these clauses when the procurement involves an area or commodity that is subject to special provisions.

Mandatory - This designates a mandatory provision within a land claims agreement - i.e. a provision that the Federal government is obligated to carry out. In the case of the column "Entity, Area and Commodity Specific Provisions", include these clauses when the procurement involves the specific entity or is for the specified area or commodity. For example, provisions related to silviculture would only be included if the procurement is for silviculture.

As Applicable - This designates a provision which may not be appropriate for every land claims agreement procurement. Only include these provisions if they also form part of the bid solicitation, eg. evaluation.

List of Comprehensive Land Claims Agreements, National Park Co-management Agreements, and DND Co-operation Agreements listed in Treasury Board of Canada Secretariat Contracting Policy Notice 1997-8

Section 1: James Bay and Northern Quebec Agreement
Section 2: Inuvialuit Final Agreement
Section 3: Gwich'in Comprehensive Land Claim Agreement
Section 4: Inuit of Nunavut Land Claims Agreement
Section 5: Umbrella Final Agreement, Council for Yukon Indians
- Section 5.1 First Nation of Nacho Nyak Dun Final Agreement
- Section 5.2 Champagne and Aishihik First Nations Final Agreement
- Section 5.3 Teslin Tlingit Council Final Agreement
- Section 5.4 Vuntut Gwichin First Nation Final Agreement
- Section 5.5 Selkirk First Nation Final Agreement
- Section 5.6 Little Salmon/Carmacks First Nation Final Agreement
- Section 5.7 Tr'ondëk Hwëch'in Final Agreement

Section 6: Sahtu Dene and Metis Comprehensive Land Claim Agreement
Section 7: Agreement for the Establishment of a National Park on Banks Island
Section 8: Tuktut Nogait National Park Co-management Agreement
Section 9: Co-operation Agreement Between the Inuvialuit Regional Corporation and the Department of National Defence Concerning the Operation and Maintenance of the North Warning System
Section 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

Summary of Benefits from
Treasury Board of Canada Secretariat Contracting Policy Notice 1997-8

Section 1: James Bay and Northern Quebec Agreement

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0011T	W0012T	--	W0013T	W0014T	--	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the James Bay and Northern Quebec Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0011T is comprised of clauses: 4.3; 28.10.3(b) ii, iii; 29.0.31(b) ii, iii.
SACC W0012T is comprised of clauses: 8.1; 8.2; 8.3; 8.4; 8.5; 8.6.
SACC W0013T is comprised of clauses: 28.10.3(b)i, ii, iiii: 29.0.31(b)i, ii, iii.
SACC W0014T is comprised of clauses: 7.1, a), b), c).

Section 2: Inuvialuit Final Agreement

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0021T	--	-	--	W0022T	--	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Inuvialuit Final Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0021T is comprised of clauses: 16(8), (b), (c).
SACC W0022T is comprised of clauses: 6.00, (a), (b), (c).

Section 3: Gwich'in Comprehensive Land Claim Agreement

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0031T	--	W0032T			W0033T W0034T W0035T W0036T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Gwich'in Comprehensive Land Claim Agreement (listed below)

in the Notice of Proposed Procurement.

SACC W0031T is comprised of clause: 17.2.1 in App. C.
SACC W0032T is comprised of clause: 17.2.5 in App. C.
SACC W0033T is comprised of clause: 25.1.10.
SACC W0034T is comprised of clauses: 9.7.1; 9.7.2; 9.7.5 (a),(b) in App. C.
SACC W0035T is comprised of clauses: 11.6.1, (a), (b); 11.6.2, (a), (b) in App. C.
SACC W0036T is comprised of clauses: 13.6.2; 13.6.3; 13.6.6 in App. C.

Section 4: Inuit of Nunavut Land Claims Agreement

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0041T	--	W0042T		W0043T	W0044T W0045T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Inuit of Nunavut Land Claims Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0041T is comprised of clause: 24.5.1; 24.5.2; 24.5.3.
SACC W0042T is comprised of clause: 24.7.1.
SACC W0043T is comprised of clause: 24.6.1,(a),(b),(c).
SACC W0044T is comprised of clause: 8.4.8,(a),(b); 8.4.9.
SACC W0045T is comprised of clause: 33.6.1,(a),(b); 33.6.2.

Section 5.1: First Nation of Nacho Nyak Dun Final Agreement[1]

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0051T	--	W0052T	--	--	W0053T W0061T W0062T W0063T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the First Nation of Nacho Nyak Dun Final Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0051T is comprised of clauses: 22.5.1.
SACC W0052T is comprised of clauses: 22.5.4: 22.5.8.
SACC W0053T is comprised of clauses: 15.7.1; 15.7.2.
SACC W0061T is comprised of clauses: 13.12.1.1; 13.12.1.2; 13.12.1.5,(a), (b).
SACC W0062T is comprised of clauses: 15.7.1.1; 15.7.1.2

[1] Provisions in the Council of Yukon First Nations Final Agreement also apply to procurements subject to the First Nation of First Nation of Nacho Nyak Dun Final Agreement.

SACC W0063T is comprised of clauses: 17.14.2.2; 17.14.2.3; 17.14.2.6.

Section 5.2: Champagne and Aishihik First Nations Final Agreement[2]

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0051T	-	W0052T	-	-	W0053T W0071T W0072T W0073T W0074T W0075T	-

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Champagne and Aishihik First Nations Final Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0051T is comprised of clauses: 22.5.1.
SACC W0052T is comprised of clauses: 22.5.4: 22.5.8.
SACC W0053T is comprised of clauses: 15.7.1; 15.7.2.
SACC W0071T is comprised of clauses: 9.3; 9.3.1; 9.3.2; 9.3.3.
SACC W0072T is comprised of clauses: 9.4; 9.4.1; 9.4.2; 9.4.3.
SACC W0073T is comprised of clauses: 13.12.1.1; 13.12.1.2; 13.12.1.5, (a), (b).
SACC W0074T is comprised of clauses: 15.7.1.1; 15.7.1.2
SACC W0075T is comprised of clauses: 17.14.2.2; 17.14.2.3; 17.14.2.6.

Section 5.3: Teslin Tlingit Council Final Agreement[3]

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0051T	--	W0052T	--	--	W0053T W0081T W0082T W0083T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Teslin Tlingit Council Final Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0051T is comprised of clauses: 22.5.1.
SACC W0052T is comprised of clauses: 22.5.4: 22.5.8.

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2 Provisions in the Council of Yukon First Nations Final Agreement also apply to procurements subject to the Champagne and Aishihik First Nations Final Agreement.

3 Provisions in the Council of Yukon First Nations Final Agreement also apply to procurements subject to the Teslin Tlingit Council Final Agreement.

SACC W0053T is comprised of clauses: 15.7.1; 15.7.2.
SACC W0081T is comprised of clauses: 13.12.1.1; 13.12.1.2.; 13.12.1.5, (a),(b).
SACC W0082T is comprised of clauses: 15.7.1.1; 15.7.1.2.
SACC W0083T is comprised of clauses: 17.14.2.2; 17.14.2.3; 17.14.2.6.

Section 5.4: Vuntut Gwich'in First Nation Final Agreement [4]

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0051T	--	W0052T	--	--	W0053T W0091T W0092T W0093T W0094T	W0095T

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Vuntut Gwich'in First Nation Final Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0051T is comprised of clauses: 22.5.1.
SACC W0052T is comprised of clauses: 22.5.4: 22.5.8.
SACC W0053T is comprised of clauses: 15.7.1; 15.7.2.
SACC W0091T is comprised of clauses: 9.6; 9.7; 9.7.1; 9.7.2; 9.7.3; 9.7.4.
SACC W0092T is comprised of clauses: 13.12.1.1; 13.12.1.3; 13.12.1.6,(a), (b).
SACC W0093T is comprised of clauses: 15.7.1.1; 15.7.1.2.
SACC W0094T is comprised of clauses: 17.14.2.2; 17.14.2.3; 17.14.2.6; 17.14.2.7.
SACC W0095T is comprised of clauses: 9.8; 9.8.1; 9.8.2.

Section 5.5: Selkirk First Nation Final Agreement [5]

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0051T	--	W0052T	--	--	W0101T W0102T W0103T W0104T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Selkirk First Nation Final Agreement (listed below) in the Notice of Proposed Procurement.

[4] Provisions in the Council of Yukon First Nations Final Agreement also apply to procurements subject to the Vuntut Gwich'in First Nation Final Agreement.

[5] Provisions in the Council of Yukon First Nations Final Agreement also apply to procurements subject to the Selkirk First Nation Final Agreement.

SACC W0051T is comprised of clauses: 22.5.1.
SACC W0052T is comprised of clauses: 22.5.4: 22.5.8.
SACC W0101T is comprised of clauses:13.12.1.1; 13.12.1.2; 13.12.1.3;13.12.1.7,(a), (b).
SACC W0102T is comprised of clause: 5.1.
SACC W0103T is comprised of clauses: 15.7.1.1; 15.7.1.2.
SACC W0104T is comprised of clauses: 17.14.2.2; 17.14.2.3; 17.14.2.4; 17.14.2.8.

Section 5.6: Little Salmon/Carmacks First Nation Final Agreement[6]

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0051T	--	W0052T	--	--	W0111T W0112T W0113T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Little Salmon/Carmacks First Nation Final Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0051T is comprised of clauses: 22.5.1.
SACC W0052T is comprised of clauses: 22.5.4: 22.5.8.
SACC W0111T is comprised of clauses: clauses:13.12.1.1; 13.12.1.2; 13.12.1.3;13.12.1.7,(a), (b).
SACC W0112T is comprised of clauses:15.7.1.1; 15.7.1.2.
SACC W0113T is comprised of clauses: 17.14.2.2; 17.14.2.3; 17.14.2.4; 17.14.2.8.

Section 5.7: Tr'ondëk Hwëch'in Final Agreement[7]

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0051T	--	W0052T	--	--	W0171T W0172T W0173T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from theTr'ondëk Hwëch'in Final Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0051T is comprised of clauses: 22.5.1.

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6 Provisions in the Council of Yukon First Nations Final Agreement also apply to procurements subject to the Little Salmon/Carmacks First Nation Final Agreement.

7 Provisions in the Council of Yukon First Nations Final Agreement also apply to procurements subject to the Tr'ondëk Hwëch'in Final Agreement.

SACC W0052T is comprised of clauses: 22.5.4: 22.5.8.
SACC W0171T is comprised of clauses: clauses:13.12.1.1; 13.12.1.2; 13.12.1.3;13.12.1.7,(a), (b).
SACC W0172T is comprised of clauses:15.7.1.1; 15.7.1.2.
SACC W0173T is comprised of clauses: 17.14.2.2; 17.14.2.3; 17.14.2.4; 17.14.2.8.

Section 6: Sahtu Dene and Metis Comprehensive Land Claim Agreement

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0121T	--	--	--	--	W0122T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Sahtu Dene and Metis Comprehensive Land Claim Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0121T is comprised of clauses:12.2.1, (a), (b).
SACC W0122T is comprised of clauses: 26.2.8.

Section 7: Agreement for the Establishment of a National Park on Banks Island

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0131T	--	--	W0132T	--	W0133T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Agreement for the Establishment of a National Park on Banks Island (listed below) in the Notice of Proposed Procurement.

SACC W0131T is comprised of clauses: 8.02; 8.03, (a), (b), (c), (d).
SACC W0132T is comprised of clauses: 8.05,(a),(b),(c).
SACC W0133T is comprised of clauses:8.04; 8.06,(a),(b),(c),(d),(e). 8.07, (a),(b),(c).

Section 8: Tuktut Nogait National Park Co-management Agreement

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0141T	--	--	W0142T	--	W0143T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Tuktut Nogait National Park Co-management Agreement (listed below) in the Notice of Proposed Procurement.

SACC W0141T is comprised of clauses: 14.2; 14.3, (i), (ii), (iii), (iv), (v).

SACC W0142T is comprised of clauses: 14.5, (i), (ii), (iii).
SACC W0143T is comprised of clauses: 14.4; 14.6, (i), (ii), (iii), (iv), (v); 14.7, (i), (ii), (iii).

Section 9: Co-operation Agreement Between the Inuvialuit Regional Corporation and the Department of National Defence Concerning the Operation and Maintenance of the North Warning System

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0151T	--	--	W0152T	--	W0153T W0154T W0155T W0156T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the Co-operation Agreement Between the Inuvialuit Regional Corporation and the Department of National Defence Concerning the Operation and Maintenance of the North Warning System (listed below) in the Notice of Proposed Procurement.

SACC W0151T is comprised of clause: 4.2, (a), (c).
SACC W0152T is comprised of clauses: 4.0; 4.1.
SACC W0153T is comprised of clauses:4.3; 4.3.1.
SACC W0154T is comprised of clauses: 4.3; 4.3.2.
SACC W0155T is comprised of clauses: 4.3; 4.3.3.
SACC W0156T is comprised of clauses:4.3; 4.3.4.

Section 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

Notification			General Evaluation		Entity, Area & Commodity Specific	
Bid Solicitation		Creation of a List				
Mandatory	As Applic.	Mandatory	Mandatory	As Applic.	Mandatory	As Applic.
W0161T	--	--	W0162T	--	W0163T W0164T W0165T W0166T W0167T W0168T W0169T	--

Include the relevant SACC clause(s) (identified in the chart above) in the bid solicitation and insert the corresponding clause numbers from the 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 (listed below) in the Notice of Proposed Procurement.

SACC W0161T is comprised of clause: 6.1, (b)
SACC W0162T is comprised of clauses: 4.1 (a); 5.1; 5.2; 6.1,(c).
SACC W0163T is comprised of clause: 6.2, (a).

SACC W0164T is comprised of clause: 6.2, (b).
SACC W0165T is comprised of clause: 6.2, (c).
SACC W0166T is comprised of clause: 6.2, (d).
SACC W0167T is comprised of clause: 6.2, (e).
SACC W0168T is comprised of clause: 6.3, (a).
SACC W0169T is comprised of clause: 6.4,(a).

Annex 9.1: Requirements for the Set-aside Program for Aboriginal Business (2004-05-14)

Who is eligible?

An Aboriginal business, which can be:

- a band as defined by the Indian Act
- a sole proprietorship

or

- a limited company
- a co-operative
- a partnership
- a not-for-profit organization

in which Aboriginal persons have at least 51 percent ownership and control,

OR

A joint venture consisting of two or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business(es), provided that the Aboriginal business(es) has at least 51 percent ownership and control of the joint venture.

When an Aboriginal business has six or more full-time employees at the date of submitting the bid, at least thirty-three percent of them must be Aboriginal persons, and this ratio must be maintained throughout the duration of the contract.

The bidder must certify in its submitted bid that it is an Aboriginal business or a joint venture constituted as described above.

Are there any other requirements attached to bidders in the Set-Aside Program for Aboriginal Business? - Yes.

- In respect of a contract, (goods, service or construction), on which a bidder is making a proposal which involves subcontracting, the bidder must certify in its bid that at least thirty-three percent of the value of the work performed under the contract will be performed by an Aboriginal business. *Value of the work performed* is considered to be the total value of the contract less any materials directly purchased by the contractor for the performance of the contract. Therefore, the bidder must notify and, where applicable, bind the subcontractor in writing with respect to the requirements that the Aboriginal Set-Aside Program (the Program) may impose on the subcontractor or subcontractors.

- The bidder's contract with a subcontractor must also, where applicable, include a provision in which the subcontractor agrees to provide the bidder with information, substantiating its compliance with the Program, and authorize the bidder to have an audit performed by Canada to examine the subcontractor's records to verify the information provided. Failure by the bidder to exact or enforce such a provision will be deemed to be a breach of contract and subject to the civil consequences referred to in this document.

- As part of its bid, the bidder must complete the *Certification of Requirements for the Set-Aside Program for Aboriginal Business* (certification) stating that it:

  i) meets the requirements for the Program and will continue to do so throughout the duration of the contract;

  ii) will, upon request, provide evidence that it meets the eligibility criteria;

iii) is willing to be audited regarding the certification; and

iv) acknowledges that if it is found NOT to meet the eligibility criteria, the bidder shall be subject to one or more of the civil consequences set out in the certification and the contract.

How must the business prove that it meets the requirements?

It is not necessary to provide evidence of eligibility at the time the bid is submitted. However, the business should have evidence of eligibility ready in case it is audited.

The civil consequences of making an untrue statement in the bid documents, or of not complying with the requirements of the Program or failing to produce satisfactory evidence to Canada regarding the requirements of the Program, may include: forfeiture of the bid deposit; retention of the holdback; disqualification of the business from participating in future contracts under the program; and/or termination of the contract. In the event that the contract is terminated because of an untrue statement or non-compliance with the requirements of the Program, Canada may engage another contractor to complete the performance of the contract and any additional costs incurred by Canada shall, upon the request of Canada, be borne by the business.

What evidence may be required from the business?

Ownership and control

Evidence of ownership and control of an Aboriginal business or joint venture may include incorporation documents, shareholders' or members' register; partnership agreements; joint venture agreements; business name registration; banking arrangements; governance documents; minutes of meetings of Board of Directors and Management Committees; or other legal documents.

Ownership of an Aboriginal business refers to "beneficial ownership" i.e. who is the real owner of the business. Canada may consider a variety of factors to satisfy whether Aboriginal persons have true and effective control of an Aboriginal business. (See Appendix A for a list of the factors which may be considered by Canada.)

Employment and employees

Where an Aboriginal business has six or more full-time employees at the date of submitting the certification and is required by Canada to substantiate that at least thirty-three percent of the full-time employees are Aboriginal, the business must, upon request by Canada, immediately provide a completed *Owner/Employee Certification* form for each full-time employee who is Aboriginal.

Evidence as to whether an employee is or is not full-time and evidence as to the number of full-time employees may include payroll records, written offers for employment, and remittance and payroll information maintained for Canada Revenue Agency purposes as well as information related to pension and other benefit plans.

A full-time employee, for the purpose of this program, is one who is on the payroll, is entitled to all benefits that other full-time employees of the business receive, such as pension plan, vacation pay and sick leave allowance, and works at least 30 hours a week. It is the number of full-time employees on the payroll of the business at the date of bid submission that determines the ratio of Aboriginal to total employees of the business for the purpose of establishing eligibility under the Program.

Owners who are Aboriginal and full-time employees who are Aboriginal must be ready to provide evidence in support of such status. The *Owner/Employee Certification* to be completed by each owner and full-time employee who is Aboriginal shall state that the person meets the eligibility criteria and that the information supplied is true and complete. This certification shall provide the person's consent to the

verification of the information submitted.

Subcontracts

Evidence of the proportion of work done by subcontractors may include contracts between the contractor and subcontractors, invoices, and paid cheques.

Evidence that a subcontractor is an Aboriginal business (where this is required to meet the minimum Aboriginal content of the contract) is the same as evidence that a prime contractor is an Aboriginal business.

Who is an Aboriginal Person for Purposes of the Set-Aside Program for Aboriginal Business?

An Aboriginal person is an Indian, Metis or Inuit who is ordinarily resident in Canada.

Evidence of being an Aboriginal person will consist of such proof as:

- Indian registration in Canada
- membership in an affiliate of the Metis National Council or the Congress of Aboriginal Peoples, or other recognized Aboriginal organizations in Canada
- acceptance as an Aboriginal person by an established Aboriginal community in Canada
- enrolment or entitlement to be enrolled pursuant to a comprehensive land claim agreement
- membership or entitlement to membership in a group with an accepted comprehensive claim

Evidence of being resident in Canada includes a provincial or territorial driver's licence, a lease or other appropriate document.

For further information on the Set-Aside Program for Aboriginal Business, contact the Access to Federal Procurement Directorate in the Department of Indian and Northern Affairs at (819) 997-8383 or (819) 997-8746 or fax (819) 994-0445.

Certification Requirements for the Set-Aside Program for Aboriginal Business

A bidder who submits, under this program, a bid or proposal in response to a solicitation must complete and submit this certification. Failure to submit this certification will result in the proposal's being found non-compliant.

1. i) I, _____ *(Name of duly authorized representative of business)* hereby certify that _____ *(Name of business)* meets, and shall continue to meet throughout the duration of the contract, the requirements for this program as set out in the attached document entitled "Requirements for the Set-Aside Program for Aboriginal Business", which document I have read and understand.

   ii) The aforementioned business agrees to ensure that any subcontractor it engages with respect to the contract shall, if required, satisfy the requirements set out in "Requirements for the Set-Aside Program for Aboriginal Business."

   iii) The aforementioned business agrees to provide to Canada, immediately upon request, information to substantiate a subcontractor's compliance with this program.

Please Check the Applicable Boxes in 2 and 3 below

2. i) The aforementioned business is an Aboriginal business which is a sole proprietorship, band, limited company, co-operative, partnership or not-for-profit organization, [ ]

   OR

   ii) The aforementioned business is a joint venture between two or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business. [ ]

3. The Aboriginal business or businesses have:

   i) fewer than six full-time employees [ ]

   OR

   ii) six or more full-time employees [ ]

4. The aforementioned business agrees to immediately furnish to Canada, such evidence as may be requested by Canada from time to time, corroborating this certification. Such evidence shall be open to audit during normal business hours by a representative of Canada, who may make copies and take extracts from the evidence. The aforementioned business agrees to provide all facilities for audits and to furnish information requested by Canada with respect to the certification.

5. It is understood that the civil consequences of making an untrue statement in the bid documents, or of not complying with the requirements of the Program or failing to produce satisfactory evidence to Canada regarding the requirements of the Program, may include: forfeiture of the bid deposit; retention of the holdback; disqualification of the business from participating in future contracts under the Program; and/or termination of the contract. In the event that the contract is terminated because of an untrue statement or non-compliance with the requirements of the Program, Canada may engage another contractor to complete the performance of the contract and any additional costs incurred by Canada shall, upon the request of Canada, be borne by the aforementioned business.

6. Date: _____ Signature: _____
Title (Duly authorized representative of business)

Place: _____ Title: _____
For:

_____
Name of Business

Appendix A

The Set-Aside Program for Aboriginal Business

Factors that may be considered in determining whether Aboriginal persons have at least 51% ownership and control of an Aboriginal business include:

- Capital Stock and Equity Accounts, i.e., preferred stock, convertible securities, classes of common stock, warrants, options
- Dividend policy and payments
- Existence of Stock Options to employees
- Different treatment of Equity transactions for Corporations, Partnerships, Joint Ventures, Community organizations, Cooperatives, etc.
- Examination of Charter Documents, i.e., corporate charter, partnership agreement, financial structure
- Concentration of ownership or managerial control in partners, stockholders, officers trustees and directors based definition of duties
- Principal occupations and employer of the officers and directors to determine who they represent, i.e. banker, vested ownerships
- Minutes of directors meetings and stockholders meetings for significant decisions that affect operations and direction
- Executive and employee compensation records for indication of level of efforts associated with position
- Nature of the business in comparison with the type of contract being negotiated
- Cash management practices, i.e., payment of dividends - preferred dividends in arrears
- Tax returns to identify ownership and business history
- Goodwill contribution/contributed asset valuation to examine and ascertain the Fair Market value of non cash capital contributions
- Contracts with owners, officers and employees to be fair and reasonable
- Stockholder authority, i.e. appointments of officers, directors, auditors
- Trust agreements made between parties to influence ownership and control decisions
- Partnership - allocation and distribution of net income, i.e., provision for salaries, interest on capital and distribution share ratios
- Litigation proceedings over ownership
- Transfer pricing from non-Aboriginal joint venturer
- Payment of management or administrative fees
- Guarantees made by the Aboriginal business

- Collateral agreements

Owner/Employee Certification Form

Set-aside Program for Aboriginal Business

1. I, _____, am an
   Name

   owner and/or full-time employee of_____,
   Name of business

   and an Aboriginal person, as described in the document “Requirements for the Set-Aside Program for Aboriginal Business”.

2. I certify that the above statement is true and consent to its verification upon the request of Canada.

_____ _____
Date Signature of owner and/or employee

_____
Place

Chapter 10 - Cost and Profit

10.001 (1998-02-16) When a contract is to be awarded on a non-competitive basis, or when, following a competitive process, price negotiations with the successful bidder are required, contracting officers are to determine the contract price based on the procedures outlined in this Chapter.

10.002 (2005-06-10) The calculation of prices and costs depends on the circumstances of each contract. Before referring to the general sections on Establishing Costs (see 10.005) and Profit (see 10.010), contracting officer should determine that the following special circumstances do not apply:

- Travel and Living Expenses (see 10.030);
- Prices for Out of Plant Services of Individuals (see 10.040);
- Surplus Materials in Cost-Reimbursable Contracts (see 10.050);
- Costing of Lease Transactions (see 10.065);
- Service Contracts (see 10.070);
- Joint Ventures (see 10.080);
- Research and Development Contracts with Universities and Colleges (see 10.090);
- Non-Competitive Contracts with Non-Profit Organizations, excluding Universities and Colleges (see 10.105);
- Non-Competitive Acquisitions from Agency and Resale Outlets, and for Manufactured Products and Repair and Overhaul Services (see 10.115);
- Transfer Pricing (see 10.130);
- Special Production Tooling and Special Test Equipment (see 10.150).

Contracting officers should also refer to the requirements for Audit. (See 6C.337.)

Establishing Costs

10.005 (2005-06-10) Whenever a contract price is negotiated based on costs, the costs are determined using Contract Cost Principles 1031-2 of the *Standard Acquisition Clauses and Conditions* (SACC) Manual.

In particular, for non-competitive contracts valued at $50,000 and over, with a firm price or fixed time rate basis of payment, except in cases for the acquisition of commercial products and services, the price or rate shall be negotiated based on the estimated costs computed using the Contract Cost Principles 1031-2.

For non-competitive contracts valued at $50,000 or over, with a cost reimbursable basis of payment, except in cases for the acquisition of commercial products and services, the price shall be determined based on actual costs incurred, computed in accordance with the Contract Cost Principles.

In both of the above cases, the Contract Cost Principles shall be included as a condition of the contract. Annex 10.1.0 explains why certain costs are considered non-applicable when utilizing Contract Cost Principles 1031-2.

For determining costs in accordance with the Contract Cost Principles, the Cost Interpretations issued by Cost and Forensic Accounting Directorate should be taken into consideration at the time of negotiations. There are currently Cost Interpretation Bulletins on:

- *Excess Facilities - Annex 10.1.1*
- *Depreciation - Annex 10.1.2*
- *Lease Costs - Annex 10.1.3*
- *Travel Costs - Annex 10.1.4*

- *Head Office Expenses - Annex 10.1.5*
- *Pension Costs - Annex 10.1.6*
- *Research and Development Expenses - Annex 10.1.7*
- *Bid and Proposal Expenses - Annex 10.1.8*
- *Selling and Marketing Expenses - Annex 10.1.9*
- *Severance Payments - Annex 10.1.10*
- *Pension Plan Refunds - Annex 10.1.11*
- *Company Funded Costs - Annex 10.1.12*
- *Executive Compensation - Annex 10.1.13*
- *Mobile Repair Party Requirements - Annex 10.1.14*
- *Environmental Costs - Annex 10.1.15*
- *Take Out Rates - Annex 10.1.16*
- *Government Supplied Materials - Annex 10.1.17*
- *Incentive Remuneration Profit Sharing Plans - Annex 10.1.18*
- *Purchased Labour – Personnel Procured from Outside Sources - Annex 10.1.19.*

10.006 (2004-05-14) The Contract Cost Principles 1031-2 are not required for commercial products and services, since these are used regularly for other than government purposes, and are sold by the supplier in the course of carrying out its normal business operations; and there is a sufficient number of buyers, other than the government to establish a going price for the product or service.

Calculation of Profit on Negotiated Contracts

10.010 (1998-11-23) The policy and guidelines for the calculation of the amount of profit applicable to negotiated contracts and parts thereof with Canadian-based suppliers, for both products and services are detailed in 10.011 to 10.021 below. Contracts valued under $50,000 do not require negotiation of profit under this section.

There are differences in the guidelines for contracts with total costs between $50,000 and $249,999, and for contracts with total costs of $250,000 or more.

For agency and resale outlets, the procedures for profit determination in 10.122 apply.

10.011 (1994-06-23) When for any reason it is not possible to establish an acceptable basis of price by competition or a fair and reasonable price assessment, the price shall be negotiated. The object of price negotiation is to duplicate a fair market price, while establishing a realistic division of responsibilities and risks between the contractor and the Crown.

A fair market price for non-competitive contracts for the acquisition of products or services (other than commercial products or services), shall be negotiated. The object of such negotiation is to arrive at a price which is considered to be fair and reasonable in the circumstances based upon an estimate of the costs, to be incurred in the performance of the contract, computed in accordance with the Contract Cost Principles 1031-2, plus a fair profit. A fair profit is an amount no greater than that calculated under this section.

There are the following exceptions:

(a) Generally, all contracts placed on behalf of the Canadian Commercial Corporation (CCC). However, if the ultimate customer for the CCC contract is the United States Department of Defense or National Aeronautics and Space Administration or the United Kingdom Ministry of Defence, the profit may be calculated in accordance with this section.

(b) Contracts or parts thereof for which the price is based on catalogues, price lists or fee schedules where only discounts are subject to negotiation.

10.012 (1994-06-23) Profit levels shall vary:

(a) to recognize the cost of money associated with the capital employed by the contractor in performance of the contract;

(b) to recognize the levels of general business and contractual risk assumed by the contractor in performance of the contract.

The calculation of the amount of profit attributable to each of the above factors shall normally be made in accordance with the following guidelines.

Return on Capital Employed

10.013 (1994-06-23) The return on capital employed will be determined in two parts:

(a) return on fixed capital employed, and

(b) return on working capital employed.

The determination is different for contracts with total costs between $50,000 and $249,999 and for contracts with total costs of $250,000 or more. (See 10.015.)

Return on Fixed Capital Employed (Between $50,000 and $249,999)

10.014 (1994-06-23) For contracts with total costs between $50,000 and $249,999, the return on fixed capital employed is calculated as follows:

If machinery and/or equipment owned by the contractor is used on a regular basis in the manufacture of the product(s) or provision of the service(s) being acquired under the contract, an amount equivalent to 1 percent of total allowable costs will be awarded as a return on fixed capital employed.

Return on working capital employed (Between $50,000 and $249,999)

10.015 (1994-06-23) The following rates applied to the total contract costs will be used to provide for a return on working capital employed:

(a) if there are no advance or progress or milestone payments - 3 percent;

(b) if there are progress or milestone payments - 1½ percent;

(c) if there are advance payments - 1½ percent (NOTE: The profit factor of 1½ percent will apply only to total costs less amount of advance.);

(d) if there are both advance and progress payments - 0 percent.

Return on Fixed Capital Employed ($250,000 or more)

10.016 (2005-06-10) For contracts with total costs of $250,000 or more, the return on fixed capital employed is calculated as follows:

The provision of a return on fixed capital employed is intended not only to compensate contractors for the cost of money associated with the fixed capital employed on the contract but also to encourage investment in new capital equipment, the result of which is generally greater productivity and consequently reduced costs to the Crown.

(a) For the purpose of this section, the fixed capital employed is defined as the net book

value of fixed assets, less

(i) land and any intangible assets,

(ii) any fixed assets not in use such as idle plant, and

(iii) any surplus value arising from re-appraisal.

(b) The determination of fixed capital employed will be as follows:

(i) Determine the percentage:

(A/B) x 100%

A = overhead recovery base allocated to the contract
B = total budgeted amount of recovery base

(ii) Apply the percentage in (i) to the net book value of fixed assets.

Such determination will be performed in accordance with the format set out in Annex 10.2.

(c) The rate of return to be applied to the fixed capital employed applicable to the contract will be 1.7 times the corporate bond rate, which will be published monthly by the Director of Cost and Forensic Accounting Directorate (CFAD). The rate used will be the latest rate published at the date that the contractor's price proposal is firmed up. In the event that the published rate at the time of contract award has changed by more than one full point, up or down, this rate shall be used to recompute the return.

(d) The rate used in the contractor's price proposal will be the latest figure published at the time the price proposal is submitted. In order to conform to (c) above, it is necessary that the following clause be included in the price proposal:

"The price quoted includes an amount of profit using a corporate bond rate of ___ percent. In the event that the corporate bond rate, as published by the Director, CFAD, at the time of contract award, has changed by more than one full point, up or down from this rate, the price will be adjusted to reflect such rate."

Return on Working Capital Employed ($250,000 or more)

10.017 (2005-06-10) The amount of working capital employed applicable to a particular contract is defined as all allowable contract costs (exclusive of depreciation where considered significant) less contract revenue (exclusive of profit).

For contracts with total costs of $250,000 or more, the return on working capital employed is calculated as follows:

(a) During negotiations, a schedule of the estimated net working capital for the contract, as defined above, on a month-by-month basis, will be determined and agreed to between the contracting officer and the contractor.

(b) The rate of return to be applied to the cumulative monthly amounts of working capital is defined below. However, as this is an annual rate of return, one-twelfth only of the rate is applicable to each monthly amount. For ease of calculation, the equivalent formula, to be used for determining the return on working capital employed on a particular contract, is as follows:

(A/12) x B

A = sum of the cumulative monthly working capital amounts
B = prescribed rate

(c) The rate of return to be applied to working capital employed applicable to the contract will be the chartered bank prime rate. This rate will be published weekly by the Director, CFAD. The rate used will be the latest rate published at the date that the contractor's price proposal is firmed up. In the event that the published rate at the time of contract award has changed by more than one full point, up or down, this rate shall be used to recompute the return.

(d) The rate used in the contractor's price proposal will be the latest figure published at the time the price proposal is submitted. The following clause must be included in the price proposal:

"The price quoted includes an amount of profit using the chartered bank prime rate of ___ percent. In the event that the chartered bank prime rate, as published by the Director, CFAD, at the time of contract award, has changed by more than one full point, up or down from this rate, the price will be adjusted to reflect such rate."

10.018 (1998-02-16) Specific guidelines in regard to the **cost base** for purposes of all profit calculations are as follows:

(a) **Direct material costs** should include the costs of all materials purchased specifically for the contract together with the costs of any other materials issued specifically for the contract from the contractor's own inventories except Accountable Advance (AA) spares embodied. Direct materials shall not include the value of Government Furnished (GF) nor Contract Issue (CI) materials. However, direct labour and overhead costs associated with the acquisition, stocking and handling of GF and CI materials and AA spares embodied may be included under the appropriate cost element for profit purposes.

(b) **Overhead** in this context includes not only plant or factory overhead but engineering, material handling, general and administrative or any other overheads as appropriate to and allowable on the contract.

(c) **All other allowable costs** are those costs not considered to be direct material, direct labour or overhead but nevertheless are an appropriate and allowable direct charge to the contract. Royalty payments and the goods and services tax or the harmonized sales tax, although they may be an appropriate and allowable direct charge to the contract, must not be included for the purpose of profit calculation.

General Business Risk

10.019 (1994-06-23) The award of profit under this factor is intended to recognize the level of effort a contractor makes in the management of all the resources required to perform the contract in an efficient and economical manner.

The level of effort is considered to vary according to the elements of cost and is reflected in the following rates of profit to be applied to the costs in each element:

Direct Materials: 1½%
Subcontracts: 2%
Accountable Advance Spares Embodied: 2%
Direct Labour: 4%
Overhead: 4%

All other Allowable Costs: 1½%

Contractual Risk

10.020 (1994-06-23) The rates of profit to be paid for contractual risk will depend upon the basis of payment selected for each individual line item of the contract, or part thereof, and the cost base associated with each distinct basis of payment.

The basis of payment determines the maximum level of profit, and requires the following consideration of different factors in arriving at the appropriate profit level.

(a) Firm Price and Firm Base Price with Economic Price Adjustments (7 percent maximum) - consider:

(i) the ability of the Crown to state its requirements in the form of a well-defined specification;

(ii) the ability of the contractor to convert the Crown's specification into a comprehensive statement of work;

(iii) the ability of the Crown and the contractor to precost the statement of work;

(iv) the duration of the contract and its effect on the predictability of labour and material costs and overhead distribution, taking into account whether protection in this regard is provided to the contractor by the inclusion in the contract of a provision for economic price adjustment (Firm Base Price with Economic Price Adjustments Basis of Payment);

(v) whether the final determination of the firm price takes place before or after a portion of the contract period has elapsed.

(b) Fixed Time Rate with Ceiling Price (4½ percent maximum) and Without Ceiling Price (3½ percent maximum) - consider:

(i) the duration of the contract and its effect on the predictability of the labour and overhead rates;

(ii) if a ceiling price is included, the familiarity of the contractor with the work being performed under the contract resulting from the previous manufacture of the same or similar products, or the provision of the same or similar services;

(iii) whether the final determination of the fixed time rates takes place before or after a portion of the contract period has elapsed.

(c) Cost Reimbursable with Incentive Fee (4½ percent maximum) - consider:

(i) the degree to which the difference between the target fee and the maximum fee will provide an incentive for more effective cost control and contract performance by the contractor;

(ii) whether the agreement on target costs and target fee was reached before or after a portion of the contract period has elapsed.

To calculate the bonus on target incentive fee contracts: the maximum fee for cost reimbursable with incentive fee contracts shall consist of the target fee plus an added amount which brings the total profit for the General Business Risk and Contractual Risks Factors to a maximum of 10 percent of target costs.

(d) Cost Reimbursable with Fixed Fee with Ceiling Price (4½ percent maximum) and Without Ceiling Price (1 percent maximum) - consider:

(i) the reliability of the cost estimate used for determining the fixed fee, taking into account the duration of the contract and its effect on the predictability of costs, and provided that no "swing points" at which the fixed fee will be renegotiated are included in the contract;

(ii) if a ceiling price is included, the familiarity of the contractor with the work being performed under the contract resulting from the previous manufacture of the same or similar products, or the provision of the same or similar services;

(iii) whether the fixed fee was determined before or after a portion of the contract period has elapsed.

(e) Cost Reimbursable with No Fixed Fee and No Ceiling Price (0 percent): there is no business or contractual risk.

Total Profit

10.021 (1994-06-23) The total amount of profit awarded under all factors shall in no event exceed 20 percent of the total contract costs.

The amount of profit for all factors should be calculated separately and included in the price of each line item with a distinct basis of payment in the contract (see Examples in annexes 10.3 and 10.4).

Travel and Living Expenses

10.030 (1994-06-23) Normally, travelling and living expenses incurred by a contractor in the ordinary course of business are to be treated as indirect costs chargeable to overhead. Crown contracts bear their proportionate share of such overhead, and this overhead is profit bearing. Therefore, no special provision with respect to these incidental travel and living expenses is required for such contracts.

However, some firms consistently charge travel and living expenses directly to contracts. Where a price is negotiated with suppliers, these charges will be acceptable as direct charges against Crown contracts if:

(a) the expenses are directly attributable to the performance of the work under the contract, and these expenses are eliminated from indirect costs; and

(b) the practice of direct charging is consistently followed by the contractor in the costing of both government and commercial work; and

(c) the expenses referred to in (a) above are eliminated from indirect costs allocated to Crown contracts.

10.031 (2005-06-10) When travel and living expenses are to be directly charged to the contract, such expenses will attract administrative overhead either at full rates, where adequate support for the claimed general and administrative rate can be demonstrated, or at a lower negotiated rate where such substantiation cannot be provided. Alternatively, where industry practice so dictates, a contract may provide for travel and living expenses to be charged at cost with no allowance for overhead or profit.

When travel and living expenses are to be directly charged to a contract on a cost reimbursable basis, contracting officers must use *Standard Acquisition Clauses and Conditions* (SACC)

Manual clause C4000C or C4001C.

The Treasury Board (TB) Travel Directive applies to travel costs incurred on contracts with persons, i.e. individuals, outside the Public Service, when these costs are a specific element of the contract. Refer to the TB Government Travel & Living Accommodations Policies: Travel Directive and Special Travel Authorities for more details.

The contracting officer may accept a supplier's travel and living rates, if these are lower than the TB rates.

For additional information, contracting officers should consult Annex 10.1.4, Cost Interpretation Bulletin - Travel Costs.

10.032 (1994-06-23) Department of National Defence (DND) service establishments may be able to provide transportation, mess and lodging facilities to the contractor's employees performing work at or near these establishments under mobile repair party and maintenance type contracts. The commanding officer of the establishment will, upon request, advise the contractor as to the availability of these facilities, which will reduce direct contract expenses.

In order that contractors may be reimbursed for any charges plus incidental expenses incurred by their personnel beyond the cost of such Crown-furnished facilities, SACC Manual clause C4004C should be used with SACC Manual clause C4000C or C4001C.

Prices for Out of Plant Services of Individuals

10.040 (1998-11-23) The following methods are applicable to all negotiated charge-out rates irrespective of whether any subsequent contract is fixed price, fixed unit price, cost reimbursable, etc. and covers out-of-plant services of individuals or groups of individuals with or without equipment.

Services *include field service representatives, out-of-plant technical services and mobile repair parties away from the contractor's plant.*

10.041 (2004-05-14) When rates have not been established commercially or when they are considered excessive, the Contract Cost Principles 1031-2 shall be used as a basis for negotiating out-of-plant charge-out rates (including applicable overhead). Profit shall be negotiated in accordance with 10.010. Travel and living expenses shall be determined in accordance with 10.030.

10.042 (1994-06-23) Contracting officers are responsible for negotiating fair and reasonable charge-out rates which would normally be on a fixed time rate, i.e. hourly, per diem, monthly, etc. Charge-out rates will be shown as a separate line item in the basis of payment.

In determining charge-out rates, some items to be considered are:

- *normal industrial practice/commercial rates;*
- *whether the company usually provides the service;*
- *availability of the service from other sources;*
- *wages of the individuals;*
- *whether the plant overhead should apply or whether a separate overhead should be negotiated;*
- *equipment utilized;*
- *use of Crown facilities.*

Prior to award of a contract, contracting officers are advised to seek guidance and cost interpretations from the sector/region cost analyst with respect to negotiated charge-out rates.

10.043 (1998-11-23) Full plant overhead should not be applied to out-of-plant charge-out rates unless

the out of plant technical services are a relatively minor part (less than 10 percent) of the contractor's total business (volume/direct labour) in any one year.

10.044 (2005-06-10) Dislocation/displacement pay allowances may be allowed provided that the amount of the displacement pay is reasonable; the displacement pay is for justifiable purposes; and/or displacement pay is in accordance with the contractor's established practice.

For removal, living, car allowances and outside Canada expenses, contracting officers should consider the following:

(a) Only one removal from and back to the original residence will be paid for any one representative. Where removal expenses to the site of the work have been paid by the Crown on a previous contract and the services are being extended for a further period, such contract amendment or subsequent contract should provide for reimbursement only for expenses incurred for moving the representative back to the original residence.

(b) Removal expenses should not be paid on assignments of less than six months, and any removal by a married employee for assignments exceeding six months should be carried out during the first 90 days, and by a single employee during the first 60 days.

(c) Reimbursement for living expenses for a married employee on an assignment exceeding six months should cease when the family is moved (whether or not removal expenses have been paid) to permanent quarters at the location of the work.

(d) Reimbursement for living expenses for a single employee on an assignment exceeding six months should cease when the employee's effects have been moved (whether or not removal expenses have been paid) to the location of the work or in any event after the first 60 days of such assignment.

(e) Reasonable car allowances in accordance with the contractor's practice may be paid for the use of personally owned motor cars by the contractor's personnel for essential on-base travelling where local Crown transportation is not available.

(f) Cases where the representative is required to go abroad should be dealt with individually and considered on their merits.

For additional information, contracting officers should consult Annex 10.1.14, Cost Interpretation Bulletin - Mobile Repair Party Requirements.

Surplus Materials in Cost Reimbursable Contracts

10.050 (1994-06-23) Surplus materials resulting from the performance of a contract may be disposed of in several ways:

(a) declared surplus to a Crown Assets Distribution Centre (CADC);

(b) transferred to the client, or to another contract with the same contractor, or to another contractor; or

(c) returned to the original supplier.

Each of these has implications for contract terms relating to costs and profits.

10.051 (1998-11-23) Costs of surplus materials are allowable costs in a production contract if the surplus is due to:

(a) normal accumulation of stores, during or on completion of a contract, and which are

declared surplus to CADC, or transferred to the client, or transferred to another contract with the same or a different contractor;

(b) major design changes or other major adjustments of a substantial nature not including termination;

(c) minor design changes or other minor adjustments in the scope of the work provided the contract does not specifically exclude such items.

10.052 (1998-11-23) When the surplus is due to excess purchasing by a contractor, the costs are not allowable in a contract.

10.053 (1998-11-23) Material handling costs associated with the surplus materials are allowable costs in a contract whenever the costs of surplus materials are allowable.

10.054 (1994-06-23) General and administrative overhead costs associated with surplus materials are allowable costs in a contract only when the surplus materials consist of work-in-process and finished goods resulting from design changes and minor cutbacks.

10.055 (1998-11-23) Profit will be allowed on the following categories (10.051, 10.053, 10.054) of allowable costs, except that:

(a) in the case of surplus materials arising from the normal accumulation of stores, during or on completion of a contract, profit will be allowed only if the inventories acquired for a contract were financed by the contractor;

(b) in the case of surplus materials arising from major design changes, or other major changes of a substantial nature, profit will be allowed only if the inventories were either purchased by the contractor or, if not purchased by the contractor, were manufactured by the contractor and rendered surplus as the result of the changes.

10.058 (2005-06-10) For cost reimbursable fixed fee or cost reimbursable incentive fee contracts, and contracts containing a ceiling price, allowable costs of surplus materials will be treated as an extra direct cost to the contract, outside the area of fixed fee, incentive fee or ceiling price considerations. It may be necessary to renegotiate the principal terms of the contract.

10.059 (1994-06-23) Where incentive fee contracts require negotiation of targets, the costs of surplus materials should be included in the revision of a target only where other reasons make it essential to re-open the calculation for the protection of either the contractor or the Crown. Alternatively, when a contract so provides, these costs may be paid for as an extra to the target or other arrangements, e.g. at cost plus a fixed fee at whatever rate of profit is appropriate.

Costing of Lease Transactions

10.065 (1994-06-23) When a contractor proposes to include, in the cost of a contract, costs relating to the leasing by the contractor of an asset, the amount of allowable charge depends on the type of lease.

The necessary information for contracting officers is in Annex 10.1.3

Service Contracts

10.070 (2005-06-10) Fees for all services not established by price competition, except Repair and Overhaul, are negotiated on the basis of the prevailing rates for the type of work required and recognizing the circumstances of each contract. Considerations are:

(a) requirements of the task: an assessment of skill level, expertise necessary, or

complexity of the task requirements;

(b) supplier qualifications: fees will vary in terms of factors like the calibre of proposed personnel, knowledge or expertise, previous experience, personnel utilization rate, use of facilities, or the area of specialization;

(c) market conditions: a determination as to whether there is a commercial or going rate for a particular expertise or service capability in private industry should be made. If these rates cannot be determined, the fee scales recommended by provincial professional associations may be used as a reference point from which the reasonableness of a negotiated rate can be compared;

(d) costing/fee practices: the costing structures of individuals, firms and universities are different and will vary significantly. Some costs that would otherwise be charged separately are sometimes charged to overhead, thus increasing the total rate.

10.071 (1994-06-23) Fees should include only those elements of cost properly associated with the actual time expended on the work. These are the direct labour costs and their fair share of overheads, general and administrative expenses and profit. Other direct costs such as charges for publication of reports, special computer or test services, travel and living, should normally be shown separately. Each case must be taken on its own merits to arrive at an assessment of which amounts are reasonable charges, either as a fee element, or as a separately charged item.

10.072 (1994-06-23) In all contracts for services with a cost reimbursable or fixed time rate basis of payment, the time rates of payment should be specified for the entire period required for performance of the contract, including all phases and specified option periods. When this is not possible, payments for each year or phase should be based on a pre-agreed rate or formula that is to be specified in the contract.

Joint Ventures

10.080 (2005-06-10) For non-competitive contracts, i.e. single or sole sourced, intended to be awarded to a joint venture, special costs that may be attributed to the joint venture arrangement alone, such as legal, accounting and consulting fees in connection with the setting up of the joint venture, are not an acceptable charge.

10.081 (1994-06-23) Ongoing operational costs related to the joint venture arrangement are acceptable to the extent that they are considered reasonable and can be allocated to the contract using the Contract Cost Principles 1031-2.

10.082 (2005-06-10) When materials, supplies or services are to be transferred to the joint venture under subcontracts issued to a member of the joint venture, the contracting officer should negotiate acceptable subcontract costs with such member(s) in accordance with the pricing policy stated in procedures 10.115 to 10.119.

10.083 (1994-06-23) The joint venture cannot submit a price proposal based on average rates. Each joint venture member's workload will be priced separately using appropriate costing procedures. The total of all the joint venture member prices will be the total proposed contract price.

Research and Development Contracts with Universities and Colleges

10.090 (1994-06-23) Research and development work carried out by universities or colleges is priced at direct costs plus a contribution to overhead. This contribution is a maximum take-out rate of 65 percent of direct payroll costs for on-campus work, and 30 percent of direct payroll costs for off-campus work. In addition, a contribution equivalent to 2 percent of applicable and acceptable travelling and living expenses will be made.

10.091 (1994-06-23) Contract Cost Principles 1031-2 will not be called up in the contract, and post-contract audits of overhead charges will not be carried out. Direct costs will be subject to cost verification or audit.

10.092 (1994-06-23) Allowable direct costs are:

(a) Direct Payroll Costs

Professional salaries
Clerical salaries
Technicians' wages
Fellowships - daily rate of personnel working directly on a contract
Fringe benefits including:
- Unemployment Insurance
- Workmen's Compensation
- Canada or Quebec Pension Plan

University pension plan (current service only)
University portion of medical plans
Sick leave

Annual salaries will be prorated over annual working days taking into account statutory holidays and annual vacation.

(b) Materials and Supplies

Stationery
Postage
Materials issued from stores
Materials, parts and components purchased specially for the contract at "laid-down cost"
Long distance telephone charges
Telegrams and cables
Freight and express
Publication charges as agreed in contract

(c) Direct Expenses - those costs which can be specifically identified and measured as having been used or to be used in the performance of the contract, and which are so identified and measured by the institution's cost accounting system. These expenses may include such items as:

Travelling expenses
Consultant services
Apparatus and equipment acquisition. (This will remain the property of the Crown and be subject to CADC procedures.)
Other costs as agreed and negotiated, including charges for computer time.

10.093 (1994-06-23) Consultants are to be considered in three separate categories:

(a) in-house standard rate of pay: the 65 percent overhead is applicable;

(b) external type consultant, which is in-house personnel working additional hours at increased rates, but using university equipment: direct charge without overhead;

(c) outside consultant: direct charge without overhead.

10.094 (1994-06-23) Manufactured equipment is to be considered as a "make" or "buy" decision for the contracting officer. If it is a "buy", it will be a direct charge, and be the property of the Crown: a

decision regarding disposal will be made later. If it is a "make", the university would be allowed the cost of parts and labour as laid out in the proposal, including the 65 percent overhead, with ownership and disposal the same as for a buy. This should be a separate item under the contract.

10.095 (1994-06-23) Allowable overhead costs are:

(a) Maximum of 65 percent applicable to Direct Payroll Costs for on-campus work;

(b) Maximum of 30 percent applied to Direct Payroll Costs for off-campus work;

(c) An administration charge of 2 percent on travelling and living expenses incurred directly against the contract will be allowed.

10.096 (1994-06-23) Costs incurred by the university or college which have no direct bearing on the research activity will not be acceptable as direct charges against Crown research contracts. These include:

University annual reports
Contingency reserves
Convention expenses - unless applicable to specific contract
Post service lump-sum payments
Termination allowances not earned during the course of the contract
Admissions Department
Grants - unless for services rendered for a specific contract
Finance charges (bank, debenture, bond interest, etc.)

10.097 (1994-06-23) No additional special facility charges will be included in the price, since these are accounted for in the contribution to overhead.

10.098 (1994-06-23) Charges for use of a computer centre will be direct to a contract at a predetermined rate per hour, including general overhead, and computed at a break-even level for the centre. These charges shall be in line with normal policies of the university for internal use.

10.099 (2005-06-10) Departments and agencies of the United States (U.S.) Government negotiate directly with Canadian universities and colleges towards research and development contracts. Public Works and Government Services Canada may be asked for assistance in developing an appropriate overhead rate. These requests will be handled by the Services and Technology Acquisition Management Sector, which will develop the overhead rates from the latest certified financial statements of the university or college, with indirect costs prorated over the direct cost base in conformity with the costing principles set out in the applicable U.S. Government directive on the subject.

Non-Competitive Contracts with Non-Profit Organizations, excluding Universities and Colleges

10.105 (1994-06-23) Non-profit organizations incur financing charges for working capital, over and above normal operating costs as determined in accordance with the Contract Cost Principles 1031-2. They are also subject to business and contractual risk, though less than profit-oriented organizations.

10.106 (1994-06-23) The price is based on costs incurred, computed using the Contract Cost Principles 1031-2 plus an allowance in lieu of profit.

10.107 (1994-06-23) For financing charges on working capital employed, the allowance depends on the basis of payment:

(a) If there is provision for milestone or progress payments: 1½ percent of costs incurred;

(b) If there is no provision for milestone or progress payments: 3 percent of costs incurred.

10.108 (1994-06-23) For General Business Risk, the allowance is based on contract costs:

(a) Direct materials, subcontracts and direct charges: up to 1 percent of such costs;

(b) Direct labour and overhead: up to 2 percent of such costs.

10.109 (1994-06-23) The allowance which may be included in recognition of contractual risk depends upon the basis of payment selected for the contract or part thereof:

(a) Firm price: up to 4 percent of costs incurred;

(b) Fixed time rate with ceiling price: up to 3 percent of costs incurred;

(c) Cost reimbursable with ceiling price: up to 3 percent of costs incurred;

(d) Fixed time rate with no ceiling price: up to 2 percent of costs incurred;

(e) Cost reimbursable with no ceiling price: 0 percent.

Non-Competitive Acquisitions from Agency and Resale Outlets, and for Manufactured Products and Repair and Overhaul Services

10.115 (1994-06-23) The procedures detailed in 10.116 to 10.122 provide for the establishment of fair and reasonable prices, when the competitive process cannot be used for:

(a) acquisitions from Canadian agency and resale outlets, and

(b) acquisitions of manufactured products and repair and overhaul services, from Canadian suppliers, except Canadian agency and resale outlets.

There are key differences between these two types of acquisitions in the determination of what costs will be allowed, and how profits will be determined. The procedures also differ depending on whether the product or service is commercial or non-commercial.

Non-competitive acquisitions of commercial products and services

10.116 (1994-06-23) The contracting officer should negotiate a fair price on the basis of at least one of the following criteria:

(a) recent prices paid;

(b) published price lists or catalogues;

(c) prices paid by others, such as other governments, Crown corporations, hospitals, universities and large private sector corporations or companies.

10.117 (1998-11-23) For acquisitions valued at less than $50,000, additional price support by way of a price certification signed by the supplier may be requested at the discretion of the contracting officer, but for acquisitions valued at $50,000 or over, price certifications should be obtained in all cases.

The price certification and corresponding discretionary audit clause used should be in accordance with the following:

- for non-competitive acquisitions of commercial products and services, other than petroleum products, from Canadian suppliers other than agency and resale outlets, use *Standard Acquisition Clauses and Conditions* (SACC) Manual clauses C0002T and C0100D;

- for non-competitive acquisitions of commercial products and services, other than petroleum products, from agency and resale outlets, use SACC Manual clauses C0004T and C0100D;

- for non-competitive acquisitions of petroleum products, use SACC Manual clauses C0006T and C0100D.

Non-competitive acquisitions of non-commercial products and services

10.118 (1998-11-23) For non-competitive acquisitions of non-commercial products and services valued at less than $50,000, a fair price may be negotiated in accordance with the guidelines for commercial products and services given above, provided the data required to follow this guideline is available.

For acquisitions from agency and resale outlets only, if the data is not available, then the guideline presented in 10.121 below should be followed.

10.119 (1998-11-23) The supplier should be requested to provide the contracting officer with an itemized breakdown of the price quoted. The price breakdown should be analyzed by the contracting officer (in the case of agency and resale outlets, in accordance with the guideline in 10.122 below). The depth of the analysis required will depend on the value of the acquisition and the quality and completeness of the support data provided by the supplier. The cost of performing the analysis versus the potential benefit in the form of cost savings on the acquisition should be taken into account.

See 6E.521 for additional detail on the bases of payment. A firm price basis of payment is generally used for contracts with agency and resale outlets.

The price certification and corresponding discretionary audit clause used should be in accordance with the following:

- for non-competitive acquisitions of non-commercial products and services from Canadian suppliers as well as agency and resale outlets, use SACC Manual clauses C0003T and C0101D.

Agency and Resale Outlets - Additional Requirements

10.121 (1994-06-23) The two chief types of agency and resale outlets encountered when purchasing for the Crown are:

(a) those engaged in manufacturing, which also act as agency or resale outlets representing other manufacturers (type 1); and

(b) those not engaged in any form of manufacturing, which act solely as agents, distributors, wholesalers, jobbers or retailers. They may conduct the functions of purchasing, receiving, storing, shipping and accounting (type 2).

Price Analysis

10.122 (1994-06-23) The following should be considered when analyzing the price breakdown:

(a) Laid-down Costs

Ensure that the necessary support for the price of the product/service quoted by the principal is provided by the supplier, and that all trade discounts have been deducted. The applicability and amount of any added charges for transportation, foreign exchange, customs duty and brokerage should be verified. Transfer prices representing fair market value, constitute laid-down cost for the purposes of price analysis and profit calculations.

(b) Cost of Necessary Services and Overhead

Establishment of the cost of necessary services rendered by the supplier will depend upon requirements, the type of organization the supplier operates, and the degree of sophistication in the supplier's cost accounting system.

Types of services which may be considered for costing purposes:

- purchasing;
- internal handling including unpacking, incoming inspection, inhibiting, warehousing, and re-packing for delivery to one or more destinations, but excluding costs related to the supplier's own manufacturing or other related costs;
- general and administrative expenses applicable to the activity required.

After-sales activity, such as on-site installation and test should be taken into account in establishing the overall price structure.

An examination of the overhead costs allocated to the particular buy should be made to ensure that the allocation represents a fair and reasonable distribution of overhead costs in accordance with the Contract Cost Principles 1031-2.

If the government's requirements can be met by direct shipment from the principal, the supplier's charges will normally be confined to the costs of purchasing and invoicing, and in such cases, a special direct shipment rate of overhead should be developed.

The negotiated rates established in accordance with the foregoing are generally applied as a percentage additive to the laid-down costs.

(c) Profit

Agency and Resale Outlet (type 1)

A reasonable rate of profit will be allowed on the total of laid-down costs and the cost of services required by the Crown. The rate should be commensurate with the risk, the volume of resale business to the Crown and other circumstances. For example, if the services required include the maintenance of an inventory, a higher rate of profit is permitted.

Agency and Resale Outlet (type 2)

The profit amounts should be calculated by application of the following:

(i) Profit on Laid-down Costs:

Recognizing the cost of financing and risks associated with the maintenance of stocks, the maximum rates of profit applied to laid-down costs vary in accordance with the method of supply as follows:

- supplied from stocks maintained and financed by the supplier: up to 4 percent.

- supplied from stocks held by the supplier on consignment from the principal: up to 3 percent.

- supplied by the principal through the supplier, only when ordered by the government: up to 3 percent.

- supplied by the principal in direct shipment to the government: up to 2 percent.

(ii) Profit on Cost of Necessary Services and Overhead:

Recognizing the associated general business risk, the rates of profit applied to the cost of necessary services and overhead may vary in accordance with the services provided and are:

- where the services include those of purchasing and invoicing only: up to 7½ percent.

- where the services include other than purchasing and invoicing: up to 10 percent.

(d) Price Certification and Discretionary Audit:

Subsequent to the price negotiation, the supplier should resubmit its price proposal based on the agreement reached and include a price certification. In addition, all contracts for non-competitive acquisitions from agency and resale outlets valued at $50,000 and over should contain a discretionary audit clause. (see 10.117 and 10.119).

Transfer Pricing

10.130 (2005-06-10) When materials, supplies or services are transferred to a seller to the Crown from divisions, subsidiaries or affiliates under common control, the transfer price should be established in conformity with standard criteria, to avoid the payment of a rate of profit exceeding departmental norms.

Considerations of materiality and practicality will govern in the application of these criteria. Consistency is also an objective - consistency between government and commercial work, consistency among the various kinds of firm price and cost reimbursable contracts, and consistency from one year to the next. In order to ensure consistency, personnel from all sectors/regions shall consult early in the negotiation process a repository of applicable data maintained by the Cost and Forensic Accounting Directorate.

10.131 (1994-06-23) The following criteria apply to the establishment of acceptable inter-company and intra-company transfer prices on Crown contracts in non-competitive situations for which a price is negotiated with the supplier through a process involving analysis of costs and determination of profit.

These criteria do not apply if the transfer price can be verified to be reasonable by reference to comparable third party prices involving transactions between the Canadian subsidiary (agency or resale outlet) or its parent and a third party, or between unrelated parties.

10.132 (1994-06-23) **Intra-company** transfer prices (that is, for transfers between divisions of the same legal or corporate entity) shall be charged to Crown contracts at cost according to the Contract Cost Principles 1031-2 without allowances for profit or an allocation of corporate general and

administrative expenses. These allowances will apply on the cost of the finished product sold to the Crown.

10.133 (2005-06-10) **Inter-company** transfer prices (that is, for transfers between a company and its subsidiary or affiliate enjoying separate legal status but otherwise under common ownership control) charged to Crown contracts shall, whenever possible, be not greater than those which approximate fair market value. In those situations where approximate fair market value cannot be determined, inter-company transfer prices shall be those that can be considered as reasonable under the circumstances if the parties to the transaction had been dealing at arm's length.

Fair Market Value *means 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.*

If the product/service has a **going price** at which significant quantities are known to sell in the market in arm's length transactions, such a price will represent fair market value. Examples: regulated prices, posted prices, catalogue prices and other prices actually available and given in past transactions to arm's-length parties for the size, quality, timing and location of the transaction, after all discounts have been considered. An inter-company transfer price representing fair market value will be used as "laid-down cost" for that item for the purposes of computing mark-up, profit and contract price.

In any case where the circumstances described in the last paragraph do not apply, the company shall be deemed to have transfer prices at cost calculated in accordance with Contract Cost Principles 1031-2 without allowance for profit and without an allocation of corporate general and administrative expenses.

In interpreting the term "reasonable under the circumstances," the following considerations apply:

(a) If the seller to the Crown can prove that the transfer price is **at cost**, then a normal profit at rates set out in 10.010 will apply to the final product cost.

(b) If the seller to the Crown can provide satisfactory price support for a transfer price **in excess of cost**, the profit element in such transfer price will be limited to a return (at a rate not exceeding the corporate bond rate periodically published by the Director, Cost and Forensic Accounting Directorate, on the fixed and working capital used in the production of the goods/services. The formula for computing profit is as follows:

$$(R/12) \times M(a \times (b/c)) = P$$

R = corporate bond rate
M = period (in months of capital use)
a = fixed and working capital employed
b = transfer price less profit
c = total company annual cost of sales and transfers
P = profit amount to include in transfer price

It should be noted that satisfactory price support originating from the transferor should be capable of being verified by reference to instances of transactions in similar goods either between the Canadian subsidiary or its parent and a third party, or between unrelated parties.

(c) In situations other than (a) and (b) above, profit will not be allowed on the transfer price component of the total costs of the final product sold to the Crown.

10.134 (1994-06-23) Where necessary, common ownership control will be determined by reference to the latest issue of appropriate trade surveys (e.g. Financial Post Survey of Industrials, Moody's Industrials, etc.), as confirmed by means of a certification from the company as to control (use SACC Manual clause K9000C, for this purpose). Ownership control is presumed in cases where at least 50 percent of the voting rights are held by the affiliate.

Special Production Tooling and Special Test Equipment

10.150 (1994-06-23) No profit is allowed on Special Production Tooling (SPT) or Special Test Equipment (STE) which is purchased by a contractor for use under a contract, or purchased or otherwise acquired by its subcontractors for use under approved subcontracts.

10.151 (1994-06-23) When the production of the end product involves prior or concurrent expenditures for SPT or STE under a separate agreement, or pursuant to a clause in a contract or subcontract, a profit of up to 5 percent may be allowed on all SPT fabricated in a plant owned or operated by a contractor.

No profit is allowed on the cost of purchased equipment incorporated or built into the STE.

10.152 (1994-06-23) Expenditures incurred by a contractor in connection with purchased SPT or STE (other than the cost of such tooling or equipment) are usually recovered as preproduction expenses or factory overhead.

Administrative overhead is not accepted on STE.

Purchased tooling should be included in the Cost of Sales base for the distribution of administrative overhead.

10.153 (1994-06-23) Since the cost of SPT or STE represents part of the cost of the end product being acquired by a client, payment is made out of the client's funds appropriated for the purchase of that end product.

10.154 (1994-06-23) SPT may be acquired on a firm price or a cost reimbursable basis irrespective of the price arrangement for the end product for which the tooling is required.

When SPT is to be provided on a cost basis:

(a) the cost of such tooling is to be in accordance with the Contract Cost Principles 1031-2;

(b) a dollar limit is to be placed on the cost of the tooling with the provision that the cost is not to exceed this limit until further authorization is obtained.

Annex 10.1.0: Reasons for the non-applicability of certain costs when utilizing Contract Cost Principles 1031-2

(**2004-05-14**)

The following costs are considered non-applicable to government contracts when utilizing contract cost principles 1031-2 for the reasons given.

(a) Allowances for interest on invested capital, bonds, debentures, bank or other loans together with related bond discounts and finance charges.

Interest on borrowing, however represented, is not an acceptable cost. There are several reasons for this. In the first place, it is impossible to know how much of a contractor's capital should be properly provided by equity capital and how much by borrowed capital. If it were fair to allow interest on the borrowed capital (the financial reward to the lender), it would also seem fair to allow dividends (the financial reward to the investor). As dividends are recognized as a distribution of profits and therefore not an item of cost, so too with interest. Another consideration is the determination of what a contractor's capital properly should be, regardless of what it may actually happen to be. If interest were to be an acceptable cost, then a contractor financed by bonds, debentures or long term loans would be in an advantageous position compared to a contractor financed by the sale of equity. The government recognizes the cost-of-money (interest) associated with capital employed, however financed, as a factor in the calculation of profit.

(b) Legal, accounting and consulting fees in connection with financial re-organization, security issues, capital stock issues, obtaining of patents and licences and prosecution of claims against the Crown.

A distinction should be drawn between the occasional expenses in relation to the raising of capital referred to here, which are not an acceptable cost, and the normal recurring expenses associated with the day-to-day management and recording of capital transactions, which are an acceptable cost. The latter expenses include those arising from the registry and transfer of share capital when they form part of the activity of the company secretary, costs of share holders' meetings, normal proxy solicitations, reports to shareholders, submission of required reports to government agencies, reasonable directors' fees and incidental expenses of directors and for committee meetings.

(c) Losses on investments, bad debts and expenses for the collection thereof

Since interest on capital invested in a contractor's business is not considered a business operating cost, neither is interest received by a contractor from funds invested outside the business considered a necessary credit against business operating costs. However, it also follows that any losses sustained by a contractor from these outside investments are not considered to be a business operating cost and thus are not acceptable on government contracts.

Since the government as a debtor always pays its just debts, while it is only the commercial customers who have bad debts on a contractor's books, the losses due to bad debts and the expenses of collection thereof are not an acceptable cost to government contracts.

(d) Losses on other contracts

An excess of costs over income on a contract is not acceptable as a cost to any other contract. This principle also applies to application by a contractor of preferred overhead rates to certain contracts. Where this occurs, the excess of actual overhead over the preferred overhead amount will not be absorbed by government contracts.

(e) Federal and provincial income taxes, excess profit taxes or surtaxes and/or special expenses in connection therewith

In general, taxes which a contractor is required to pay and which are computed in accordance with sound accounting principles are acceptable costs, except for those included under this heading and/or other taxes in connection with financing, refinancing or re-organizing.

On the other hand, all tax refunds, federal or provincial, are not required to be applied to reduce any related expenses.

(f) Provisions for contingencies

A contingency liability is a liability which could arise on the happening of some event which may or may not occur. The initial provision or increase of funding for a contingent liability is considered to be a setting aside of earned profits to meet possible liabilities against future profits and not a business operating cost and therefore not an acceptable cost to government contracts.

There is one exception to the above and that is in respect of the acceptability of costs for the provision of warranties. In any firm price contract, a contractor may include as a cost a reasonable amount to be set aside as a provision for the absorption of expenses associated with warranties given under the terms of the contract. In determining a reasonable amount, the following factors should be taken into account:

(1) the amounts provided for warranty expenses should be separate for each distinctive product or family of products;

(2) the amounts provided should reflect, where available, the previous performance of the product(s) in regard to warranty, using an average of three to five years;

(3) the cost of any provision for warranty charged to a specific contract should reflect any difference in the warranty period from that normally granted by a contractor on the product(s); and

(4) the costs should be net of any warranty contract sales to other customers.

(g) Premiums for life insurance on the lives of officers and/or directors where proceeds accrue to the contractor.

Similarly, proceeds from such life insurance need not be applied to reduce any cost to the contractor.

Premiums on this type of insurance are not acceptable in government contracts since the Crown does not derive any benefit therefrom.

(h) Amortization of unrealized appreciation of assets.

See annex 10.1.2 "Depreciation".

(i) Depreciation of assets paid for by the Crown.

See annex 10.1.2 "Depreciation".

(j) Fines and penalties.

The amounts of fines and penalties imposed by federal, provincial or local authorities are not an acceptable cost to government contracts, for to accept such amounts would be tantamount to the government's supporting financially the offense which gives rise to the imposition of a fine or

penalty.

(k) Expenses and depreciation of excess/idle facilities.

For this purpose, excess/idle facilities means the sum of all fixed assets appearing in a contractor's books of account which are not in use or for which no use is anticipated within a reasonable period. The expenses associated with the maintenance and/or the amounts of depreciation attributable to such fixed assets are not acceptable costs to government contracts.

The expenses and/or depreciation of excess/idle facilities, as defined above, which the government has ordered retained for defence purpose, should be charged to a separate contract set up for that purpose.

(l) Unreasonable compensation for officers and employees.

The extra costs associated with the above are not an acceptable charge to government contracts.

(m) Product development or improvement expenses not associated with the product being acquired under the contract.

See annex 10.1.7 "Research and Development Expenses".

(n) Advertising, except reasonable advertising of an industrial or institutional character placed in trade, technical or professional journals for the dissemination of information for the industry or institution.

(1) Assuming that a contractor's employees enhance their knowledge by reading trade, technical or professional journals, and, in turn, government contracts benefit from this increased knowledge by way of increased efficiency and productivity, and that the advertising supports these publications, the expenses of advertising in this manner are an acceptable cost to government contracts, provided:

- it is in the nature of institutional or support advertising only, and not in the form of display advertising;
- it does not advertise a particular product or service of a contractor;
- it is placed in trade, technical or institutional journals (financial publications are primarily for investors, not for an industry or trade; and so do not qualify); and
- the cost is reasonable.

(2) Expenses associated with the help wanted advertisements are an acceptable cost, provided they are reasonable and only for the purpose of recruiting personnel.

(3) The expenses associated with advertising through any media for other than (1) and (2) above, are not an acceptable cost to government contracts. For this purpose, advertising media are: magazines, newspapers, television and radio programs or "commercials", brochures, direct mail, outdoor advertising, conventions, exhibits, free goods and samples.

(o) Entertainment expenses.

Although expenses for amusement, diversion, social activities and incidentals relating thereto are not acceptable, the expenses associated with meetings and conferences, when called for the dissemination of technical information or discussion of production problems and the like, are

acceptable. These latter expenses may include those for meals, transportation, rental of meeting places and other incidentals provided they are reasonable.

(p) Donations, except those to charities registered under the *Income Tax Act*.

Donations, except those to political parties, are an acceptable cost provided they comply with the Income Tax regulations and are taken into overhead in the period they are paid rather than pledged.

(q) Dues and other memberships other than regular trade and professional associations.

The expenses associated with membership, either of the company as a whole or individual officers or employees in associations whose prime purpose is to provide entertainment or recreation, are not an acceptable cost to government contracts.

(r) Fees, extraordinary or abnormal, for professional advice in regard to technical, administrative or accounting matters, unless approval from the Contracting Authority is obtained.

The fees associated with obtaining this assistance are not an acceptable cost, unless a contractor demonstrates, to the satisfaction of the contracting officer, the circumstances giving rise to the need for this assistance.

Annex 10.1.1: Cost Interpretation Bulletin - Number 01 (2004-05-14)

Excess Facilities

Section 07 (k) of Contract Cost Principles 1031-2 provides that the expenses and depreciation of excess facilities shall be considered non-applicable costs to the contract.

This Bulletin explains the costs that should be considered for the purpose of the application of the above section.

Definition

For the purpose of this Bulletin:

"Facilities" in this context means plant or any portion thereof (including land integral to the operation), equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

Interpretation

The costs that are associated with facilities that are excess to the contractor's current needs should be examined to determine if these costs are non-applicable.

In examining these costs, the following factors should also be considered:

(a) Vacant, or largely vacant space;

(b) Inactive or unused equipment;

(c) Idle capacity required for stand-by purposes;

(d) Indirect supporting staff no longer required either in full or part;

(e) Other costs such as maintenance, repair, rent, property taxes, insurance, depreciation, etc.;

(f) Management costs that should be reduced because of the reduction in active facilities.

Annex 10.1.2: Cost Interpretation Bulletin - Number 02 (2004-05-14)

Depreciation

Section 04 (2) (e) of Contract Cost Principles 1031-2 provides that Indirect Costs (Overhead) may include a reasonable provision for depreciation.

This Bulletin explains what is meant by a reasonable provision for depreciation for the purpose of the application of the above section.

Definitions

For the purpose of this Bulletin:

"Depreciation" is the gradual exhaustion of the service capacity of fixed assets which is not restored by maintenance practices. It is the consequence of such factors as use, obsolescence, inadequacy, and decay.

"Depreciation Base" is the asset laid down cost less estimated residual value, if any, plus applicable costs of installation and preparation for use.

"Depreciation Accounting" is an accounting procedure in which the cost of a fixed asset less the estimated residual value, if any, is distributed over its estimated useful life in a systematic and rational manner.

"Renewal (Replacement) Accounting" is the accounting procedure in which no charge for expense is made for a fixed asset until replacement occurs; the cost of the replacement rather than the cost of the original asset is then charged to expense.

"Retirement Accounting" is an accounting procedure in which no charge to expense is made for a fixed asset until it is removed from service; the original cost is charged to overhead in the year the asset is retired.

"Capital Cost Allowance" is a deduction, akin to depreciation, allowed in computing income for tax purposes.

"Straight Line Depreciation" is the depreciation amount computed by dividing the depreciation base by the estimated number of periods of service life.

"Diminishing, Declining or Reducing Balance Depreciation" is the depreciation amount computed by a constant fraction of the depreciated cost so that the depreciation base is written off by the estimated date of retirement.

"Production Depreciation" is the depreciation amount computed by that portion of the depreciation base that the production, or use during the period, bears to the total estimated production or use to be obtained from the asset.

"Sum-of-the years'-digits Depreciation" is the depreciation amount whereby the depreciation base is allocated to the individual years on a reducing basis, by multiplying it by a fraction in which the numerator is the number of years + 1 of estimated life remaining, and the denominator is the sum of the series of numbers representing the years in the total estimated life.

"Asset Laid Down Cost" is the cost incurred by a contractor to acquire an asset. This includes the supplier's invoice price (less trade discount) plus any applicable charges for transportation, exchange, customs duties, brokerage duties and applicable taxes.

Interpretation

To be considered reasonable any provision for depreciation should be determined in accordance with the following.

1. The amount should be calculated using one of the following methods on a consistent basis:

   (a) Capital Cost Allowance;

   (b) Straight Line;

   (c) Diminishing, Declining or Reducing Balance;

   (d) Production;

   (e) Sum-of-the-years' digits.

   but for this purpose the following two methods are not acceptable:

   (f) Renewal (Replacement) Accounting; and

   (g) Retirement Accounting.

2. The amount calculated using Capital Cost Allowance (CCA) rates should be no higher than the basic CCA rates published by Canada Revenue Agency (CRA) for income tax purposes. From time to time, CRA permits the use of accelerated CCA rates for income tax purposes, but they are not permitted for 1031-2 purposes.

3. The total amount of depreciation for any one asset should not exceed 100% of that asset's original cost.

4. In general, depreciation should be calculated and included in the cost of production only for accounting periods subsequent to the asset being put into use. During the first year of use, the depreciation amount may be based on the exact fraction of the fiscal year, or by using the half-year convention, if that is the contractors practice. This latter method assumes that all capital acquisitions take place at mid-year.

5. Assets purchased specifically for use on Crown contracts should be capitalized and depreciated using the contractor's normal method, unless title is taken by the Crown, or the Crown pays for the asset under an Assistance Program.

6. Crown funding in any form, including direct or indirect benefits such as the investment tax credits and contribution for capital assistance, should be accounted for using the cost reduction approach. The amount of all such funds received by, or credited to the contractor's account should be deducted from the related purchase price of the assets, with any depreciation or amortization calculated on the net amount.

7. Leasehold improvement costs are similar to capital additions and for depreciation purposes should be amortized over the lesser of the expected useful life of the leasehold improvement or the non-renewable term of the lease.

Annex 10.1.3: Cost Interpretation Bulletin - Number 03
(2004-05-14)

Lease Costs

Under the terms of Contract Cost Principles 1031-2 lease costs are applicable costs for inclusion in a contractor's overhead or as direct charge to the contract, if they are reasonable.

This Bulletin explains what is meant by reasonable lease costs.

Definitions

For the purpose of this Bulletin:

"Lease" is the conveyance by a lessor to a lessee of the right to use a tangible asset usually for a specific period of time in return for rent.

"Operating Lease" is a lease in which the lessor does not transfer substantially all the benefits and risks incident to the ownership of the property.

"Capital Lease" is a lease that transfers substantially all the benefits and risks incident to ownership from the lessor to the lessee.

"Executory Costs" are costs related to the operation of the leased property (e.g. insurance premiums, maintenance costs, and property taxes).

"Interest Rate Implicit in the Lease" is the discount rate that, at the inception of the lease, causes the aggregate present value of:

- the minimum lease payments excluding that portion of the payments representing executory costs to be paid by the lessor and any profit on such costs; and

- the unguaranteed residual value accruing to the benefit of the lessor, to be equal to the fair value of the leased property to the lessor at the inception of the lease.

"Rate for incremental borrowing" is the interest rate that, at the inception of the lease, the lessee would have incurred to borrow, over a similar term and with similar security for the borrowing, the funds necessary to purchase the leased asset.

"Unguaranteed Residual Value" is that portion of the residual value of leased property which is not guaranteed or is solely guaranteed by a related party to the lessor.

Interpretation

To be considered reasonable any lease cost should be determined in accordance with the following.

1. The type of lease must be correctly identified as either an operating lease or a capital lease. In the case of an operating lease, the actual rental cost paid is considered to be a reasonable cost. In the case of a capital lease, the depreciation amount calculated on the capitalized value of the asset in the lease over the lease term or economic life of the asset, is considered to be a reasonable cost.

2. A lease should be classified as a capital lease if one of the following criteria are met:

   (a) the lease specifies the transfer of the property to the lessee by the end of the lease term; or

(b) the lease contains a bargain purchase option; or

(c) the lease term is such that the lessee will receive substantially all of the economic benefits from the use of the leased property over its life span, which will normally occur if the lease term covers 75% or more of the economic life of the leased property; or

(d) the present value of the minimum lease payments, excluding any executory costs, is equal to substantially all (usually 90% or more) of the fair value of the leased property at the inception of the lease; the discount rate to be used in determining the present value of the minimum lease payments for this purpose should be the lower of the lessee's rate for incremental borrowing and the interest rate used in the lease, if known.

3. For a capital lease, the value at which it will be capitalized should be the lower of the present value of the minimum lease payments as described in 2 d) or the fair value of the asset (usually this is the purchase value of the asset).

Annex 10.1.4: Cost Interpretation Bulletin - Number 04
(**2004-05-14**)

Travel Costs

Under the terms of Contract Cost Principles 1031-2 reasonable travel costs are applicable costs for inclusion in a contractor's overhead or as a direct charge to contract.

This Bulletin explains the conditions to be met before any specific travel costs are charged directly to the contract.

DEFINITION

For the purpose of this Bulletin:

"Travel Costs" are the costs for transportation, lodging, meals and incidental expenses incurred by a contractor's personnel on official company business. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

INTERPRETATION

1. In order for travel costs to be acceptable as direct costs to a contract, the following conditions must be met:

   (a) such costs are directly attributable to the performance of the work under the contract;

   (b) the practice of charging travel costs to a contract is consistently followed in the costing of both government and non-government work; and

   (c) all directly charged travel costs are eliminated from indirect costs allocated to government contracts.

2. A reasonable amount/percentage may be added to travel costs allocated directly to a contract to cover applicable G&A costs, provided it is the contractor's usual and consistent practice to do so.

Annex 10.1.5: Cost Interpretation Bulletin - Number 05
(2004-05-14)

Head Office Expense

Under the terms of Contract Cost Principles 1031-2 expenses allocated to a contractor which is a segment of an organization by the Head Office of that organization are applicable costs for inclusion in the contractor's overhead provided that the amount allocated is reasonable.

This Bulletin explains the method to be used in the allocation of Head Office expenses in order for the amount allocated to be considered reasonable.

Definitions

For the purpose of this Bulletin:

"Head Office" is an office responsible for the policy direction and management of two or more, but not necessary all, segments of an organization.

"Segment" is one of two or more branches, divisions, product departments, plants, or other subdivisions of an organization reporting directly to a parent/head office, usually identified with responsibility for profit and/or producing a product or service.

INTERPRETATION

1. For the allocation of any expenses to be acceptable, a Head Office/Segment relationship must exist, generally with company policies describing the basis of allocation for these expenses.

2. For the allocation of the expenses to be considered reasonable all, or any combination of the following three methods should be used.

   (a) **Directly Chargeable** - Those expenses included within the Head Office expense pool to be allocated which can be identified as having been incurred specifically and totally for one particular segment. Such expenses should be allocated directly to the particular segment, to the extent practicable.

   (b) **Separately Allocated** - Those individual, or groups of expenses which are allocated only to a limited group of corporate segments. Such expenses are not usually incurred for specific segments but possess objective, measurable relationships to the segments and should be grouped in homogeneous pools for subsequent allocation on a basis which represents these objective, measurable relationships.

   (c) **Residual** - These represent the remaining expenses which are allocated to all, or most corporate segments on an overall basis. These expenses should be allocated to segments using a base or bases which represent the total activity of the segments (see 3. below).

   A three part exercise for allocation, as described above, would only be necessary where the dollars concerned were material. In less significant situations, a combination of the Directly Chargeable and the Residual methods might suffice. In low-dollar value situations, the Residual method alone might be appropriate.

3. There are many and varied bases which might be used to allocate residual expenses. However, to be accepted and considered reasonable, the base(s) selected must be representative and consistently applied to all segments of the organization. The following are examples of bases for allocation which are often used:

(a) Number of personnel in each segment of the organization.

(b) Dollar value of production in each segment of the organization.

(c) Cost of goods sold in each segment of the organization.

(d) Total sales in each segment of the organization.

4. Allocations derived from an arbitrary forecasted distribution base are not considered acceptable. Historical and present cost data used to derive the allocation base, along with future economic conditions should be considered and documented.

Annex 10.1.6: Cost Interpretation Bulletin - Number 06
(2004-05-14)

Pension Costs

Section 04(2)(c) of Contract Cost Principles 1031-2 states in part, that "indirect costs may include such items as fringe benefits (the contractor's contribution only)" in overhead pools.

Pension costs are normally included as a fringe benefit in a contractor's overhead pools. This interpretation explains the determination and measurement of pension costs.

Definitions

For the purposes of this Bulletin:

"Actuarial Assumptions" are presumptions about future events that will affect pension costs and obligations. These include theories concerning mortality, withdrawal, disability, retirement, changes in compensation, interest on accrued pension benefits, investment earnings, and asset appreciation or depreciation.

"Actuarial Cost Methods" are methods used to determine the cost of providing pension plan benefits and to allocate that cost to specific time periods.

"Current Service Cost" is the cost of anticipated future retirement benefits accrued during any year usually determined on an actuarial basis; it represents the aggregate estimated cost for one year's service by each employee who is a member of the plan.

"Defined Benefit Pension Plan" specifies either the benefits to be received by employees after retirement or the method for determining those benefits.

"Defined Contribution Pension Plan" is one in which the employer's contributions are fixed, usually as a percentage of compensation, and allocated to specific individuals. The pension benefit for each employee is the amount that can be provided at retirement based on the accumulated contributions made on that individual's behalf and investment earnings on those contributions.

"Experience Gain or Loss" is the measure of the difference between the expected and actual experience of the plan.

"Past Service Cost" is the estimated cost of future retirement benefits accrued in the years prior to the adoption of a pension plan; these costs are normally charged to operations over a reasonable period of years.

"Pension Plan" is any arrangement (contractual or otherwise) by which a program is established to provide retirement income to employees.

INTERPRETATION

The reasonableness of these proposed pension cost amounts should be determined in accordance with the following:

(1) The terms and conditions of the plan are determinant factors in measuring the obligations.

(2) The amount of pension cost for a cost accounting period is periodically determined by use of an actuarial cost method which measures separately each of the components of pension costs.

(3) Each Actuarial Assumption used to measure pension cost must be separately identified and

represent the contractor's best estimates of anticipated experience under the plan, taking into account past experience and reasonable expectations.

(4) Either Defined Contribution Pension Plans or Defined Benefit Pension Plans are acceptable in the calculation of pension costs in accordance with Government Contract Cost Principles (1031-2).

Under Defined Contribution Pension Plans the employer's responsibility is simply to make a contribution each year based on the formula established in the plan. The pension cost for a cost accounting period will normally be the current and past service cost.

Accounting for Defined Benefit Pension Plans is quite complex, because the benefits are defined in terms of uncertain future variables, an appropriate funding pattern must be established to assure that enough funds will be available at retirement to meet the benefits promised. The pension cost for a cost accounting period will normally be the aggregate of current service, plus past service, plus interest, minus expected return on plan assets, plus or minus experience gains/losses.

Annex 10.1.7: Cost Interpretation Bulletin - Number 07
(2004-05-14)

Research and Development Expenses

Section 04 (02) (h) of Contract Cost Principles 1031-2 states that General Research and Development expenses as considered applicable by the Crown may be included in Indirect Costs (Overhead). Section 7 (m) of Contract Cost Principles 1031-2 states that Product Development or Improvement expenses not associated with the product being acquired under the contract are considered as non-applicable costs to the contract.

This Bulletin explains the difference between General Research and Development Expenses and Product Development or Improvement expenses in the light of these two sections of Contract Cost Principles 1031-2. It also explains the treatment required for each of the different type of expenses in a contractor's cost accounting practices for acceptability in Crown contracts.

Definitions

For the purpose of this Bulletin:

"General Research and Development" is a planned investigation undertaken with the hope of gaining new scientific or technical knowledge and understanding. Such investigation may, or may not be directed towards a specific practical aim or application.

"Product Development and/or Improvement" is a systematic program of work, going beyond basic and applied research which is directed towards the creation of a new or improved product, system, component or material, substantially in a marketable form, but excluding any manufacture beyond completion of the new and improved product's prototype.

Interpretation

1. Company funded research and development should be divided into two distinct expenditure categories:

   (a) General Research and Development; and

   (b) Specific Product Development and/or Product Improvement.

2. General Research and Development

   (a) The expenditures relating to general research and development should be included in overhead and allocated to the contractor's total business activity which would exclude those items such as resale activity, warranty, etc., within the current fiscal year.

3. Specific Product - Product Development/Product Improvement

   (a) The Costs within these categories of research should not be included in overhead at the time it is incurred. Proper treatment of these expenditures would be to extract them from overhead pools and segregate these costs for later recovery against product sales.

   (b) Negotiators should consider, as an aspect of their negotiations, overhead applications to these product development costs. In the case of G&A overhead, either the costs are applied at the time that the Product Development Costs are incurred, or at the time the Product Development Costs are recovered against product sales. For guidance on the timing of application of G & A overhead costs, negotiators may look at other G & A recovery applications made to Product Development by the company.

(c) The recovery of the contractor's product development costs should, in the majority cases, be accomplished through the amortization of these product development costs against the sales of the family of products to which the product development pertained.

(d) The contractor may recover these expenses on the relevant product sales, including government sales, even if the related expenditures have been written off to the profit and loss account in the year originally incurred. However, in this case the contractor must maintain sufficient records to demonstrate the costs to be recovered and also to substantiate that these costs had not already been recovered in overhead.

4. The following are examples of activities that typically would be excluded from any general research and development and product development project:

(a) engineering follow-through in an early production phase;

(b) quality control during commercial production, including routine product testing;

(c) trouble-shooting in connection with breakdowns during production;

(d) routine, or periodic alterations to existing products, production lines, manufacturing processes, and other ongoing operations, even though such alterations may represent improvement;

(e) adoption of an existing capability to a particular requirement, or customer's need, as part of a continuing commercial activity;

(f) routine tools, jigs, mould, and dies design;

(g) activity, including design and construction engineering, related to the construction, relocation, rearrangement, or facilities start-up, or equipment, whose sole use is for a particular R&D project, unless specifically approved by the technical authority;

(h) all market research activities, including those directed at market development, verification, identification, demonstration, preference, and customer acceptance development;

(i) pre-production and proposal costs;

(j) cost overruns on previous firm price development contracts.

5. **General Research and Development (R&D) - Other Factors**

(a) Costs acceptable as general research and development must relate to projects classified as basic research, or applied research. Costs applicable to Product Development projects partially funded by the Crown are not acceptable as general research and development costs. Product Development is not considered an overhead item and is recovered by a separate product development expenditure recuperation rate.

(b) In those instances where the general research and development expenditures are the majority of the total G & A cost pool, this fact must be highlighted in the cost rate negotiation report, or a separate general research and development overhead rate developed.

(c) Significant differences between the negotiated and actual costs incurred must be taken into consideration when reviewing audited costs, or negotiating future years general research and development costs.

6. **Product Development (PD) - Other Factors**

(a) Company funded product development will inevitably produce non-marketable products which would not allow these costs to be recovered on related product sales. However, there may be marketable by-products or product advances made.

7. **Product Development Amortization**

(a) Contractors proposing to amortize PD costs of the product developed against future sales to the Crown, must submit an annual cost schedule to the responsible Directorate.

Annex 10.1.8: Cost Interpretation Bulletin - Number 08 (2004-05-14)

Bid and Proposal Expenses

Under Section 04 (02) (g) of Contract Cost Principles 1031-2, Selling and Marketing Expenses which could be considered to include amongst other things, Bid and Proposal Expenses, are listed as one of the items generally considered to be indirect costs. However, in some instances contractors follow a consistent practice of charging Bid and Proposal Expenses of a successful Bid or Proposal direct to the resulting contract.

This Bulletin explains the criteria under which the direct charging of Bid and Proposal Expenses to resulting contracts is acceptable to PWGSC.

Definition

For the purpose of this Bulletin:

"Bid and Proposal Expenses" are the costs incurred in preparing, submitting, and supporting bids and proposals, (whether or not solicited), on potential contracts, including:

(a) direct administrative effort, for the physical preparation of the technical proposal documents, and also the technical and non-technical effort for the preparation and publication of cost data, and other administrative data necessary to support the contractor's bids and proposals;

(b) technical effort, incurred to specifically support a contractor's bid, or proposal, including the system and concept formulation studies, and the development of engineering and production data; and,

(c) purchased services and supplies incurred to specifically support a bid or proposal.

Interpretation

Bid and Proposal Expenses are acceptable to PWGSC as a direct charge to resulting contracts in cases of proposals resulting in subsequent contract negotiations, provided that the bid and proposal expenses are clearly denoted in the proposal and contract documents as forming part of the agreed contract price.

Annex 10.1.9: Cost Interpretation Bulletin - Number 09
(2004-05-14)

Selling and Marketing Expenses

Section 04 (02) (g) of Contract Cost Principles 1031-2 permits selling and marketing expenses associated with the product or service being acquired under a PWGSC contract, providing they are reasonably and properly incurred, to be an acceptable cost to the contract.

This Bulletin explains what constitutes reasonable selling and marketing expenses and how an appropriate share of these expenses for allocation to an PWGSC contract is to be determined.

Interpretation

1. In determining the reasonableness of selling and marketing expenses, consideration shall be given to:

   (a) the nature and amount of these expenses in the light of the expenses which a prudent individual would incur in the conduct of a competitive business;

   (b) the proportionate amounts expended as between government and commercial business;

   (c) the trend and comparability of the contractor's current period cost in relation with prior periods;

   (d) the general level of such costs within a contractor's industrial sector;

   (e) the nature and extent of the sales effort in relation to the cost thereof and to the contract value.

2. Selling and Marketing expenses may include reasonable product demonstration expenses incurred for attendance at trade shows and fairs. However, the following expenses are considered non-applicable:

   (a) Entertainment Expenses, i.e. expenses for amusement, diversion, social activities and incidentals relating thereto. However, expenses associated with meetings and conferences, when called for the dissemination of technical information or discussion of production problems and the like, including the reasonable cost of meals, transportation, rental of meeting places and other incidentals, are acceptable.

   (b) Advertising Expenses, except for expenses referred to in 1031-2 as being acceptable, i.e. those expenses associated with reasonable advertising of an industrial or institutional character placed in trade, technical or professional journals for the dissemination of information for the industry or institution.

   (c) Salaries and Expenses of Personnel Engaged in Lobbying.

   (d) Unreasonable Commissions to Selling Agents.

   (e) Unspecified Payments to a Third Party.

   (f) Depreciation or Write-off Costs of Demonstration Equipment.

3. Allocation to Contracts

To enable a fair and reasonable share of selling and marketing expenses to be charged against PWGSC contracts, the following practice should generally be adopted:

(a) selling and marketing expenses should be clearly identified by a contractor as distinct from other indirect costs to the extent, where warranted, of creating a separate cost pool for these expenses;

(b) where a contractor manufactures more than one particular product or provides more than one particular service, the selling and marketing expenses specifically identifiable with each particular product or service should be allocated directly thereto with any general expenses being prorated equitably across all products or services; and then

(c) a pro-rata share of the selling and marketing expenses allocated in accordance with b) above to the particular products or services or family of products or services being acquired under the PWGSC contract included in the applicable overhead costs of the contract.

Annex 10.1.10: Cost Interpretation Bulletin - Number 10
(2004-05-14)

Severance Payments

Contract Cost Principles 1031-2 state that the total cost of the Contract shall be the sum of the applicable direct and indirect costs which are, or to be reasonably and properly incurred and/or allocated, in performance of the Contract, less any applicable credits. Such costs may include severance payments to employees.

This Bulletin explains which severance payments and the amount there of that may be an acceptable cost to the contract.

Definition

For the purpose of this Bulletin:

"Severance Pay" means a cash settlement or paid leave granted to employees upon termination of employment for various reasons, or upon retirement. Remuneration for earned vacation credits or compensation for unused sick leave credits is not considered as severance pay. Other payments excluded from severance pay are return of contributions made to pension plans or retirement savings programs.

Interpretation

1. Severance payments should be calculated using one of the following criteria in order to be considered as an allowable cost:

   (a) in accordance with an employment contract, collective agreement or enacted legislation; or

   (b) according to an established company policy; or

   (c) based on the merits of a particular case.

2. In order for the allowable severance payment to be deemed reasonable any amount associated with the following should not be included:

   (a) profit sharing;

   (b) commissions;

   (c) patent or other rights.

Annex 10.1.11: Cost Interpretation Bulletin - Number 11

Pension Plan Refunds

On occasion, there exist credits due to refunds to contractors from companies handling their pension plans. This situation could be as a result of large lay offs of employees, plan terminations and related interest on funds invested.

The accounting issue that arises from these terminations is whether a gain should be recognized when these assets revert back to the company.

Definitions

For the purpose of this Bulletin:

"Pension Plan Settlement" occurs when an employer legally discharges the obligation for accrued pension benefits either by transferring assets directly to plan participants in exchange for their rights to pension benefits or by purchasing annuity contracts in which a third party unconditionally undertakes to pay all accrued pension benefits.

"Pension Plan Curtailment" occurs when the expected years of future service to be rendered by the existing employee group is reduced significantly or when benefits will not be earned by employees for some or all future periods.

Interpretation

1. The pension refund amounts to be deducted from overhead expenditures used to determine costing rates should be the contractor's share of the expected pension credits.

2. Upon a pension plan settlement or curtailment, the employer may have eliminated obligations with respect to the plan, any gains or losses on the transaction, including any unauthorized amounts related to previous plan amendments.

   Changes in assumption and experience gains and losses, should be recognized immediately.

3. On the other hand, if an employer settles only a part of the accrued pension benefits, a portion of any gains or losses including any unamortized amounts should be recognized immediately.

Annex 10.1.12: Cost Interpretation Bulletin - Number 12
(2004-05-14)

Company Funded Costs

Contract Cost Principles 1031-2 refer to "costs which are, or are to be reasonably and properly incurred and/or allocated, in the performance of the contract, less any applicable credits."

This bulletin explains the establishment of costs when government assistance has been provided related to costs of fixed assets, research, and product development.

Definitions

For the purpose of this Bulletin:

"Company Funded Costs" are expenditures made from funds over which the enterprise has spending power and which were not provided to the company through the terms of a related agreement or understanding.

"Grant" is an unconditional payment made to a recipient, usually for a specific purpose, for which the donor will not receive any royalties, goods, or services.

"Contribution" is a conditional transfer payment under an auditable agreement for which the donor will not receive any royalties, goods, or services.

"Contribution Arrangement" is an undertaking between a donor department or agency and a prospective recipient of a contribution, describing the obligations of each, and the terms and conditions of payments and which contain conditions for royalties from resulting sales. The arrangement may be as informal as an exchange of letters.

Interpretation

The Company Funded Costs that shall be considered applicable for contracts negotiated in accordance with 1031-2 are:

Fixed Assets

Government Assistance towards the acquisition of fixed assets shall be deducted from the fixed asset acquisition cost and the relevant depreciation thereof calculated on the net asset amount. Depreciation on the net amount may be included in the applicable overhead for cost recovery on Crown Contracts.

Research and Development

Government Assistance in the form of Investment Tax Credits shall not be deducted from the related research and development expenditures when determining the applicable costs.

Product Development

Government Assistance, as well as third party funded assistance, towards a specific product development shall be netted against the relevant product development costs to arrive at the portion to be recovered over the sale of that product or family of products.

Annex 10.1.13: Cost Interpretation Bulletin - Number 13 (2004-05-14)

Executive Compensation

Section 04 2. (f) of Contract Cost Principles 1031-2, states that indirect costs may include "general and administration expenses: including remuneration of executive and corporate officers...". However, section 07 1. identifies "unreasonable compensation for officers and employees" as a non-applicable cost. There are many different considerations that may affect the amount a particular individual may be receiving.

This cost interpretation provides guidelines on the determination and allowability of executive compensation expenses that are included in a contractor's overhead expenditures.

Interpretation

1. Items included in a total compensation plan for any executive, not necessarily all allowable costs, usually consist of four basis elements, these are:

   (a) Salary: reflects the extent of experience and sustained level of performance for a job, or position.

   (b) Benefits: deals with the provision of time off with pay, employee services, health care services, allowable insurance protection and retirement incentives.

   (c) Performance Incentives: rewards the extent of accomplishment agreement targets.

   (d) Perquisites: benefits which are designed only to apply to executives, such as housing loans; these are in addition to benefits offered to other employees.

2. Guidelines for considering what is reasonable executive compensation are:

   (a) compensation paid to executives in similar positions, compared to related executive pay scales surveys;

   (b) the executive's previous experience, experience in other positions within the company and similar appointments in other companies;

   (c) comparison of the compensation paid for the nature and scope of the work, or service, as defined in the contract of service and/or the position description;

   (d) the size and complexity and the corporate management structure;

   (e) the company's general salary policy should be reviewed to ascertain the compensation is uniformly paid, according to set criteria;

   (f) in the case of smaller contractors with a limited number of officers, the amount of compensation paid to executives in the previous year should be reviewed, as a substantial increase over the prior year tends to indicate compensation may be excessive, further investigation should be made to determine whether the executives' salaries are for services rendered, rather than a re-distribution of the business's profits;

   (g) compensation paid to executives through related party transactions.

Annex 10.1.14: Cost Interpretation Bulletin - Number 14
(2004-05-14)

Mobile Repair Party Requirements

Section 5 of Contract Cost Principles 1031-2 recognizes that indirect costs should be accumulated and allocated based on a principle of similarity of costs in the pool and a causal relationship to the contracts to which the costs are allocated.

Repair work is normally carried out in a contractor's plant but, on occasion, it is necessary in meeting the requirements of a customer department, to have repair work performed at other locations.

This cost interpretation provides guidelines on the determination of overhead expenses applicable to Mobile Repair Party requirements.

Definition

For the purpose of this Bulletin:

"Mobile Repair Party" is the individual, or group of individuals, performing work away from the contractor's plant.

Interpretation

The overhead rate on Mobile Repair Party work normally will be at the full plant rate, however, it should be noted that under the three conditions below, the overhead rate could be different:

(a) where the estimated hours to be expended for Mobile Repair Party work exceed 5% of the estimated total direct labour hours for both commercial and defence repair and overhaul work during the contract period; or

(b) where the estimated hours to be expended for Mobile Repair Party work are less than 5%, but the contracting officer considers that a significant number of direct labour employees are hired for Mobile Repair Party work only; or

(c) where the contractor maintains adequate cost records to permit the calculation and negotiation of a separate Mobile Repair Party rate.

In the circumstances contemplated under alternatives a) and b) above, an overhead rate should be negotiated to reflect the reduced costs applicable to Mobile Repair Party work.

Notwithstanding the Cost Interpretation on Travel Costs, all travel costs for direct personnel for Mobile Repair Party requirements, should be charged to the contract directly and not included in any overhead pool.

Annex 10.1.15: Cost Interpretation Bulletin - Number 15
(2004-05-14)

Environmental Costs

According to Section 04 of Contract Cost Principles 1031-2,"Indirect Costs" are those costs which, though necessarily having been incurred during the period of the Contract performance for the conduct of the Contractor's business in general, cannot be identified and measured as directly applicable to contracts.

An element that is becoming a more significant portion of indirect costs is environmental costs. This cost interpretation provides guidelines on applicable environmental costs included in a Contractor's indirect costs.

Definition

For the purposes of this Bulletin:

"Environmental costs" are the costs incurred by an entity to prevent , abate , or remediate damage to the environment or to deal with the conservation of renewable and non-renewable resources.

Interpretation

1. Any direct or indirect benefits, for example, tax credits, insurance benefits, or government assistance, should be accounted for using the cost reduction approach. The amount of all such benefits received by or credited to the contractor's account should be deducted from the related environmental cost and any amortization of the cost should be calculated on the net amount.

2. Notwithstanding the other sections of this bulletin, no fines, or penalties, or any other non applicable cost as determined under Section 07 of Contract Cost Principles 1031-2 are allowable.

3. Environmental costs can be grouped according to the periods when the cost is incurred and the periods that the cost relates to.

   (a) Current period operations.

   An example of this type of cost is the disposal of waste from current period operations.

   These costs should be allowed and allocated on the appropriate base in the current period.

   (b) Current period past operations.

   An example is clean up costs for activities that occurred previously.

   Any current period cost that is a material amount should be deferred and amortized over a reasonable number of future periods.

   (c) Current period future operations.

   An example is depreciable equipment purchased to control hazardous emissions.

   These costs should be amortized over the periods for which benefits are expected from the costs incurred.

Annex 10.1.16: Cost Interpretation Bulletin - Number 16
(2004-05-14)

Take-out Rates

Section 05 of Contract Cost Principles 1031-2 states: “Indirect costs shall be accumulated in appropriate indirect cost pools, reflecting a contractor's organizational or operational lines and these pools subsequently allocated to contracts in accordance with the following two principles:

(a) the costs included in a particular indirect cost pool should have a similarity of relationship with each contract to which that indirect cost pool is subsequently distributed; further, the costs included in an indirect cost pool should be similar enough in their relationship to each other that the allocation of the total costs in the pool provides a result which would be similar to that achieved if each cost within that pool were separately distributed.

(b) the allocation basis for each indirect cost pool should reflect, as far as possible, the causal relationship of the pooled costs to the contracts to which these costs are distributed.

This bulletin provides interpretation on how take out rates reflect the allocation of specific cost from indirect cost pools to suit the related costs and circumstances of the contracts. However, a fair level of overhead, or G&A costs must be charged to the particular products or services in question.”

Definition

For the purpose of this Bulletin:

“Take-Out Rate” is the negotiated rate applied for the recovery of overhead costs on goods and services which do not form the major portion of the company's business but are in themselves significant relative to a government contract. The resulting rate, in most cases, should be somewhat less than that which applies to other work processed through the company's facilities.

Interpretation

1. Take-out rates may be established to apportion overhead expenses on a fair and reasonable basis on goods and services which requires less overhead effort than the company's regular activity.

2. The task of identifying where and when a take-out rate is applicable is left to the discretion of the negotiators, who are in the best position to establish the need, based on the information available at the time.

3. Some of the areas for applications of take-out rates are:

   (a) Subcontracts;
   (b) Drop shipments, other resale and high value purchases;
   (c) Mobile repair party and field services;
   (d) Other specialized applications such as for travel and living that are charged directly to a contract.

4. The purpose of a take out rate is to allocate costs to a contract. Other overhead recovery rates must not include any of the costs of any contracts that are subject to take out rates. This means that take out rates that are established without taking into account the full costs of specific situations may result in unrecovered overhead as this overhead cannot be recovered on other contracts. As an example; this situation can arise if a contract is established using a take out rate that is set to limit the total price of the contract and the rate is not sufficient to allow full cost

recovery.

Annex 10.1.17: Cost Interpretation Bulletin - Number 17
(**2004-12-10**)

Government Supplied Materiel

Section 05(a) of Contract Cost Principles 1031-2 deals with the allocation of indirect costs according to the principles of "similarity of relationship" and the "causal relationship of pooled costs". Applying these principles requires consideration of both the nature of activities giving rise to the costs and when different activities occur.

The purpose of this cost interpretation is to provide guidance in determining when material handling and general and administrative costs relating to government supplied material are allowable items for cost reimbursement.

Definitions

For the purpose of this Bulletin:

"Accountable Advance Spares" are non-catalogued materiel owned by the government and manufactured or purchased by contractors in accordance with agreements between contractors and the government. Accountable Advance Spares are used in the repair and overhaul of government equipment.

"Laid-Down Cost" is the cost incurred by a contractor to acquire a specific product. This includes the invoice price (less trade discounts) charged to the contractor plus any applicable charges for transportation, exchange, custom duties, and brokerage charges.

"Government-Supplied Materiel"(GSM): Material supplied to a contractor by a government department or agency for incorporation into the end product.

Interpretation

(a) Material handling costs related to the storing and transferring out of storage are allocated to the GSM when they are embodied.

(b) General and Administrative (G&A) overhead expenses and material handling costs that are applicable should be allocated as a cost associated with the embodiment of government supplied material in the year when the materials are embodied. When transfers of GSM, for example from accountable advance spares inventory, are made to the crown for asset disposal, the general and administrative overhead expenses and material handling costs that are applicable are allocated at the time of transfer.

(c) When the contractor stores GSM for the Crown, the cost of the items being stored would normally include the laid-down cost of the purchased GSM; or the applicable direct material, direct labour, factory overhead and G&A applicable to the manufacturing operation of the manufactured GSM.

Annex 10.1.18: Cost Interpretation Bulletin - Number 18
(2004-05-14)

Incentive Remuneration Profit Sharing Plans

Section 04 of Contract Cost Principles 1031-2 explains indirect costs. This section's paragraph 2. (c) indicates that fringe benefits (the contractor's contribution only) are to be included as indirect costs (overhead). A fringe benefit type that **may not** be an overhead cost for 1031-2 purposes is amounts paid under Incentive Remuneration Profit Sharing Plans. The reason these amounts are not considered costs is that normally these plans are considered as a distribution of a portion of earnings to employees. Earnings that are profits or a distribution of retained earnings are not costs. However, since the purpose of these plans is to remunerate employees, it is often argued that payments under these plans should be considered costs.

This cost interpretation is to determine the features of Incentive Remuneration-Profit Sharing Plans that may be considered as allowable cost items in accordance with 1031-2.

Definition

Incentive Remuneration Profit Sharing are plans designed to link the performance of employees to the achievement or organizational objectives, through the provision of additional compensation from the distribution of a defined share of the organization's net profit.

Interpretation

Incentive Remuneration Profit Sharing Plans may be considered as an allowable cost element providing:

(a) The plan includes a documented sharing arrangement, with all employees, and the incentive amounts payable by the employer must be computed with reference to earned profits.

(b) The company pays employees directly or provides the funds for the employee profit sharing plan to a trustee in trust for the benefit of the employees who are members of the plan.

(c) The amount of cost will not exceed the amount of payment made to the employees or the plan trustee.

(d) The cost is recognized only in the year the employee provides services to earn benefits under the plan.

(e) The entire amount recognized as cost must be disbursed to employees (or paid to the trustee) in the fiscal year when the benefits were earned or shortly after the end of the fiscal year (within a few months, but well before the end of the fiscal year following the one for which plan benefits were based).

(f) Any funds payable by the trustee to the employer for over contributions or funds that the plan may earn; shall be used to reduce the current year cost unless these earned funds or over contributions are paid directly by the employer to the employees within that current fiscal year. (see Cost Interpretation 11 on Pension Plan Refunds).

(g) Compensation to owners of closely held corporations, partners, sole proprietors, or members of their immediate families should be in accordance with the personal service rendered rather than a distribution of profits. (see Cost Interpretation 13 on Executive Compensation).

Annex 10.1.19: Cost Interpretation Bulletin - Number 19
(**2004-12-10**)

Purchased Labour -- Personnel Procured From Outside Sources

In accordance with Sections 03, 04 and 05 of Contract Cost Principles 1031-2, Purchased Labour Costs are considered either as Direct Costs or may be viewed as Direct Labour Costs.

Definitions

For the purpose of this Bulletin:

"**Purchased Labour Costs**" are the costs incurred by a contractor/ entity for temporary personnel procured from the outside for skills such as engineers, technical writers, technicians, craftsmen. Purchased Labour normally attract different indirect costs. Care must be taken to ensure that they are not accounted for as the contractor's employees.

Interpretation

1. Contractors' cost accounting method for purchased labour and overhead allocation thereon varies depending on the circumstances under which purchased labour costs are incurred.

   For example,

   (a) some contractors classify purchased labour as direct labour costs when the work is performed in the contractor's facilities under their supervision and otherwise meets section 03(b) of 1031-2 definition of direct labour costs. These contractors cost direct labour using either the purchased labour rate or average labour rate incurred by their own employees for comparable work. However differences between the average labour rate incurred by the contractor's own employees and purchased labour prices are treated as overhead costs and are allocated accordingly.

   (b) other contractors classify purchased labour as subcontract costs.

2. Purchased labour must share in an allocation of certain indirect expenses where there is a causal or beneficial relationship, and the allocation method must be consistent with the contractor's disclosed cost accounting practices.

3. The accounting treatment for purchased labour must be evaluated on a case-by-case basis with consideration given to the materiality of costs involved and the overall effect of the accounting treatment on final cost objectives. Acceptance or rejection of the contractor's treatment of purchased labour must be based upon

   (a) the causal and beneficial relationship of indirect expenses and purchased labour, and

   (b) the nature of the employer/consultant relationship.

4. The preferred cost accounting method for purchased labour is to have a separate direct cost for this activity with an appropriate allocation of applicable overhead. Other methods devised are acceptable providing the accounting method is considered fair and reasonable and meets the relevant Contract Cost Principles 1031-2.

Annex 10.2: Determination of Fixed Capital Employed Applicable to a Contract (2004-05-14)

Contracts of $250,000 and more

Line No.	Details	A	B	C	D	E	F	TOTAL
1.	Amounts for depreciation.							
2.	Net Book Value of Fixed Assets as at beginning of fiscal year. $							
3.	Re-allocation of cost centres to other cost centres as required by the entrepreneur's cost accounting system. $							
4.	Adjusted Net Book Value of Fixed Assets by cost centres. $							
5.	Bases used for recovery of overhead.							
6.	Total amount of each overhead recovery base for the fiscal year.							
7.	Amount of each overhead recovery base allocated to this contract.							
8.	Percentage of Line 7 to Line 6. %							
9.	Net Book Value of Fixed Assets applicable to the contract. Line 8 by Line 4. $							

Notes:

Line 1 Amounts for depreciation taken from the contractor's overhead budget in total or by cost centre as agreed during negotiations.

Line 2 Total amount of the Net Book Value of Fixed Assets (excluding land, and any intangible assets) as found in the contractor's balance sheet as at the end of the fiscal year previous to that being negotiated. If this balance sheet is not available at the time of negotiations, the amount may be estimated. Subsequently, the amount is allocated to cost centres either in accordance with the contractor's records or, if not recorded, in accordance with the depreciation amounts at Line 1 (allocation required only in the event that depreciation by cost centre was agreed during negotiations).

Line 3 The necessary re-allocation of the amounts at Line 2 if required by the contractor's cost accounting system.

Line 4 The amounts for Net Book Value of Fixed Assets at Line 2 as adjusted by Line 3.

Line 5 The base for recovery of overhead costs in total or for each cost centre as per the contractor's cost accounting system.

Line 6 The total amount of each overhead recovery base included in the contractor's budget for the fiscal year as agreed during negotiation.

Line 7 The amount for each overhead recovery base allocated to the particular contract as agreed during negotiations.

Line 8 The percentage of Line 7 to Line 8.

Line 9 The amounts determined by applying the percentages at Line 8 to the amount for the Net Book Value of Fixed Assets at Line 4. The total amount on this line is the equivalent of the Fixed Capital Employed Applicable to the contract in the particular fiscal year.

If the contract period extends over more than one of the contractor's fiscal years, the calculation will have to be made for each fiscal year involved, and the sum of the Fixed Capital Employed Applicable to the contract determined for each fiscal year will be the equivalent of the Total Fixed Capital Employed Applicable to the particular contract.

If a contractor does not accumulate overhead by cost centre, the above calculation should be done in total only.

Two examples of the calculation could be found in Annex 10.4.

Annex 10.2.1: Determination of Working Capital Employed Applicable to a Contract

Contracts of $250,000 and more

Examples of Calculation

Example 1 - Assumptions:

1. The contract period is 12 months.
2. Total contract costs are $1,313,190 of which $26,500 is for depreciation.
3. Costs incurred are on an even basis month by month.
4. Progress payments at 85% are paid monthly.
5. The time between forwarding the invoice and receipt of payment is 1 month.

Month	Allowable Contract Cost excluding Depreciation $	Contract Revenue Less Profit $	Monthly Working Capital Employed $	Cumulative Monthly Working Capital Employed $
1	107,224	--	107,224	107,224
2	107,224	--	107,224	214,448
3	107,224	93,017	14,207	228,655
4	107,224	93,018	14,206	242,861
5	107,224	93,017	14,207	257,068
6	107,224	93,018	14,206	271,274
7	107,224	93,017	14,207	285,481
8	107,224	93,018	14,206	299,687
9	107,224	93,017	14,207	313,894
10	107,224	93,018	14,206	328,100
11	107,224	93,017	14,207	342,307
12	107,206	93,018	14,208	356,515
13	--	93,017	(93,017)	263,498
14	--	289,998	(289,998)	(26,500)
	1,286,690	1,313,190	(26,500)	3,484,512

Working Capital Employed Applicable to the Contract for profit purposes =	$3,484,512 / 12 = $290,376

Example 2 - Assumptions:

1. Contract period is 18 months.
2. Contract is for the design, manufacture and supply of 24 widgets at a cost per widget of $40,000 for total costs of $960,000.
3. The total costs include an amount of $84,000 for depreciation.
4. Costs are incurred on a month by month basis as shown in the attached schedule.
5. Invoices are made on delivery and the delivery schedule is as follows:

   1 widget in each of the 8th, 9th and 10th months. 2 widgets in each of the 11th and 12th months. 3 widgets in each of the 13th through 17th months inclusive. 2 widgets in the 18th month.

6. The time between forwarding the invoice and receipt of payment is 1 month.

Month	Allowable Contract Cost excluding Depreciation $	Contract Revenue Less Profit $	Monthly Working Capital Employed $	Cumulative Monthly Working Capital Employed $
1	24,000	--	24,000	24,000
2	24,000	--	24,000	48,000
3	30,000	--	30,000	78,000
4	30,000	--	30,000	108,000
5	40,000	--	40,000	148,000
6	40,000	--	40,000	188,000
7	60,000	--	60,000	248,000
8	60,000	--	60,000	308,000
9	60,000	40,000	20,000	328,000
10	60,000	40,000	20,000	348,000
11	70,000	40,000	30,000	378,000
12	70,000	80,000	(10,000)	368,000
13	60,000	80,000	(20,000)	348,000
14	60,000	120,000	(60,000)	288,000
15	60,000	120,000	(60,000)	228,000
16	50,000	120,000	(70,000)	158,000
17	40,000	120,000	(80,000)	78,000
18	38,000	120,000	(82,000)	(4,000)
19	--	80,000	(80,000)	(84,000)
	876,000	960,000	(84,000)	3,584,000

Working Capital Employed Applicable to the Contract for profit purposes =	$3,584,000 / 12 = $298,667

Annex 10.3: Examples of Profit Calculations

Negotiated Contracts with total costs between $50,000 and $249,999

Example 1 - Assumptions:

1. The contract is for the investigation of certain phenomena and the preparation and delivery of a report.

2. The basis of payment is cost reimbursable with a fixed fee.

3. The contractor performance period is 10 months.

4. The Estimated Contract Costs are:

Direct Materials	$500
Subcontracts	$20,000
Direct Labour	$40,000
Overhead	$40,000
Total	$100,500

5. No machinery or equipment owned by the contractor is used in performance of the contract.

6. No advance, progress or milestone payments are to be made to the contractor.

7. The contractor has little familiarity with the work to be performed from past experience and the fixed fee was agreed before the work on the contract commenced, therefore the maximum of 1% for Contractual Risk has been given.

8. No research and general development nor product development costs are applicable and allowable to the contract.

Profit Factor	**Measurement Base**			
	Details	**Amount $**	**Profit Rate %**	**Profit $**
Return on Capital Employed	Fixed Capital Employed	N/A		--
	Working Capital Employed (No advance, progress or milestone payments)	100,500	3	3,015
General Business Risk	Direct Materials	500	1.5	8
	Subcontracts	20,000	2	400
	Direct Labour	40,000	4	1,600
	Overhead	40,000	4	1,600
	Total Allowable Costs	100,500		3,608
Contractual Risk	**Total Allowable Costs**	100,500	1	1,005
		Total Profit = 7.6% of Total Costs		$7,628
		Amount of Fixed Fee		$7,628

Example 2 - Assumptions:

1. Contract is for Repair and Overhaul in Plant.

2. Basis of Payment are:

Repair and Overhaul in Plant	— Fixed Time Rate
Company Furnished Materials	— Actual Costs plus Mark Up
Accountable Advance Spares Embodied	— Mark Up Only

3. Contract Period is 12 months.

4. Total Negotiated Contract Costs are:

Company Furnished Materials		$50,000
A.A. Spares Embodied	$100,000	
In Plant Repair and Overhaul:		
Direct Labour	5,000 hours @ $8 per hour	40,000
Overhead	5,000 hours @ $16 per hour	80,000
Material Handling		
On Company Furnished Materials	$50,000 @ 6%	3,000
On A.A. Spares Embodied	$100,000 @ 6%	6,000
G & A		
On Company Furnished Materials	$50,000 @ 9%	4,500
On A.A. Spares Embodied	$100,000 @ 9%	9,000
On In Plant Repair and Overhaul	$120,000 @ 9%	10,800
On Material Handling Costs	$9,000 @ 9%	810
Total Contract Costs		$204,110

5.	Summary of Contract Costs:	$	$	$
	(a) Company Furnished Materials:			
	Laid Down Costs		50,000	
	Plus 6% Material Handling		3,000	
			53,000	
	Plus 9% G & A		4,770	57,770
	(b) Accountable Advance Spares Embodied:			
	Laid Down Costs (LDC)	100,000		
	Plus 6% Material Handling (MH) on LDC		6,000	
	Plus 9% G & A on LDC plus MH		9,540	15,540
	(c) Repair and Overhaul:			
	Labour 5,000 hours @ $24 per hour		120,000	

Plus 9% G & A		10,800	130,800
	Total		204,110
Company Furnished Materials			50,000
Direct Labour			40,000
Plant Overhead			80,000
Material Handling Overhead			9,000
			179,000
G & A			25,110
	Total		204,110

6. Machinery and equipment owned by the contractor is used in performance of the contract.

7. Progress payments are to be made on the contract.

8. The duration of the contract is twelve months and no difficulty has been experienced in predicting labour and overhead rates. Furthermore, the fixed time rate was only negotiated and agreed two months after work commenced. Therefore the rate of profit for Contractual Risk is assessed at 2½%.

9. No research and development costs are applicable and allowable on the contract.

Profit Factor	**Measurement Base**			
	Details	**Amount $**	**Profit Rate %**	**Profit $**
Return on Capital Employed	Fixed Capital Employed	57,770	1	578
	Working Capital Employed (Progress Payments to be made)	57,770	1.5	867
		Total		1,445
General Business Risk	Direct Materials	50,000	1.5	750
	Material Handling Overhead	3,000	4	120
	G & A	4,770	4	191
	Total Allowable Costs	57,770		1,061
Contractual Risk	Material ➤ Cost Reimbursable No Ceiling	50,000	0	--
	Material Handling Overhead and G & A ➤ Fixed Rates	7,770	2.5	194
	Total Costs	57,770		194
			Total Profit= 4.7% of Total Costs	$2,700
Mark Up to CF Materials				
Laid Down Cost				$100.00
Material Handling @ 6%				6.00
				106.00

Profit Factor	Measurement Base
G & A @ 9%	9.54
	115.54
Profit @ 4.7%	5.43
Mark Up 21%	$120.97

Profit on A.A. Spares Embodied

Profit Factor	Measurement Base			
	Details	Amount $	Profit Rate %	Profit Amount $
Return on Capital Employed	Fixed Capital Employed	N\A	--	--
	Working Capital Employed	N\A	--	--
General Business Risk	A.A. Spares	100,000	2	2,000
	Material Handling Overhead	6,000	4	240
	G & A	9,540	4	382
	Total Allowable Costs	115,540	--	2,622
Contractual Risk	Cost Reimbursable - No Ceiling Basis of Payment	--	--	--
	Total Profit= 2.3% of Total Costs			$2,622

Mark Up for A.A. Spares Embodied	
Laid Down Cost	$100.00
Material Handling @ 6%	6.00
	106.00
G & A @ 9%	9.54
	115.54
Profit @ 2.3%	2.66
Mark Up 18.2%	$118.20

Profit on Repair and Overhaul

Profit Factor	Measurement base			
	Details	Amount $	Profit Rate %	Profit Amount $
Return on Capital Employed	Fixed Capital Employed	130,800	1	1,308
	Working Capital Employed (Progress Payments to be made)	130,800	1.5	1,962
		Total		3,270
General Business Risk	Direct Labour	40,000	4	1,600

	Plant Overhead	80,000	4	3,200
	G & A	10,800	4	432
	Total Costs	130,800		5,232
Contractual Risk	Fixed Time Rate Basis of Payment	130,800	2.5	3,270
	Total Profit = 9.0 % of Total Costs			$11,772

Fixed Time Rate for Repair and Overhaul	
Direct Labour	$8.00 per hour
Plant Overhead	16.00 per hour
	24.00 per hour
G & A @ 9 %	2.16 per hour
Costing Rate	26.16 per hour
Profit @ 9.0 %	2.35 per hour
Selling Rate	$28.51 per hour

Profit Summary

	Company Furnished Material$	AA Spares Embodied $	Repair and Overhaul $	Total $
Total Costs	57,770	15,540	130,800	204,110
Return on Capital Employed	1,445		3,270	4,715
% of Total Costs	2.5%		2.5%	2.3%
General Business Risk	1,061	2,622	5,232	8,915
% of Total Costs	1.8%	16.9%	4.0%	4.4%
Contractual Risk	194		3,270	3,464
% of Total Costs	3.4%		2.5%	1.7%
Total all Factors	2,700	2,622	11,772	17,094
% of Total Costs	4.7%	16.9%	9.0%	8.4%

Example 3 - Assumptions:

1. The contract is for the manufacture and supply of 180 widgets.
2. The basis of payment is a firm unit price per widget.
3. The contract performance period is 9 months.
4. The Negotiated Contracts Costs are:

Direct Materials	$15,000
Direct Labour	20,000
Overhead	45,000

G & A	10,000
Subtotal	90,000
Royalties	3,000
Total	$93,000

5. Machinery and equipment owned by the contractor is used in performance of the contract.

6. No advance, progress or milestone payments are to be made to the contractor.

7. The contractor has manufactured these particular widgets, which are to his own specifications, for a number of years. As a result a reasonable rate contractual risk is considered to be 5.5%.

Profit Factor	**Measurement Base**			
	Details	**Amount $**	**Profit Rate %**	**Profit $**
Return on Capital Employed	Fixed Capital Employed	90,000	1	900
	Working Capital Employed (No advance, progress or milestone payments)	90,000	3	2,700
	Total			3,600
General Business Risk	Direct Materials	15,000	1.5	225
	Direct Labour	20,000	4	800
	Overhead	45,000	4	1,800
	G & A	10,000	4	400
	Royalties	3,000	—	
	Total Costs	93,000		3,225
Contractual Risk	Total Allowable Costs less Royalties	90,000	5.5	4,950
	Total Profit = 12.7% of Total Costs			$11,775
	Total Cost			$93,000
	Profit			11,775
				$104,775
				= $582.08 per widget

Annex 10.4: Determination of Fixed Capital Employed Applicable to a Contract (2004-05-14)

(Contracts of $ 250,000 and more)

Examples of Calculation

Example 1 - Assumptions:

1. The period of contract performance is from April 1, 1982 to March 31, 1983.

2. The contractor's fiscal year ends on March 31.

3. The contractor accumulates costs in 5 cost centres and the amount of depreciation included in the agreed budget in the first year 1982/83 are as follows:

Repair and Overhaul	$28,500
Material Handling	$500
G & A	$1,000
Engineering	$3,000
Occupancy	$7,000

4. The costs accumulated in the Occupancy cost centre are subsequently re-allocated to all other cost centres on the basis of area occupied which is as follows:

Repair and Overhaul	65%
Material Handling	15%
G & A	10%
Engineering	10%
	100%

5. The costs accumulated in the Engineering cost centre are subsequently re-allocated to the Repair and Overhaul cost centre.

6. The Net Book Value of Fixed Assets (excluding land and any intangible assets) appearing in the contractor's balance sheet as at March 31, 1982 is $285,000.

7. The recovery base in each cost centre and the amounts thereof for fiscal year 1982/83 are as follows:

Repair and Overhaul — Direct Labour Costs	$ 600,000
Material Handling — Total Material Costs	$1,500,000
G & A — Costs of Production	$3,500,000

8. The amounts of each recovery base allocated to this contract are:

Repair and Overhaul	$272,700
Material Handling	$750,000

G & A	$1,602,900

Example 1

Details F/Y 1982/83	Cost Centres					
	Repair Overhaul $	Material Handling $	G & A $	Engineering $	Occupancy $	Total $
1. Amounts for depreciation by Cost Centre.	28,500	500	1,000	3,000	7,000	40,000
2. Net Book Value of Fixed Assets as at March 31, 1982	203,063	3,562	7,125	21,375	49,875	285,000
3. Re-allocation of cost centres						
Occupancy	32,419	7,481	4,988	4,987	(49,875)	--
Engineering	26,362	--	--	(26,362)	--	--
4. Adjusted Net Book Value of Fixed Assets by cost centres.	261,844	11,043	12,113	--	--	285,000
5. Bases for recovery of overhead	Direct Labour Costs	Total Material Costs	Costs of Production			
6. Total amount of each overhead recovery base for Fiscal Year 1982/83	600,000	1,500,000	3,500,000			
7. Amount of each overhead recovery base for Fiscal Year 1982/83 allocated to this contract.	272,700	750,000	1,602,000			
8. Percentage of Line 7 to Line 6.	45.5%	50.0%	45.8%			
9. Net Book Value of Fixed Assets Applicable to the contract Line 8 x Line 4.	119,139	5,522	5,548			130,209
	FIXED CAPITAL EMPLOYED APPLICABLE TO CONTRACT					$130,209

Example 2 - Assumptions:

1. The period of contract performance is from July 1, 1982 to December 31, 1983.

2. The contractor's fiscal year ends on December 31.

3. The contractor accumulates costs in 6 cost centres and the amounts for depreciation included in the agreed budget for each fiscal year are:

	F/Y 1982 $	F/Y 1983 $
Manufacturing	30,000	35,000
Engineering	6,000	5,900

Material Handling	5,000	4,500
G & A	3,500	4,000
Inspection	1,000	900
Occupancy	10,000	9,500
Total	55,500	59,800

4. The costs accumulated in the Occupancy cost centre are subsequently re-allocated to all other cost centres on the basis of area occupied which is as follows:

Manufacturing	50%
Engineering	15%
Material Handling	15%
G & A	10%
Inspection	10%
Total	100%

5. The costs accumulated in the Inspection cost centre are subsequently re-allocated to the Manufacturing cost centre.

6. The Net Book Value of Fixed Assets (excluding land and any intangible assets) appearing on the contractor's balance sheet as at December 31, 1981 is $400,000, and estimated for the year ending December 31, 1982 is $405,000.

7. The recovery base for overhead in each cost centre and the amount thereof for each fiscal year are as follows:

	F/Y 1982	**F/Y 1983**
Manufacturing - Direct Labour Costs	$300,000	$440,000
Engineering - Direct Labour Hours	100,000 hours	100,000 hours
Material Handling - Total Material Costs	$700,000	$650,000
G & A - Costs of Production	$3,500,000	$3,700,000

8. The amounts of each recovery base allocated to this contract in each fiscal year are:

	F/Y 1982	**F/Y 1983**
Manufacturing	$65,000	$110,000
Engineering	6,000 hours	600 hours
Material Handling	$75,000	$125,000
G & A	$350,000	$484,000

Determination of Fixed Capital Employed Applicable to a Contract
Fiscal Year Ending December 31, 1982 (1st Year)

Example 2 (cont'd...)

Details F/Y 1982/83	Cost Centres						
	Manufac-turing $	Engineering $	Material Handling $	G & A $	Inspection $	Occupancy $	Total $
1. Amounts for depreciation by Cost Centre.	30,000	6,000	5,000	3,500	1,000	10,000	55,500
2. Net Book Value of Fixed Assets as at March 31, 1981	216,218	43,244	36,036	25,225	7,207	72,070	400,000
3. Re-allocation of cost centres							
Occupancy	36,035	10,810	10,811	7,207	7,207	(72,070)	--
Inspection	14,414	--	--	--	(14,414)	--	--
4. Adjusted Net Book Value of Fixed Assets by cost centres.	266,667	54,054	46,847	32,432	--	--	400,000
5. Bases for recovery of overhead.	Direct Labour Costs	Direct Labour Hours	Total Material Costs	Cost of Production			
6. Total Amount of each overhead recovery basis for Fiscal Year 1982.	300,000	100,000 hours	700,000	3,500,000			
7. Amount of each overhead recovery base for Fiscal Year 1982 allocated to this contract	65,000	6,000 hours	75,000	350,000			
8. Percentage of Line 7 to Line 6.	21.7%	6.0%	10.7%	10.0%			
9. Net Book Value of Fixed Assets Applicable to this contract in Fiscal Year 1982. Line 8 x Line 4.	57,867	3,243	5,013	3,243			69,366
FIXED CAPITAL EMPLOYED APPLICABLE TO THIS CONTRACT							$69,366

Determination of Fixed Capital Employed Applicable to a Contract Fiscal Year Ending December 31, 1983 (2nd Year)

Example 2 (cont'd...)

Details F/Y 1983	Cost Centres						
	Manufac-turing $	Engineer-ing $	Material Handling $	G & A $	Inspection $	Occupancy $	Total $
1. Amounts for depreciation by Cost Centre.	35,000	5,900	4,500	4,000	900	9,500	59,800
2. Net Book Value of Fixed Assets as at March 31, 1982	237,041	39,958	30,476	27,091	6,095	64,339	405,000
3. Re-allocation of cost centres							

Occupancy	32,169	9,651	9,651	6,434	6,434	(64,339)	
Inspection	12,529	--	--	--	(12,529)	--	--
4. Adjusted Net Book Value of Fixed Assets by cost centres.	281,739	49,609	40,127	33,525	--	--	405,000
5. Bases for recovery of overhead.	Direct Labour Costs	Direct Labour Hours	Total Material Costs	Cost of production			
6. Total Amount of each overhead recovery base for Fiscal Year 1983.	440,000	100,000 hours	650,000	3,700,000			
7. Amount of each overhead recovery base for Fiscal Year 1983 allocated to this contract.	110,000	600 hours	125,000	484,000			
8. Percentage of Line 7 to Line 6.	25.0%	0.6%	19.2%	13.1%			
9. Net Book Value of Fixed Assets Applicable to this contract in Fiscal Year 1983. Line 8 x Line 4.	70,435	298	7,704	4,392			82,829
FIXED CAPITAL EMPLOYED APPLICABLE TO THIS CONTRACT							82,829

Summary

Fixed Capital Employed Applicable to this Contract - F/Y 1982	$69,366
Fixed Capital Employed Applicable to this Contract - F/Y 1983	$82,829
Total	$152,195

Example 3 - Assumptions:

1. Contract is for Repair and Overhaul in Plant and by Mobile Repair Party (MRP)

2. Bases of Payment are:

Repair and Overhaul in Plan	— Fixed Time Rate
Mobile Repair Party	— Fixed Time Rate
Company Furnished Materials	— Actual Costs plus Mark Up
Accountable Advances (AA)	
Spares Embodied	— Mark Up only

3. Contract Period is 12 months.

4. Total Negotiated Contract Costs are:

Company Furnished Materials		$300,000
AA Spares Embodied		(450,000)
In-Plant Repair and Overhaul:		
Direct Labour	30,000 hours @ $ 9 per h	270,000

Overhead	30,000 hours @ $18 per h	540,000
Mobile Repair Party		
Direct Labour	300 hours @ $ 9 per h	2,700
Overhead	300 hours @ $ 9 per h	2,700
Material Handling		
On Company Furnished Materials	$300,000 @ 5%	15,000
On AA Spares Embodied	$450,000 @ 5%	22,500
G & A		
On Company Furnished Materials	$300,000 @ 10%	30,000
On AA Spares Embodied	$450,000 @ 10%	45,000
On In-Plant Repair and Overhaul	$810,000 @ 10%	81,000
On MRP	$5,400 @ 10%	540
On Material Handling Costs	$37,500 @ 10%	3,750
Total Contract Costs		$1,313,190

Examples of Profit Calculations

5. Summary of Contract Costs			$	$
a) Company Furnished Materials				
	Laid Down Costs		300,000	
	Plus 5% Material Handling		15,000	
			315,000	
	Plus 10% G & A		31,500	346,500
b) Accountable Advance Spares Embodied:				
	Laid Down Costs		(450,000)	
	Plus 5% Material Handling		22,500	
			472,500	
	Plus 10% G & A		47,250	69,750
c) Repair and Overhaul:				
	Labour 30,000 hours	@ $27.00 per h	810,000	
	Plus 10% G & A	2.70	81,000	891,000
	Costing Rate	29.70		
d) Mobile Repaid Party:				
	Labour 300 hours	@ $18.00 per h	5,400	
	Plus 10% G & A	1.80	540	5,940
	Costing Rate	19.80	**Total**	1,313,190
Company Furnished Materials				300,000

Direct Labour		272,700
Plant Overhead		542,700
Material Handling Overhead		37,500
		1,152,900
G & A		160,290
Total		1,313,190

6. Fixed Capital Employed applicable to the contract is $130,209 (see Example 1 in this Annex) broken down as follows:

Company Furnished Materials	$346,500	27.8%	$36,198
Repair and Overhaul	891,000	71.7%	93,360
Mobile Repair Party	5,940	0.5%	651
Total	$1,243,440	100.0%	$130,209

7. Latest Bond Rate published by the Director, Acquisition Program Integrity Secretariat (APIS), is 10%.

8. Working Capital Employed applicable to the contract is $290,376 (see Example 1 in Annex 10.2.1), broken down as follows:

Company Furnished Materials	$346,500	27.8%	$80,724
Repair and Overhaul	891,000	71.7%	208,200
Mobile Repair Party	5,940	0.5%	1,452
Total	$1,243,440	100.0%	$290,376

9. Latest Chartered Bank Prime Rate published by the Director, APIS, is 11%.

10. The contractor has been performing this or similar Repair and Overhaul work for a number of years, and the contract price was negotiated and agreed to prior to work commencing. As a result, the rate for contractual risk on the fixed time rate work is assessed at 3%.

Profit on Company Furnished Materials

Profit Factor	**Measurement Base**			
	Details	**Amount $**	**Proifit Rate %**	**Proft Amount $**
Return on Capital Employed	Fixed Capital Employed	36,198	1.7 x 10%	6,154
	Working Capital Employed Applicable to Contract	80,724	11	8,880
	Total	116,922		15,034
General Business Risk	Direct Materials	300,000	1.5	4,500
	Material Handling Overhead	15,000	4	600
	G & A	31,500	4	1,260

	Total Costs	346,500		6,360
Contractual Risk	Cost Reimbursable - No Ceiling	300,00	0	--
	Material Handling Overhead and G & A - Fixed Rates	46,500	3	1,395
	Total Costs	346,500		1,395
	Total Profit = 6.6% of Total Costs			$22,834

Mark Up for Company Furnished Materials	
Laid Down Cost	$100.00
Material Handling @ 5%	5.00
	105.00
G & A @ 10%	10.50
	115.50
Profit @ 6.6%	7.62
Mark Up 23.12%	$123.12

Profit on Accountable Advance Spares Embodied

Factor de Profit	**Measurement Base**			
	Details	**Amount $**	**Profit Rate %**	**Profit $**
Return on Capital Employed	N/A	--	--	--
General Business Risk	General AA Spares	450,000	2	9,000
	Material Handling Overhead	22,500	4	900
	G & A	47,250	4	1,890
	Total Costs	519,750		11,790
Contractual Risk	Cost Reimbursable - No Ceiling Risk Price Basis of Payment	519,750	0	--
	Total Profit = 2.3 % Total Costs			$11,790

Mark Up for AA Spares Embodied	
Laid Down Costs	$100.00
Material Handling @ 5%	5.00
	105.00
G & A @ 10%	10.50
	115.50
Profit @ 2.3%	2.66
Mark Up 18.25%	$118.16

Profit on Repair and Overhaul

Profit Factor	Measurement Base			
	Details	**Amount $**	**Profit Rate %**	**Profit Amount $**
Return on Capital Employed	Fixed Capital Employed Applicable to Contract	93,360	1.7 x 10%	15,871
	Working Capital Employed Applicable to Contract	208,200	11	22,902
	Total Capital Employed	301,560		38,773
General Business Risk	Direct Labour	270,000	4	10,800
	Plan Overhead	540,000	4	21,600
	G & A	81,500	4	3,240
	Total Costs	891,000		35,640
Contractual Risk	Fixed Time Rate Basis of Payment	891,000	3	26,730
Total Profit = 11.4 % of Total Costs				$101,143

Fixed Time Rate for Repair and Overhaul	
Direct Labour	$9.00 per hour
Plant Overhead	18.00 per hour
	27.00 per hour
G & A @ 10%	2.70 per hour
	29.70 per hour
Profit @ 11.4%	3.39 per hour
Selling Price	$33.09 per hour

Profit on Mobile Repair Party

Profit Factor	Measurement Base			
	Details	**Amount $**	**Profit Rate %**	**Profit Amount $**
Return on Capital Employed	Fixed Capital Employed Applicable to Contract	651	1.7 x 10%	111
	Working Capital Employed Applicable to Contract	1,452	11	160
	Total Capital Employed	2,103		271
General Business Risk	Direct Labour	2,700	4	108
	Plan Overhead	2,700	4	108
	G & A	540	4	22
	Total Costs	5,940		238

Contractual Risks	Fixed Time Rate Basis of Payment	5,940	3	178
Total Profit = 11.6 % of Total Costs				$687

Fixed Time Rate for Mobile Repair Party	
Direct Labour	$9.00 per hour
Plant Overhead	9.00 per hour
	18.00 per hour
G & A @ 10%	1.80 per hour
Costing Rate	19.80 per hour
Profit @ 11.6%	2.30 per hour
Selling Price	$22.10 per hour

Profit Summary

	Company Furnished Material $	**AA Spares Embodied $**	**Repair and Overhaul $**	**Mobile Repair Party $**	**Total $**
Total Costs	346,500	69,750	891,000	5,940	1,313,190
Return on Capital Employed % of Total Costs	15,034 4.3%	-- --	38,773 4.4%	271 4.6%	54,078 4.1%
General Business Risk % of Total Costs	6,360 1.8%	11,790 16.6%	35,640 4.0%	238 4.0%	54,028 4.1%
Contractual Risk % of Total Costs	1,395 0.4%	-- --	26,730 3.0%	178 3.0%	28,303 2.2%
Total/All Factors % of Total Costs	22,789 6.6%	11,790 16.6%	101,143 11.4%	687 11.6%	136,409 10.4%

Example 4 - Assumptions:

1. The contract is for the design, manufacture and supply of 24 widgets.

2. The basis of payment is a firm unit price per widget.

3. The contract performance period is 18 months.

4. Total negotiated Contract Costs are:

Direct Materials	$200,000
Subcontracts	40,000
Direct Labour	254,000
Overhead	340,000
G & A Overhead	116,000
Royalties	10,000
Total	$960,000

5. Fixed Capital Employed applicable to the contract is $152,195 (see Example 2 in this Annex).

6. The latest Bond Rate published by the Director, Acquisition Program Integrity Secretariat (APIS), is 10%.

7. Working Capital Employed applicable to the contract is $298,667 (see Example 2 in Annex 10.2.1).

8. The latest Chartered Bank Prime Rate published by the Director, APIS, is 11%.

9. The widgets are of a completely new design, as requested by the government, and the contractor is assuming maximum risk in agreeing to a firm price. However, the price was only reached 3 months after the commencement of work. Therefore, the rate of profit for contractual risk was assessed at 6.5%.

10. The G & A overhead contains an amount of $20,000 for allowable Research and General Development.

Profit Factor	**Measurement Base**			
	Details	**Amount $**	**Profit Rate %**	**Profit Amount $**
Return on Capital Employed	Fixed Capital Employed Applicable to Contract	152,195	1.7 x 10%	25,873
	Working Capital Employed Applicable to Contract	298,667	11	32,852
	Total Capital Employed	450,862		58,726
General Business Risk	Direct Materials	200,000	1.5	3,000
	Subcontracts	40,000	2	800
	Direct Labour	254,000	4	10,160
	Overhead	456,000	4	18,240
	Other Allowable Costs (Royalties)	10,000	--	--
	Total Allowable Costs	960,000		32,200
Contractual Risk	Total Allowable Costs less Royalties	950,000	6.5	61,750
Total Profit = 15.9% of Total Costs				$152,676
Total Cost				$960,000
Profit				152,676
Total				$1,112,676
				= $ 46,361.50 per widget

Annex 10.5: Cost Notification 01 - TPC Royalty Amount for Cost Rate Negotiations (2004-05-14)

Background

Technology Partnership Canada (TPC) has contributed sums per TPC Project Agreements which carry provisions for the possible repayment of these contributions per Royalty repayment terms in these accords.

In most cases, these royalty repayment terms are tied to the sale of the potential product/project that TPC contributed the funds for. The term and repayment percentage varies per the understanding.

Issue

In the agreements that were reviewed, the royalty payments to TPC to be made by the firm, in most instances, exceed the original contribution amount providing that the project has viable sales of the development project.

The annual rate negotiation with a firm will be faced with a potential royalty repayment cost in the overhead rate calculation in the year that the repayment is required and made to TPC.

Cost Recovery Position For Annual Rate Negotiation Negotiations

For annual rate negotiation purposes, the recovery amount allowed on Crown contracts shall be limited to the original TPC contribution per the agreement. The amount in excess of the original contribution shall be considered a separate element outside the rate negotiations and will not be an allowable contract cost.

The amount of the recovery shall be determined by the original TPC agreement. For contributions that are product specific, a product development recovery rate will be established. For non-product specific agreements, the recovery will be made through a General and Administrative Overhead and shall be recovered over a reasonable amount of time.

References

Treasury Board Accounting Standard 3.2 - Transfer Payments (Grants and Contributions)

Contract Cost Principles 1031-2, of the *Standard Acquisition Clauses and Conditions* Manual

Annex 10.1.0: Reasons for the Non-applicability of Certain Cost when Utilizing Contract Cost Principles 1031-2.

Annex 10.1.7: Research and Development Expenses - Number -07

Annex 10.1.12: Company Funded Costs - Number - 12

CICA 3290 Contingencies

Chapter 11 - Contract Management

11.001 (1994-06-23) Contracting officers must ensure that the terms of the contract are met and that the Crown's interests protected. The level of involvement in contract management activities will vary with the scope and complexity of the procurement.

Effective client service will be enhanced when the contracting officer verifies with the client, on all milestone dates in a contract, that the contractor is meeting the terms of the contract.

Progress Claims and Invoicing

11.002 (1994-06-23) No payment, other than a progress payment, may be made under a contract unless a person authorized by the appropriate minister certifies that:

(a) the work has been performed,

(b) the goods supplied or the service rendered, as the case may be, and

(c) the price charged is according to the contract or, if not specified by the contract, is reasonable.

Where a payment is to be made before the completion of the work, delivery of the goods or rendering of the service, the payment must be in accordance with the contract.

11.003 (1994-06-23) Progress claims are normally routed, through the contracting officer, to the client for verification and authorization of payment. Contracting officers processing payment claims must act promptly. The standard due date for payment is thirty (30) days after invoicing or receipt of goods, whichever is later. Acceptable performance standards must be set by the sectors/regions to allow adequate time for the certification of the claim by an authorized representative of the client. All other invoices are normally sent directly to the client by the contractor.

Some confusion for contractors and clients may result because Public Works and Government Services Canada (PWGSC) is both the contracting authority and, with the Minister's role as Receiver General for Canada, the issuer of the cheque. If there is a payment problem the contracting officer must determine the source of the problem and take appropriate action.

11.004 (2003-05-30) Progress payment claims must include the completed form PWGSC-TPSGC 1111, Claim for Progress Payment, which requires a certification of contract expenditures. If the contractor's certification of the claim is false, this cannot be used against third party claimants.

11.005 (1994-06-23) Invoices that include billings for items not received are not considered due until all items are received. If a contractor wishes payment for a partial shipment, a revised invoice, if permitted by the contract, must be submitted.

11.006 (1994-06-23) Clients are required to notify suppliers of any error or missing information in an invoice or supporting documentation, within fifteen (15) days of receipt. Clients should return, within fifteen (15) days, any invoice not in accordance with the terms of the contract to the contractor for resubmission.

Claims for Exchange Rate Adjustment

11.007 (2003-05-30) For contracts subject to the exchange rate fluctuation adjustment provision, the Conversion Factor (Initial) shown in Column 3 of the form Claim for Exchange Rate Adjustments, PWGSC-TPSGC 9411, will establish the conversion rate against which claims for

adjustment will be calculated, subject to the criteria set out in clauses C3015C, C3020C or C3030C. This Conversion Factor (Initial) will normally be the same as the Bank of Canada rate on the date of bid closing or any other date as otherwise specified in the contract. (See 7D.413.)

Interest

11.008 (1994-06-23) Simple interest will be paid automatically on all amounts that have been outstanding for more than fifteen (15) days following the day the amount was due and payable, but only if the government is responsible for the delay. The amount of interest will be shown separately on the cheque stub or accompanying remittance advice.

Interest will be calculated from the day after the due date to the day prior to the date that the payment is issued. However, interest will not be paid until the contract payment is made.

Interest is calculated according to the following formula:

Interest = Amount owed x ((that date's bank rate + 1.25%) x (number of days interest payable/365))

Taxes and Duties

Goods and Services Tax/Harmonized Sales Tax

11.010 (1998-02-16) Goods and Services Tax (GST) and the Harmonized Sales Tax (HST), as applicable, is payable on the invoiced amount before any discount for prompt payment or penalty for late payment.

11.011 (2004/05/14) GST/HST is payable when the progress, milestone, or advance payment becomes due or the client pays it.

Canada Revenue Agency (CRA) considers advance payments to be progress payments.

11.012 (1998-02-16) GST/HST is normally paid on the total amount claimed before any holdback is deducted. No GST/HST is paid when the holdback is released.

The exception is a holdback under legislation or under a contract for the construction, renovation or repair of a marine vessel or real property. GST/HST is due when the amount held back becomes due or when the contractor receives it, whichever is earlier.

Excise Taxes

11.013 (1994-06-23) The general terms and conditions provide for adjustments in firm price and ceiling price contracts in the event of changes in excise taxes after the contract date.

After-Imposed and After-Relieved Taxes

11.014 (1994-06-23) A contract will be increased by the actual amount of any after-imposed taxes, provided the contractor forwards to the contracting officer a certified statement showing that the increase in cost is directly attributable to the after-imposed taxes and that no amount for such newly imposed taxes was included in the contract price.

11.015 (1994-06-23) A contract will be decreased by the actual amount of any after-relieved taxes.

After-Imposed and After-Relieved Duties

11.016 (1994-06-23) Provision for price adjustments, upward or downward, may be made in firm price contracts, in the event that changes in duties, which affect the cost of the work to the contractor, are made after the contract date.

11.017 (1994-06-23) The contract price shall be increased by the actual amount of any after-imposed duties, provided the contractor forwards to the contracting officer a certified statement showing that the increase in cost is directly attributed to the after-imposed duties, and that no amount for such newly imposed duties was included in the contract price.

11.018 (1994-06-23) The contract price shall be decreased by the actual amount of any after-relieved duties.

Services of Non-Residents

Entry Requirements

11.019 (1994-06-23) In the performance of a contract, a contractor may wish to use the services of a non-resident employee on a temporary basis. The determination of eligibility to enter Canada is the responsibility of Immigration Canada.

11.020 (1994-06-23) United States nationals may apply for employment authorization at the port of entry; all others must obtain authorization before the point of entry. To obtain the correct documentation and necessary authorizations, the applicant must contact the nearest Canadian Embassy or Consulate.

Canadian citizens residing outside Canada always have the right to work in Canada.

11.021 (1994-06-23) In cases of emergency service requirements, the client (or Public Works and Government Services Canada [PWGSC]) should provide the contractor with written notice, including details of the emergency. In some emergencies, this information may be provided by telephone to the appropriate immigration authorities.

Withholding in Lieu of Taxes

11.022 (2005-06-10) Clients, on whose behalf a contract for services rendered in Canada has been awarded by PWGSC to a non-resident contractor, are responsible for: withholding 15 percent of any amounts payable, in lieu of taxes; remittance of this amount to Canada Revenue Agency (CRA); and reporting the amounts paid, and withheld, to CRA. (See 6D.430 and 7A.103.)

PWGSC contracting officers should remind clients of their obligations in this regard. Reference should be made to CRA Income Tax Information Circular IC75-6R2.

11.023 (2005-06-10) When a contract provides for services to be performed in more than one country, including Canada, an allocation of the contract price is required. Only the portion of the payment attributable to services performed in Canada will be subject to a withholding of 15 percent. (See sections 32-34 of Income Tax Information Circular IC75-6R2.)

11.024 (1994-06-23) Although most tax treaties between Canada and other countries provide for some relief from Canadian tax, Canada does not normally relinquish its right to withhold tax pursuant to the provisions of section 153 of the *Income Tax Act* and subsection 105 (1) of the *Income Tax Regulations*.

11.025 (2004-05-14) Where the non-resident contractor can adequately demonstrate, based on treaty protection, that withholding normally required is in excess of the ultimate Canadian tax liability, the withholding may be reduced accordingly by CRA.

11.026 (2004-05-14) Requests for a waiver or a reduction of the amount required to be withheld will not be entertained unless deductions at source are remitted to CRA.

Overtime

11.027 (1996-06-03) When a contractor incurs overtime work on Crown contracts, added costs may be incurred by the Crown in the form of overtime premiums. Recognition of the additional cost by the Crown depends upon the attendant circumstances and the cause of the overtime. Crown work should not attract higher overtime charges than would apply to similar commercial work.

Scheduled overtime premium costs included in a contractor's overhead account and applied to Crown contracts are allowed if Crown contracts account for a pro rata share of the overtime.

Unscheduled overtime premium costs to specific contracts are allowable only if the overtime is due to PWGSC or client demands for accelerated delivery, increased delivery quantities, or other reasons initiated by the client for which benefit to the Crown can be demonstrated.

If the need for unscheduled overtime appears likely, the contracting officer should ensure that proper provisions concerning authorization, rates and dollar limits are included in the contract.

The contracting officer should consult with the cost analyst to ascertain whether the contractor's cost system includes overtime premium costs in the overhead account or as a direct charge to the particular contract.

11.028 (1994-06-23) When deciding to authorize unscheduled overtime, the contracting officer should:

(a) consult with the client and jointly determine that authorization and the need of overtime will result in benefit to the Crown;

(b) ensure that funds are available to reimburse the contractor;

(c) determine the aggregate limits of time and costs of the overtime to be authorized;

(d) determine what delegation of authority, if any, should be made to the client representative;

(e) ensure that provision for proper claiming and approval of overtime claimed, and overtime payments to the contractor is included in the contract.

Claims for Extra Payment

11.031 (2002-12-13) From time to time, contractors submit claims for upward price revision of firm price contracts, based on changes caused by Crown action. A firm price contract may not be amended to provide for upward price revision without prior approval of Treasury Board (TB), unless either the contract contains an escalation clause covering the adjustment requested or the contract terms and conditions allow for the adjustment requested.

When unusual circumstances exist, other than those a contractor might reasonably anticipate, a contractor or a sector/region may submit a claim to the Contract Audit Group (CAG).

These Extra Payments shall cover only the additional reasonable costs incurred by the contractor and will be considered only where the circumstances were beyond the contractor's control and where the contractor was without fault or negligence and could not reasonably have foreseen the actual circumstances at the time the contract was awarded.

11.032 (2003-05-30) The approval of TB is required for all Extra Payment claims, irrespective of the dollar amount. The advice of Legal Services should be obtained as to whether the extra payments may be considered as an amendment to the contract or an "ex gratia" payment.

TB has granted full authority to deputy heads to make ex gratia payments, and to designate officials within the department to act on their behalf. Refer to TB Policy on Claims and Ex gratia

Payments.

As a general rule, claims for Extra Payments arising solely from the following causes will not be approved by TB:

- *increases in labour or material costs*;
- *changes in freight rates*;
- *revisions in exchange rates*;
- *delays caused by the contractor*;
- *errors on the part of the contractor*; or
- *other difficulties which the contractor overlooked, but should have foreseen.*

Assignment of Monies

11.033 (1994-06-23) Contracting officers may receive from contractors, banks, other financial institutions, or other sources, statements or documents showing that persons or companies other than the contractor claim to be entitled to receive monies under a contract with PWGSC or Canadian Commercial Corporation (CCC).

11.034 (2001-12-10) Payments to persons other than those named in the contract will only be made in cases of bankruptcy, the appointment of a receiver manager, or an assignment of debt pursuant to Part VII of the *Financial Administration Act*.

11.035 (2004-05-14) This does not include those cases where the contractor owes a debt to Canada for tax arrears where Canada Revenue Agency has obtained TB approval to collect taxes due or has requested a deduction for taxes due to Canada.

11.036 (1994-06-23) If the claim relates to a bankruptcy or insolvency situation, see 11.112.

11.037 (1994-06-23) The contracting officer, immediately upon receipt of any other claim, such as a power of attorney to receive monies under a contract, a notice of assignment of money under a contract, or an assignment of book debts with a request to pay the assignee, should send the document to the client's requisitioning authority or, for CCC, the Comptroller.

Amending Contracts

11.038 (1994-06-23) Contract amendments are used to formally delete, modify, or introduce new conditions to the original contract. The need for an amendment may arise from continuing negotiations, changes in requirements, or to deal with an unforeseen circumstance. Amendments are subject to agreement by the contractor.

The amendment format will follow the form of the original contract. The amendment should identify, by using complete clauses, any changes, additions or deletions. Any aspect of the contract which will be affected by the amendment must be identified and dealt with in the amendment.

11.039 (1994-06-23) A single amendment may contain many individual changes.

The cost of producing amendments can become significant, so wherever practical, contracting officers should combine as many individual changes into a minimum number of amendments, e.g. multiple changes in a technical requirement due to design change or deviation.

Amendments must receive the same distribution as the original contract.

Contract Amendment Request

11.040 (2000-12-01) If TB approval was previously required for a contract, or if an amendment to the original contract increases the dollar limit to TB approval, a Contract Request, form PWGSC-TPSGC 1151-1, must be completed.

Preparation of this form is outlined in Annex 11.1. Information pertaining to Contract Requests is outlined in 7E.636 and Annex 7.7. The amendment approval and signing levels are detailed in Section 6A.

Design Change/Deviation

11.045 (1994-06-23) If there is no design change or deviation provision in the contract, the procedure may be instituted only after an authorization document is received from the client and is incorporated in the contract. The client's Design Authority must be designated in the contract and adequate funds should be authorized and set aside for changes. If additional funds are required, a requisition amendment is needed.

11.046 (1994-06-23) Each design change or deviation request must have technical approval by the Design Authority and, normally, procurement authorization by the contracting officer.

Delegation of Authority

11.048 (1994-06-23) After the client has authorized a design change or deviation, the contractor's estimated cost of design changes or deviations is subject to negotiation by the contracting officer.

If possible, price changes should be negotiated before the work affected by the change has been completed.

11.050 (1994-06-23) Design changes or deviations can result in upward, downward or nil adjustment to contract costs. After approval by the client, the contracting officer is responsible for prompt negotiation of price adjustments, and ensuring that these changes are reflected in the total contract price.

11.051 (2003-05-30) All design changes and deviations must be supported by the form Design Change/Deviation, PWGSC-TPSGC 9038, and reflected in an amendment.

It may be convenient to include a number of design changes or deviations in one amendment.

Implementing the Procedure

11.052 (1994-06-23) When it is necessary to depart, either temporarily or permanently, from the governing technical data in a contract, a request for design change or deviation may be originated by the contractor or by the Design Authority.

11.053 (1994-06-23) The contractor may initiate the Design Change/Deviation process by completing section 1 of the Design Change/Deviation form, including a ceiling price for the change, subject to negotiation and sending three copies to the Design Authority and one to the contracting officer. When required, copies of the supporting technical data must be submitted.

A subcontractor must submit the Design Change/Deviation form through the contractor, who will ensure that all the information required is entered prior to submission.

11.054 (1994-06-23) The Design Authority, with the sole right to deny approval, will review the design change or deviation request and either approve it and forward it to the contracting officer or reject it and return it to the contractor so noted.

11.055 (1994-06-23) The Design Authority may initiate the process by sending five copies of the Design

Change/Deviation form to the contractor. After providing the contractual information required, the contractor will retain one copy, and send three copies to the Design Authority and one to the contracting officer.

11.056 (1994-06-23) Where equipment or stores affected by the change are being procured under more than one contract, a separate Design Change/Deviation form is required for each contract, unless the use of one form for all contracts held by a single contractor has been specifically authorized by the Design Authority. In all cases, the form must show all contract references, including the file number and the serial number assigned by the contracting officer.

11.057 (1994-06-23) The contracting officer will:

(a) negotiate a firm price, if possible, or another pricing basis that is consistent with the existing basis of payment in the contract;

(b) provide contractual authority for the design change or deviation; and

(c) sign the Design Change/Deviation form and send a copy to the contractor and the Design Authority. Upon receipt, the contractor will implement the change.

11.058 (1994-06-23) The contractor should direct enquiries regarding the Design Change/Deviation procedure to the Design Authority. The contracting officer or the Design Authority will provide blank forms to the contractor, who will provide forms to subcontractors.

Surplus Materiel

11.060 (1994-06-23) Surplus materiel resulting from an authorized design change or deviation must be accounted for and reported to the contracting officer.

Loan of Department of National Defence Materiel

11.061 (2003-05-30) When a contract does not provide for the loan of Department of National Defence (DND) materiel, the contractor may request such a loan.

Such requests should be directed to DND, Director Disposal, Sales, Artifacts and Loans at (819) 994-8692. (See 6B.1BB.)

Subcontracting

11.062 (1999-12-13) Except for those subcontracts previously permitted in the contract or as allowed for in the general terms and conditions forming part of the contract, a contractor must apply to subcontract using form PWGSC-TPSGC 1137, Application for Permission to Subcontract. In completing the application for subcontracting the contractor is required to certify that the proposed subcontract is to be subject to the same general conditions and supplemental general conditions as contained in the contract. The contracting officer will only consent if satisfied with the subcontractor and the proposed subcontract.

11.063 (1994-06-23) If a contractor wishes the subcontract to include terms and conditions which deviate from those contained in the contract, the contractor should be informed that any deviations are entirely at its own risk.

11.064 (1994-06-23) The placement of a subcontract does not relieve the contractor of any contractual obligations or impose any liability upon the Crown in relation to the subcontractor.

11.065 (1994-06-23) The profit margin for a subcontract should not exceed the top rate of profit allowed in the contract or the type of subcontract, unless exceptional circumstances prevail.

11.066 (2005-06-10) If the value of the work subcontracted will exceed the amount authorized by more than 15 percent, the contractor must submit a revised form PWGSC-TPSGC 1137. Once approved, a copy of the revised form must be sent to Contract Audit Group (CAG).

11.067 (2004-05-14) For the protection of contractors and subcontractors, the contracting officer must instruct the contractor to inform each subcontractor, at the time of negotiating a subcontract, of the appropriate general conditions and supplemental general conditions, and the applicability of the Contract Cost Principles 1031-2.

11.068 (2005-06-10) Copies of all subcontracts, multi-tier subcontracts, applications and revisions to subcontracts must be forwarded by the contractor to the contracting officer and CAG, in order to maintain up-to-date data on the contractors' financial status.

Subsequent Tier Subcontracting

11.069 (1994-06-23) Direct PWGSC control over second and subsequent tier subcontractors is not practical. Contractors must be advised by the contracting officer, at the time of subcontracting, that when second-tier subcontractors award further subcontracts, all terms and conditions must be approved by the contractor.

Defence Production Act

11.070 (1994-06-23) The *Defence Production Act* imposes upon defence subcontractors obligations similar to those imposed on contractors. The contractor must fully inform subcontractors that the terms and conditions in the contract are enforceable under the *Defence Production Act*.

Assignment of Contracts

11.075 (1994-06-23) When a contractor assigns a contract, the responsibility for all or part of the performance is transferred to a third party. However, the assignment of a contract must not relieve the original contractor of any obligations under the contract or impose any liability on the Crown in relation to the assignee.

11.076 (1994-06-23) In order to protect the Crown's interest, the transfer of the liabilities and rights under the original contract to the assignee will be done so that the original contractor is ultimately liable for the performance of the contract.

An acceptable manner of protecting the Crown's interest is to obtain the original contractor's guarantee of performance in the event the assignee fails to perform.

11.077 (2002-05-24) The contracting officer, with the assistance of the Canadian and International Industrial Security Directorate, must ensure that the assignee meets all security requirements specified in the contract.

Approval of Contract Assignments

11.078 (1994-06-23) Under the general conditions, the written permission of PWGSC is required prior to any contract assignment. All proposed assignments supported by a contracting officer must be referred to the cost analyst for review, and then, if appropriate, to Legal Services for concurrence and drafting of the necessary legal documents.

11.079 (1994-06-23) The contracting officer will forward the assignment agreement to the appropriate PWGSC signing authority with the reasons for the assignment, the number and value of contracts involved, and the financial condition of the assignee.

11.080 (2005-06-10) A copy of the approved assignment is to be forwarded to CAG, in order to maintain data on supplier financial status, or to the appropriate vice-president (Canadian

Commercial Corporation).

Audits

11.081 (2005-06-10) The authority for discretionary audits results from either the contractual terms, or statute (*Defence Production Act*, section 19). If a contracting officer determines that a discretionary audit is required, a request is to be made to the CAG. The cost of discretionary audits will be borne by CAG.

Contracting officers may refer any supplier certification of Canadian and/or Korean content to CAG for audit of compliance to the policy.

Contractor Cost Records

11.082 (2005-06-10) If required audits have not been completed before a contract commences, the contracting officer must ask CAG to carry them out as soon as possible.

11.083 (2005-06-10) If inadequate contractor records are discovered during a contract, or the contractor's cost accounting system has changed, or is likely to change, an examination of the adequacy of a contractor's accounts is to be performed by qualified personnel approved by CAG.

11.084 (1994-06-23) If the audit confirms inadequate records, the contracting officer must advise the contractor of the deficiencies or inadequacies in the accounting records and obtain a commitment to an agreed plan of action to correct them.

11.085 (1994-06-23) When the contractor refuses to make a commitment to an agreed plan of action to correct a situation of inadequate records, or fails to meet commitments, the sector/region will decide, based on the circumstances, the appropriate course of action to follow. Among the various options are:

(a) withholding of future contracts;

(b) negotiation of special terms and conditions after taking into account the known deficiencies, e.g. negotiation of a larger holdback on progress claims, negotiation of a firm pricing basis to replace a proposed cost reimbursable basis for which adequate substantiation of costs would not be available;

(c) full or partial termination of the contract for breach of contractual provisions relating to maintenance of proper accounts and records.

11.086 (2005-06-10) The contracting officer will advise CAG of the findings and of the option(s) exercised.

Financial Security Issues

Crown Responsibilities

11.087 (1994-06-23) During the contract management period, contracting officers must ensure that contract provisions relating to Crown responsibilities, a breach of which could nullify a surety bond, are strictly adhered to.

Changes in Contract Terms

11.088 (1994-06-23) Before authorizing any material changes in contract terms, contracting officers must ensure that such changes do not invalidate security obligations by obtaining the consent of

the surety company.

"Material changes" means any change to the contract except a change which on the face of it and without further explanation or investigation is clearly for the benefit of the surety. Examples of changes which require the surety company's approval are: changes in the contract price; changes in the scope of the work; revision to the completion and/or delivery dates specified in the contract; and, changes in the payment schedule.

11.089 (1994-06-23) Where the change is to be made by way of contract amendment, a copy of the draft amendment should be sent to the surety company for concurrence. Where the contract contains a provision for design or engineering changes within certain limits, it is not necessary to obtain the surety company's prior consent. In this case, the company only needs to be kept informed. If the limits are to be changed, the surety company's consent is required.

11.090 (1997-09-15) In cases where the contract price is being increased, it may be advisable to increase the amount of security to reflect the revised contract price. The face amount of a contract support letter of credit may be increased 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. Contract amendments should be contingent upon issuance of a new letter of credit or an amendment to the current letter of credit.

11.091 (1997-09-15) If a security deposit exceeds the amount required due to changes in the contract price, the excess is to be returned to the contractor. (See 11.296.) The face amount of a contract support letter of credit may be 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.

Contractor Difficulties

11.092 (1994-06-23) As soon as the contracting officer becomes aware that a contractor may have difficulty in successfully completing a contract, the surety company must be informed immediately.

Bonding Companies

11.093 (1994-06-23) Whenever a bonding company has failed to honour its undertakings, the matter must be referred to Legal Services for appropriate action, and to the Corporate Secretary who shall notify TB.

Protecting Crown Goods

11.095 (1994-06-23) If a contractor is delinquent in discharging its accrued liabilities, liens may be attached, by subcontractors or suppliers, to goods that the Crown has taken title to through full or partial payment. Steps must be taken to protect the Crown's interests.

This is not required for service contracts, and is generally not cost effective for goods contracts under $25,000.

11.096 (1994-06-23) Where a contractor has given security under section 427 of the *Bank Act*, a waiver is to be obtained waiving the bank's priority over the Crown's title to the goods. The contracting officer must consult with Legal Services.

If the contractor should change banks and a new waiver is not obtained, or if the contractor fails to disclose that security was given, the Crown's title could be affected.

11.097 (2005-06-10) To protect the Crown's interest with potentially insolvent or bankrupt contractors, the contracting officer must obtain a waiver when a bank or other financial institution has a prior lien on the contractor's assets. If the waiver is unobtainable, consult with Legal Services, the cost analyst, and Contract Audit Group (CAG) to determine if the contractor's credit position warrants relieving the contractor of the contractual obligation relating to bank liens.

11.098 (1994-06-23) To preclude the attachment of liens, the contracting officer should check, to the extent possible, that the contractor has met payment obligations under the contract to its workmen, subcontractors and suppliers.

11.099 (1994-06-23) All intimations of unpaid invoices or wages, or unreasonable delays in the payment thereof, shall be reviewed promptly by the contracting officer, and a cost analysis carried out if appropriate, in cooperation with a cost analyst.

11.100 (1994-06-23) The frequency, scope and extent of checks will be determined and carried out by the contracting officer, based on cost/benefit, and the contractor's payment record, credit rating and financial strength.

11.101 (2005-06-10) When the financial analysis indicates potentially serious financial problems, a report is to be sent to CAG, which will distribute copies to all procurement sectors/regions. The sectors/regions in turn must compile lists of all open contracts with the contractor involved, including the contract values and anticipated completion dates, and return these lists to CAG.

CAG will then determine whether a discretionary verification should be carried out, and the scope and extent of the verification.

Sectors/regions should only enter into new contracts with the contractor with due caution and proper justification.

11.102 (2005-06-10) A discretionary verification is carried out by qualified personnel approved by CAG. Discretionary verifications may be commissioned only by CAG, and will be performed on a timely and prompt basis so as to lessen potential risks to the Crown.

11.103 (1997-09-15) If the total risk exposure is $2 million or over, a discretionary verification will normally be undertaken. A determination will be made as to the protection provided to the Crown by any security deposits (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit), performance bonds, labour and material payments bonds, or registration action taken or intended.

11.104 (2005-06-10) If the total risk exposure is under $2 million, CAG will, in consultation with the sector/region involved, determine the need to commission a discretionary verification, after taking into account any financial security provision or registration action.

11.105 (2005-06-10) When the verification points to a breach of the contractor's specific contractual obligation to effect prompt payment to its workmen, subcontractors, or suppliers, CAG will provide written advice to the sectors/regions and senior financial officers of the client(s) holding the contracts in default.

Registering Notice of Interest in Goods

11.106 (1994-06-23) In provinces other than Quebec, the Crown can register notice of its interest in the goods with a view to protecting itself against the risk of liens. The registration requirements differ for each province. The contracting officer must consult with Legal Services. (See 7F.733.)

In practical terms, because of the complexities involved, this action is appropriate only on high dollar value contracts.

Bankruptcy, Receivership, Insolvency

11.112 (2005-06-10) The contracting officer must consult Legal Services when:

(a) a contractor proposes a settlement while in an impending or actual receivership, bankruptcy or insolvency condition;
(b) the contract is secured by surety bond guarantees or other securities; or
(c) a contractor has given security to a bank under section 427 of the *Bank Act*.

Upon receipt of a bankruptcy, receivership or insolvency notice or when there is an indication of such, the contracting officer must:

- inform the Director;
- develop a plan, in consultation with the client, for completion of the work; and
- advise CAG and Legal Services.

11.113 (1994-06-23) When a contractor is in formal bankruptcy, the contracting officer must, in consultation with Legal Services, pursue the rights of the Crown, including:

(a) realizing on any contractual securities;
(b) proving title to any Crown property in the contractor's possession;
(c) ensuring payment, if the Crown is unsecured, in priority of other unsecured creditors; or
(d) offsetting money payable to the contractor against any amount due the Crown.

11.114 (1994-06-23) After formal bankruptcy or receivership, monies due to the contractor are to be sent to the Trustee in Bankruptcy or the Receiver-Manager, as applicable.

Disputes

11.115 (1994-06-23) Disputes must be handled expeditiously. The contracting officer is responsible for ensuring that all parties meet their contractual obligations. Proper record keeping during disputes is vital for clarification, audit or termination purposes.

11.116 (1994-06-23) If the client has a valid complaint, the contracting officer should formally advise the contractor in writing, with a reminder of the default provisions in the general conditions. If during a reasonable period of time, corrective action has not been undertaken, consultation with Legal Services is recommended to ensure the protection of the interests of the Crown.

11.117 (1994-06-23) If a contracting officer is unable to resolve a contract dispute, the matter should be brought to the attention of the contracting officer's immediate supervisor.

11.118 (2002-12-13) When any dispute associated with goods and services contracts cannot be resolved expeditiously through negotiation, the contractor should be advised, in writing, to submit a formal claim to Contracts Settlement Board (see 11.2D1).

When any dispute associated with architectural and engineering, construction, building and maintenance and leasing contracts cannot be resolved expeditiously through negotiation, the contractor/consultant may request the Minister, in writing, to authorize a Contract Disputes Advisory Board hearing (see 11.2D2).

Goods/Services not in accordance with the Contract

11.120 (1994-06-23) It is the responsibility of the client to inform the contractor, within fifteen (15) days of receipt, or as specified in the contract, that the goods or services are not in accordance with

the contract. Failure to do so may prejudice any subsequent claims by the Crown. The settlement made following such a disagreement may take into account any outstanding interest.

Timely Performance

11.121 (1994-06-23) Under the general conditions, time is of the essence of the contract. If a contractor fails to deliver the goods or perform the services on time, the contracting officer must ascertain, in consultation with the client and Legal Services, the facts surrounding the delay. If the delay was caused by factors beyond the control and without the fault or negligence of the contractor, the contracting officer must extend the time of performance of the contract for a period equal to the length of the delay. Excusable delays are detailed in the general conditions. In all other circumstances, the contractor is responsible for the delivery default. If the contractor is in default in carrying out the delivery commitments, the contracting officer may, upon giving notice in writing to the contractor, terminate the contract fully or partially.

11.122 (1994-06-23) Where time of performance is to be extended due to delays beyond the control of the contractor, and if the contract is secured by surety bonds, the contracting officer must:

(a) advise the surety company and obtain its concurrence before the completion dates specified in the contract are actually extended; and

(b) if applicable, advise the surety company and obtain its concurrence before adjusting the contract price due to additional work requirements.

Loss of Narcotics

11.123 (2005-06-10) In the case of any loss, theft or breakage involving narcotics or controlled drugs while in transit, the Scientific, Medical and Photographic Division of the Commercial Acquisition and Supply Management Sector, will initiate action in accordance with the *Controlled Drugs and Substances Act* and *Food and Drugs Act*.

Terminations

11.130 (2003-12-12) To determine which type of termination might be involved, see 11.131 (Termination for Convenience of the Crown), 11.133 (Termination for Default) and 11.135 (Termination by Mutual Consent). Refer to subsection 5-J of the *Standard Acquisition Clauses and Conditions* (SACC) Manual for termination clauses.

Termination for Convenience of the Crown

11.131 (2002-12-13) Occasionally the Crown may wish to terminate a contract for convenience. (See 11.146.) This may be due to curtailment of funds, discontinuation of a government program, or other circumstances which make the acquisition of the product or service unnecessary. To protect the integrity of the bid solicitation system, the Crown may also terminate a contract for convenience if it is determined that it has been mistakenly awarded to other than the lowest responsive bidder. The general conditions contain a section titled "Termination for Convenience" which becomes applicable as soon as the "Notice of Termination" is received by the contractor.

11.132 (1998-06-15) Termination for Convenience is to be applied where:

(a) the client has requested termination;

(b) a Termination for Default cannot be considered because the contractor is not in default; and,

(c) a Termination by Mutual Consent would not be more advantageous to the Crown.

Termination for Default

11.133 (1994-06-23) Termination for Default applies when the contractor breaches the contract, usually through non-performance or delayed delivery. "Default by Contractor" in the general conditions provides the basis for Termination for Default. (See 11.1B0.)

11.134 (1994-06-23) Termination for Default is to be applied where:

(a) the contractor has breached the contract; and

(b) in the Crown's opinion, the contractor would have no valid defence, should the Crown claim loss or damages. Any opinion regarding a contractor's valid defence shall be rendered only by Legal Services.

A valid defence usually exists if failure to perform arises out of causes beyond the control and without the fault or negligence of the contractor, for example:

- *faulty or incomplete specifications were provided by the Crown;*
- *government-supplied materiel was faulty or substandard, or supplied after the time agreed to in the contract;*
- *samples were not provided on time; or*
- *no action was taken by the Crown after the first default by the contractor.*

Termination by Mutual Consent

11.135 (1994-06-23) On rare occasions both parties may agree to termination without claims or penalties, usually where the client has requested full or partial termination of a contract, the contractor has incurred minor or no expenses and is willing to forego a claim, and the matter may be settled at no cost to the Crown. (See 11.1B5.)

11.136 (1994-06-23) Termination by Mutual Consent will not be actioned where it is in the interest of the Crown to issue a default termination or when additional costs are claimed by the contractor following the reduction or cancellation of all or a portion of the contract.

Contractor's Request for Termination

11.137 (1994-06-23) When a contractor requests termination because of anticipated losses in performing the contract, consent will not be granted. Instead, the contractor should be instructed that the obligations in the contract must be fulfilled. The contractor may, on completion of the contract, request an "extra payment" for additional costs incurred or losses suffered, if some responsibility for the additional cost or for the loss can be ascribed to the Crown. (See 11.D31.)

If the contractor refuses to carry out the contractual obligations, termination for default should be instituted.

Financial Security Issues

11.138 (1997-09-15) If the contract is secured by a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) it should not be terminated without the prior advice of Legal Services.

11.139 (1994-06-23) If the contract is secured by surety bonds, it is not to be terminated as this would also terminate the existing contractual relationship with the bonding company. When a

contractor fails to perform a contract, or when a claim is received for non-payment of labour or material, and a payment bond is in place, contracting officers must immediately inform the surety company in writing, requesting that corrective action be taken. Contracting officers must not enter into negotiations with the contractor or claimant.

Involvement of Legal Services

11.140 (1998-06-15) The following terminations shall not be issued without a written legal opinion: all Terminations for Default, Terminations by Mutual Consent, and confirming Notices of Terminations for Convenience.

In seeking the opinion of Legal Services, the contracting officer must submit the contract file with a chronological, typed index of the documents forming the basis for the termination request, together with a short note outlining the events leading to termination. Based on this information, Legal Services will render an opinion and advise as to the appropriate method of termination.

Note: A legal opinion is not required for initial Notices of Termination for Convenience. The issuance of an initial Notice of Termination for Convenience may only be taken in response to the client's written instructions.

While a legal opinion prior to the issuance of any termination is desirable, in the interest of limiting costs incurred by the Crown, the initial Notices of Termination for Convenience (see Standard Acquisition Clauses and Conditions [SACC] Manual clauses J0200C and J0205C) do not require a legal opinion and may be issued by the contracting officer in accordance with 11.145.

Involvement of the Contract Claims Resolution Board

11.141 (2005-06-10) The Termination Claims Officer (TCO), Policy, Risk, Integrity and Strategic Management Sector (PRISMS), must be involved immediately in the claim settlement process resulting from contracts that are partially or completely terminated for convenience. Accordingly, the contracting officer must contact the TCO as soon as the initial Notice of Termination (see SACC Manual clauses J0200C and J0205C) is issued, and is to provide the TCO with a copy of each initial and confirming Notice of Termination. The TCO's facsimile number is (819) 956-0355.

Adjustment to Source Lists

11.142 (1994-06-23) Terminations for Convenience of the Crown should not result in any adjustment of the source lists, while Terminations by Mutual Consent may require correction of source lists. Terminations for Default usually are cause for the deletion or suspension of the contractor from the source list.

Standing Offers

11.143 (1994-06-23) Standing Offers are not contracts in the legal sense, and either party may withdraw from a Standing Offer by simple notification to the other party. However, call-ups received by a supplier prior to the date of its formal withdrawal must be fulfilled in accordance with the terms of the Standing Offer.

PWGSC Offices Outside Canada

11.144 (2002-12-13) Termination procedures for contracts awarded by Public Works and Government Services Canada (PWGSC) offices outside Canada may differ from those for contracts issued in Canada, and the termination procedures serve only as a general guide.

For example, if problems arise in such cases, the Director , PWGSC Washington, will obtain

guidance from the TCO and, if necessary, obtain legal advice for the outside offices from Legal Services.

Signing Authority

11.145 (2004-05-14) Initial and confirming Notices of Termination shall be approved and signed by a contracting officer with the signing authority (as indicated in Annex 6.1.2) for the total contract value at the time of the termination.

Termination for Convenience

11.146 (2004-05-14) On 15 January 2002, PRISMS was designated to provide termination settlement services associated with goods and services contracts that have been terminated for the convenience of the Crown. PRISMS was also designated to handle claims arising from United States and Canadian Commercial Corporation (US/CCC) contracts that are terminated for the convenience of the US Government. For terminations involving US/CCC contracts, the Director General, PRISMS will ensure compliance with the certification and termination settlement functions that are required to conform with the US Department of Defense and Department of National Defence Letter of Agreement (refer to US Defense Federal Acquisition Regulation Supplements 225.870-6 and 249.7000). The Director General, PRISMS, will also be responsive to requests by the US Government for arranging for audits of US Government contracts or subcontracts placed directly with Canadian-based suppliers that are terminated for convenience.

The contracting officer and the TCO are responsible for the following termination activities:

Termination Activities	Contracting Officer	Termination Claims Officer
Issue initial and confirming Notices of Termination	X	
Administration of the non-terminated portion of the contract	X	
Assessment of the contractor's request for any upward adjustment of the contract price for the non-terminated portion of the contract		X
Request claim from contractor and forward claim forms	X	
Assist contractor with preparation of claim		X
Ensure acceptability of claim		X
Determine if audit is required		X
Define audit requirements and arrange audit		X
Arrange for inventory verification and screening by client	X	
Negotiate final settlement with contractor		X
Preparation of Settlement and Release document		X
Disposal of surplus inventory	X	
Forward Settlement and Release document to contractor for acceptance		X
Obtain invoice from contractor		X
Process invoice through client department	X	

Distribute Settlement and Release document	X	

11.147 (1994-06-23) Occasionally, the client will require a status report before making a decision to cancel. In this event, the client will inform PWGSC of its intention to reduce or cancel a contract by: issuing a "Notice of Intent to Cancel"; telephone; or, a written message to that effect. The client will usually request all or part of the following contract status information before making a final decision to terminate:

(a) quantity of stores produced against the contract;

(b) quantity of stores in production;

(c) value of raw materials and/or components acquired by the contractor to carry out the specific contract;

(d) the position with respect to tooling and capital equipment, especially where the contractor had to tool-up to carry out the contract;

(e) status of subcontracts;

(f) the most economical point at which to effect termination; and,

(g) the approximate amount of termination claims if known.

11.148 (1998-06-15) The contracting officer will immediately request the information from the contractor and closely follow up to ensure that it is received as soon as possible.

When the information is received, the contracting officer will forward it, together with any recommendations, to the client.

Normally, the client's first request will be to cancel all or a portion of a contract, in which case the contracting officer must immediately issue an initial Notice of Termination in accordance with 11.150 if the termination is due to curtailment of funds, discontinuance of a government program or circumstances that make the acquisition of the product or service unnecessary.

An initial Notice of Termination must be followed by the issuance of a confirming Notice of Termination.

Notice of Termination

11.150 (2002-12-13) On receiving the client's initial written instructions to cancel all or part of a contract for the convenience of the Crown (see 11.131), the contracting officer must immediately issue an initial Notice of Termination for Convenience to advise the contractor to "stop work" (see SACC Manual clause J0200C for a complete termination or clause J0205C for a partial termination). Following the issuance of the initial Notice of Termination for Convenience a confirming Notice of Termination must be issued (see SACC Manual clauses J0001C or J0002C). The confirming Notice of Termination cannot be issued until the formal requisition amendment is received, and a legal opinion has been sought. The contracting officer must also contact and provide the Termination Claims Officer (TCO) with a copy of the initial Notice of Termination.

To expedite the termination action and minimize potential costs to the Crown, the contracting officer is authorized to issue an initial Notice of Termination for Convenience prior to receipt of the formalized amendment to the requisition, and without seeking legal advice (see 11.140).

Suspension of the Work - Stop Work Order

11.151 (2002-05-24) When a client wishes to suspend the work of a contract rather than cancel it, SACC Manual clause J0500C is to be used. The suspension of the work of a contract allows the client to obtain a review of the contract status before deciding the type and extent of termination (including a termination for default). Should a client wish to reinstate a contract after a Suspension of the Work - Stop Work Order has been issued, the Stop Work Order must be rescinded. (See SACC Manual clause J0501C). In this event, it may be necessary to adjust the delivery terms and/or contract price. It is the responsibility of the contracting officer to determine the reasonableness of all claims for additional costs which the contractor may make. Amendments to cover payment of such costs shall be approved in accordance with the contract amendment approval and signing authorities (Annex 6.1.5).

No Claim is Involved

11.152 (2002-12-13) When a contractor advises the contracting officer that a claim will not be submitted following the receipt of an initial Notice of Termination, the contracting officer is to prepare a confirming Notice of Termination, for approval by Legal Services, which includes SACC Manual clause J0003C and eliminates the funding for the terminated items. This Notice of Termination is then forwarded to the contractor for acceptance. Since no claim is made, the TCO is not involved in this process.

Client's Decision

11.153 (1994-06-23) It is the client's responsibility to decide at what stage a full or partial termination should take place. Formal amendments to the requisition confirming the decision to terminate must be provided as quickly as possible.

11.154 (1998-06-15) The contracting officer must not issue a confirming Notice of Termination for Convenience until an amendment to the client's requisition has been received.

The contracting officer should ensure that sufficient funds remain in the amended requisition to cover the estimated claim costs and costs resulting from post-termination activity carried out by the contractor. This includes the cost of producing the claim, segregation, packing, secured storage or residual inventory of material, parts assemblies, tools, equipment, etc., prior to disposal procedure.

Confirming Notice of Termination

11.155 (1998-06-15) As soon as the requisition amendment is received, the contracting officer will prepare and on advice from Legal Services send the contractor the confirming Notice of Termination or the confirming Notice of Partial Termination, using the standard clauses provided in Subsection 5-J of the SACC Manual.

11.156 (2002-12-13) After the confirming Notice of Termination or Partial Termination is issued, the contracting officer will immediately send one copy of the notice to the TCO.

In order to avoid further costs to the Crown and hardship to the contractor, a confirming Notice of Termination must be issued as promptly as possible to finalize the implications of an initial Notice of Termination.

Adjustment of Funds

11.157 (2004-05-14) The funds in the contract should not be adjusted when the confirming Notice of Termination is issued. The contract funds are adjusted only after a settlement offer has been made to a contractor.

The funding will be adjusted by the TCO *at the time that the Settlement and Release document*

is prepared for the approval and signature of the Director General, PRISMS.

Adjustment to the Price of the Non-Terminated Portion of the Contract

11.158 (2002-12-13) Whenever a contractor requests an upward adjustment to the cost or unit price of the non-terminated portion of a contract, the resulting claim for adjustment is to be referred to the TCO for review prior to reaching any agreement with the contractor concerning such upward cost or price adjustment.

Termination File

11.159 (2002-12-13) For non-complex, fully terminated contracts, the contracting officer is to transfer the complete procurement file to the TCO, if a claim is involved.

For complex procurements or partial terminations where the non-terminated portion of the file is still active, the contracting officer will prepare a termination case file including copies of the contract, amendments, specifications, pricing details, documents, correspondence and any other information relevant to the termination, and send it to the TCO.

Informing the Contractor

11.160 (2002-12-13) If a claim is involved, the contracting officer is to forward two sets of PWGSC Prime Contractor termination claim forms and the *Procedures Manual on Termination of Contracts*, to the contractor.

These may be obtained from the TCO: each set of claim forms includes the following:

SPMS -1	Settlement Proposal for Fixed Price Contracts
SPMS-1A	Inventory Schedule A for Inventory of Metals in Mill Product Form
SPMS-1B	Inventory Schedule B for Inventory of Raw Materials, Finished Product, Purchased Parts, Plant Equipment, Finished Components, etc.
SPMS-1C	Inventory Schedule C for Inventory of Work in Process
SPMS-1D	Inventory Schedule D for Inventory of Special Tooling and Test Equipment
SPMS -2	Schedule of Accounting Information
SPMS-3	Application for Partial Payment

11.161 (1996-06-03) The accompanying letter to the contractor should contain the following instructions:

"In the event subcontractors are involved with this termination, please advise of the number of subcontractors who will require termination claim forms. Please arrange to complete all sections of the claim in as much detail as possible and, after signature by your executive authority, return the original and one (1) copy to this office.

You are hereby requested to forward your completed claim within a two month period from the date of this letter. In order to assist you in meeting that date, we would be pleased to provide guidance and explanations necessary to ensure proper action is taken by your company and that the correct information is included in the forms.

Please note that all communications and documents with respect to your claim should be directed to: _____. (***Insert appropriate name and address of the responsible contracting officer***).

11.162 (2002-12-13) After the termination claim forms are forwarded, the contractor must be contacted by telephone to ensure that the forms have been received and that the necessary action is being taken on the contractor's part to submit a claim. If the contractor has any questions concerning the presentation of the claim, or the details of the termination settlement procedures, the contracting officer may advise the contractor to contact the TCO directly. When the contractor has completed the forms, the signed original and one copy are returned to the contracting officer. On receipt of the contractor's claim, one copy is to be forwarded promptly to the TCO, who shall then become responsible for the resolution of the claim.

Audit of Claims

11.163 (2002-12-13) Upon receipt of a claim, the TCO will determine the need for an audit. If the TCO concludes that an audit is required, the TCO will prepare the terms of reference for the audit and arrange for its completion by Consulting and Audit Canada.

When an audit is performed, the TCO reviews the cost factors reported by the auditor and reconciles the contractor's claim with the auditor's report and the Inventory Verification Report form (SPMS-50). The cost implications of any inventory adjustments must be discussed with the auditor as well as with the contractor.

Inventories

11.164 (2002-12-13) If the claim from a termination for convenience involves inventory that is rendered surplus by the termination, the contracting officer must send copies of the termination inventory schedules to the client in order to obtain instructions as to disposition, which will be either:

(a) arranging for the verification and shipment of all, or any part, of the inventories to a recipient designated by the client. The costs associated with packaging, routing, shipping, etc., are a proper post termination charge to be added to the contractor's claim;

Inventory verification is to be arranged by the contracting officer with the Inspection Authority of the client and a copy of the Inventory Verification Report must be provided to the TCO so that the settlement offer may be adjusted to reflect any inventory discrepancies.

(b) arranging for the disposal of the residual inventory by the Crown Assets Distribution Centre (CADC). In this case, the contracting officer must prepare the form PWGSC-TPSGC 11001, Report of Surplus (Materiel and Equipment).

The Report of Surplus must be signed by the director general or director concerned, to certify that: the inventories are reasonable in relation to the requirements of the terminated portion of the relevant contract; that their use is not required for other existing PWGSC contracts, due to the nature of the goods; and consequently, that disposal is recommended. The contracting officer will forward the signed Report of Surplus to CADC.

In due course, the contracting officer receives a Final Inventory Certificate (FIC) from CADC, signed by the CADC inspector or assessor and the contractor.

By signing the FIC, the contractor agrees to the final quantities for disposal and, at the same time, agrees to retain and be responsible for the residual inventories for ninety (90) days, at no cost, on behalf of CADC. At the time of receipt of the FIC, the contracting officer is relieved of the responsibility for the residual inventory. Any proceeds realized from the sale of the surplus inventory are credited, on behalf of the client, to the Consolidated Revenue Fund or to the revolving fund, as applicable.

Settlement Offer

11.166 (2004-05-14) Upon receipt of the audit report, the TCO will prepare a proposed settlement offer. This offer informs the contractor of the amount of settlement the TCO is prepared to recommend to the Director General, Policy, Risk, Integrity and Strategic Management Sector (DG/PRISMS), for approval.

11.167 (2004-05-14) If the contractor accepts the proposed settlement offer, the TCO will prepare a Settlement and Release, form PWGSC-TPSGC 9223-2, and submit it to Legal Services for review, the DG/PRISMS, for approval and signature, and then to the contractor for acceptance. When the contractor's written acknowledgement is received, the original is placed on the PRISMS file and a copy forwarded to the contracting officer, for the contract file.

11.168 (2002-12-13) If the contractor rejects the proposed settlement, the TCO will advise the contractor to submit the case directly, in writing, to the Director, Contract Claims Resolution Board (CCRB), so that the case may be handled in accordance with CCRB's procedures for handling disputes (see 11.201).

Contract Termination Claims

11.169 (2004-05-14) When an interim payment or final settlement on a contract terminated or partially terminated for the convenience of the Crown is approved and signed by the DG/PRISMS, the TCO will place the original of the completed document on the PRISMS file and make arrangements to implement the approved settlement payment.

Termination for Default

11.180 (1994-06-23) The decision to terminate a contract for default should be made only after all other possible solutions have been explored. In all cases, the advice of Legal Services must be obtained at an early stage to ensure that any proposed action will not prejudice the Crown's legal position and that the termination is legally enforceable.

Failure to take action may prejudice Crown interests.

If a contract is secured by surety bonds, termination of the contract may change the existing contractual relationship with the bonding company.

11.181 (1994-06-23) The Crown has the right to terminate all or any part of the contract for default if:

(a) the contractor fails to make progress so as to endanger performance of the contract.

The contracting officer may provide the contractor in writing with a reasonable period of time, normally ten (10) days, to rectify the situation. If this period must be longer, the contracting officer may require the contractor, within ten (10) days, to show evidence of corrective action.

If the contractor does not rectify the situation, the contracting officer may, subject to the limitations in the Default Clause, initiate action to terminate the contract for default.

(b) the contractor fails to perform any other provision of the contract.

If the contractor does not rectify such a defect within ten (10) days of receipt of a notice from the contracting officer, the contracting officer may, within the limitations set forth in the Default clause, initiate action to terminate the contract in whole or in part for default.

(c) the contractor fails to deliver the goods or perform the services within the time specified in the contract.

In the absence of excusable delays, the Crown has the right to terminate the contract immediately, regardless of how slight the delay may be. This includes the right to accept or reject goods shipped but not yet delivered. In addition, if the contractor does make timely delivery, but delivers defective goods or improperly performs services, and is unable to take corrective action within the unexpired delivery schedule period, the Crown also has the right to terminate for default.

Whenever a contracting officer contemplates termination of a contract for failure to deliver on time, the contractor must be so advised as soon as possible after the default occurs. Failure to take such action may prejudice the Crown's position.

When there is reasonable assurance that delivery will be made even though late, it may be desirable to discuss extension of the delivery time with the client. If the delivery date is extended, a reduction in the contract price may be appropriate.

This situation would arise when delivery would be further delayed by terminating and placing the contract elsewhere.

(d) the contractor becomes bankrupt or insolvent.

Upon receipt of a notice of bankruptcy or insolvency, the settlement procedure outlined in 11.112 is to be followed.

Action to Recover Loss or Damage

11.183 (1994-06-23) After termination, the contracting officer will determine the actual amount or best estimate of loss or damage suffered by the Crown, and the distribution of the damages to be recovered from the contractor.

Estimates of loss or damage should include any amount in excess of the contract price which the Crown may be obliged to pay in procuring the goods or services elsewhere.

11.184 (15/09/97) The contracting officer must refer claims to Legal Services when a contract is secured by a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) or when the Crown has a claim against a contractor that is related to a work package for which the contractor has a claim against the Crown.

In all other cases the contracting officer will attempt to negotiate a settlement. When a satisfactory settlement cannot be reached, the claim will be referred to Legal Services for action.

11.185 (2002-12-13) When a contractor agrees with the proposed settlement, the recommendation to recover monies will be submitted to Contract Audit Group (CAG), or, in the case of a CCC contract, the Director, Finance and Resources Administration (FRA). CAG or the Director, FRA, will issue an invoice to the contractor for the monetary recovery.

If payment is not received within sixty (60) days of date of issue of the invoice, CAG or the Director, FRA, will advise the contracting officer to take appropriate follow-up action with the contractor. When normal follow-up procedures have not been successful, the matter must be referred to Legal Services.

11.186 (1994-06-23) Claims must not be removed from departmental records until satisfied by payment or a properly authorized deletion action.

Contract Payment under Surety Bond

11.187 (1994-06-23) When a surety bond is being enforced, payments will be issued as follows:

(a) Performance bond - upon completion of the contract to the satisfaction of the Crown, the bonding company may be paid all amounts to which the contractor would be entitled under the terms of the contract.

(b) Payment bond - the bonding company shall not be reimbursed for the payment of creditors from any funds held by the Crown until the work is complete and the surety company has fully discharged its obligations under the bond.

Termination by Mutual Consent

11.195 (2002-12-13) On receiving the client's request for termination by Mutual Consent, the contracting officer shall request the contractor to confirm that no claim is involved and shall refer the matter to Legal Services in accordance with 11.140.

Since no claim is made, the TCO is not involved in this process.

Contract Claims Resolution Board

11.200 (2002-12-13) All enquiries, from contractors or contracting officers, concerning the Contract Claims Resolution Board (CCRB) and submissions to the CCRB, should be directed to CCRB.

The CCRB was formed in January 1994 by the integration of the Contract Dispute Advisory Board of the former Public Works Canada and the Contracts Settlement Board (CSB) of the former Supply and Services Canada. A summary of these two processes follows:

Contract Settlement Board Process

11.201 (2002-12-13) The Contract Settlement Board (CSB) process is designed to provide for the prompt resolution of disputes arising from goods and services contracts. It provides for an independent review of a contractor's claim as well as the Crown's response to the claim. Following that review process, the Board issues a decision which is not binding on the contractor. Accordingly, if the contractor reject the decision of the Board, its rights at law are not compromised. Further details on the CSB Process are set forth in 11.204.

Contract Dispute Advisory Board Process

11.202 (2002-12-13) The Contract Dispute Advisory Board (CDAB) process is designed to provide for the prompt resolution of disputes arising from architectural and engineering, construction, building maintenance and leasing contracts. The process provides a simplified, non-binding arbitration dispute resolution process for contractors which involves the selection of a private sector arbitrator by both parties. Following a Board Hearing, the arbitrator submits a recommendation for the Minister's final decision. Given that the Minister's decision is not binding on the Claimant, its rights at law are not compromised. Further details on the CDAB Process are set forth in 11.218.

Advice, Assistance and Training

11.203 (2002-12-13) Upon request, CCRB's staff will provide advice and assistance concerning any of the matters falling within the purview of CCRB to all persons seeking it, and is available to provide brief information and training sessions on the claims process. The expertise associated with lessons learned derived from previous cases may provide useful information to assist in the resolution of disputes.

Contract Settlement Board Procedures

11.204 (2002-12-13) When any dispute arising from goods and services cannot be resolved through negotiation, the contractor should be advised in writing to submit a formal statement and documentation of claim to the Director, CCRB. The proposed letter to the contractor should be referred to CCRB for approval.

Without this step, unresolved disputes can only be resolved through formal legal action. The CCRB process exists to resolve matters without that potentially lengthy and expensive process.

11.205 (2002-12-13) The contractor may submit a claim at any time during or after the contract. Normally a claim should not be submitted to CCRB until the contract has been completed, since in most cases an audit of the total contract will be required. The extend and nature of the Board's review process is at the discretion of CCRB.

11.206 (2002-12-13) CCRB will inform the contractor of the receipt of the claim and that the sector/region has been requested to prepare the Crown's submission. The sector/region is also notified to arrange preparation of a submission to CCRB.

11.207 (2002-12-13) The submission, to be signed at the director level, must include a recommended settlement as well as confirmation that funds are available for settlement under the encumbrance.

11.208 (2002-12-13) The Chairperson, CSB, will advise the contractor in writing of the date of receipt of the submission from the sector/region, and will, if necessary, arrange a meeting of the participants.

11.209 (2002-12-13) Depending on the complexity of the dispute, the contractor will be given the opportunity to appear in person, or to have selected company officials appear, and can be represented by legal counsel. The same opportunity will also be afforded to PWGSC and the client in relation to data or presentation against, or in support of, the contractor's claim.

Meetings

11.210 (2002-12-13) The Chairperson, CSB, is responsible for ensuring that all participants, at any Board meeting, are fully aware of the role and responsibilities of the CSB, and the manner in which the proceedings will be conducted. The Chairperson will also determine the time necessary to permit a full and detailed discussion of the claim.

All copies of submissions to CSB, assemblies of data, memoranda and working papers of CSB, are for the sole use of the Members of CSB, the Director General, Audit and Ethics Branch (AEB), the Deputy Minister and the Minister of PWGSC.

11.211 (2002-12-13) Normally, full Board meetings are only convened to review complex claims in excess of $100,000. Such meetings would be attended by the Chairperson, CSB, one or more private sector consultants, an independent representative from the project authority, as well as the Board's legal advisor. For claims at $100,000 or less, the review of the contractor's claim will normally be conducted less formally and without incurring the expense of engaging any private sector consultants.

11.212 (2002-12-13) When deliberations are complete, the final conclusions and recommendations for settlement will be recorded in the Minutes of Proceedings.

Settlement Offer

11.213 (2002-12-13) When the Chairperson, CSB, concludes that a settlement offer is to be made, CSB will officially advise the contractor of the recommended amount of settlement and will seek to obtain the contractor's written acceptance. A copy of CSB's letter of offer to the contractor will be sent to the client and the sector/region for information.

11.214 (2002-12-13) If the settlement amount exceeds departmental approval authorities, the contractor will be advised that the settlement is subject to the approval of Treasury Board (TB). The contracting officer will prepare the necessary TB submission, and send it to the CCRB for submission to TB.

11.215 (2002-12-13) When the recommended payment has received all necessary approvals, CSB prepare, in collaboration with Legal Services, a settlement and release agreement which must contain an acceptance and release clause approved by Legal Services.

11.216 (2002-12-13) Copies of the settlement and release agreement must be distributed to all interested parties.

Non-acceptance of Settlement

11.217 (2002-12-13) If a CSB ruling is not acceptable to the contractor, the contractor may institute legal proceedings against the Crown.

Contract Dispute Advisory Board (CDAB) Procedures

11.218 (2002-12-13) When any dispute arising from architectural and engineering, construction, building maintenance and leasing contracts cannot be resolved through negotiation, the contractor/consultant may request the Minister, in writing, to set up a CDAB. The Minister's Office will forward such a request to Contract Claims Resolution Board (CCRB).

11.219 (2005-06-10) If no final departmental position has been reached, the Region is to advise, within three working days, what specific actions are underway to attempt to reach a settlement by negotiation. This Region must also document the nature of the claim and supply a copy of it to the Director, CCRB, and the Assistant Deputy Minister, Real Property Branch (ADM/RPB).

11.220 (2005-06-10) If the negotiation process appears to be unduly protracted, the Director, CCRB, will write to the ADM/RPB requesting direction. The memo will attach a copy of the claim, summarize the regional position and recommend a course of action. A legal opinion or other advise may be included, as necessary.

11.221 (2005-06-10) If the negotiation process has reached an impasse, the Director, CCRB, will obtain the agreement of the ADM/RPB and will prepare a letter for the Minister's signature offering the CDAB process. Copies of the letter will explain that the CDAB process is non-binding and is without prejudice to the rights of either party. The Minister's letter will enclose an agreement containing the terms and conditions for its initiation. The agreement must be accepted ands signed by the contractor/consultant before a hearing will be scheduled.

11.222 (2005-06-10) Once the CDAB process has been agreed to, the Director, CCRB, will:

(a) Obtain the names of at least three arbitrators to act as Chairpersons from a recognized provincial Institute of Arbitrators, and forward these names to the Region and the Contractor/Consultant who will rank the proposed Chairpersons in order of their choice and will advise CCRB accordingly. CCRB will engage the highest ranking individual by combining the choices from both parties.

(b) Establish the time frame for the CDAB process through dialogue with the Region, Contractor/Consultant and the Chairperson. With regard to the time frame for the hearing itself, three days are normally allotted with the claim being presented on the first day, and responded to on the second day. On the third day, the panel concludes its review of the facts as presented by the parties.

(c) Obtain the Regional Director's response to the claim and forward copies of the claim

together with the Region's response to the panel members.

(d) Arrange to have the CDAB session monitored to ensure that the intent of the process is met and ensure that no new items of claim are introduced during the hearings.

(e) Ensure that the Chairperson's report is promptly distributed to both parties

(f) Prepare a briefing note and draft a letter of decision for the Minister's signature for sign off by the ADM/RPB and the Director General, Audit and Ethics Branch.

(g) Brief the Contractor/Consultant. If requested, concerning the basis of the Minister's decision.

(h) If the Minister's decision involves a settlement amount, the CCRB will arrange for a settlement and release document to be prepared and will ensure that the settlement payment is made in a timely manner.

Non-acceptance of Settlement

11.223 (2002-12-13) If a CCRB ruling is not acceptable to the contractor, the contractor may institute legal proceedings against the Crown.

Supplier Sanctions

Removal from Source List

11.225 (2002-12-13) Names of suppliers are to be removed from source lists in the following instances:

(a) when the supplier requests removal;
(b) in the event of bankruptcy or business failure;
(c) in the event of permanent shutdown;
(d) when fire or other disasters render the enterprise inoperable for an extended period;
(e) when the supplier refuses to provide information necessary to confirm its listing(s);
(f) when there is non-compliance with PWGSC policies or programs.

Strikes or lockouts normally do not constitute reason for removal.

11.226 (2004-05-14) Contracting officers may normally remove a supplier's name from the source lists. The supplier must be informed of this in writing.

Removal for non-compliance must have the director's approval and the letter notifying the supplier must be signed by the director general. Copies of the letter must be sent to the Deputy Minister, Assistant Deputy Minister, Acquisitions Branch, and Acquisition Policy and Process Directorate (APPD).

If a supplier is removed for non-compliance, its inclusion on other similar lists should be reviewed by the sectors/regions responsible for the other lists. APPD will advise the sectors/regions of affected lists.

11.227 (2002-12-13) Evidence provided by a supplier that the circumstances leading to the deletion have been rectified must be considered to determine whether the removal action should be rescinded.

Return of Special Test Equipment and Special Production Tooling

11.240 (2003-05-30) Contractors are required to provide Department of National Defence Director, Disposal, Sales, Artifacts and Loans (DND/DDSAL) with at least sixty (60) days written notice

prior to the date when the production assets will no longer be required. The notice should identify the contract or loan agreement serial number under which the production assets were held, location of the equipment, a brief but adequate description of the surplus production assets and the total estimated value, if applicable. (See 6B.1BB.)

A decision to retain production assets for future use should be supported by a cost/benefit analysis which provides an estimate of the storage and transportation costs involved, the duration of the storage, the refurbishing/modification costs that may be required to re-activate the assets, including installation/set-up charges, if applicable, and the remaining operational use or life of the equipment.

DND/DDSAL will advise the contractor on the most appropriate method of retention and storage of the assets. DND/DDSAL will arrange for the transfer of production assets to another contractor, or a storage facility or will prepare the appropriate documentation, declaring the items surplus, and forward it to Crown Assets Distribution Centre.

Return of Department of National Defence (DND) Loaned Materiel

11.241 (2003-05-30) Returns are to be made:

(a) when the materiel is no longer required;
(b) when repairs are beyond the contractor's capability;
(c) when recalled by DND/DDSAL;
(d) on completion of the contract.

11.242 (2003-05-30) The contractor is required to return the materiel, as directed by DND/DDSAL, and shall request from DND/DDSAL, in writing, instructions for the disposition of the items to be returned. The request should include a description of the items, identification or NATO stock number, their condition, and the Loan Agreement number.

11.243 (2003-05-30) DND/DDSAL will issue disposition instructions and inform all concerned. The contractor shall arrange for the return of the items as directed and confirm action by returning a signed copy of the "Notice to Ship" to DND/DDSAL.

11.244 (2003-05-30) Inspection on issue and return of DND loaned materiel will be carried out by the local Canadian Forces Quality Assurance Representative at their discretion.

11.245 (2003-05-30) The Contractor shall report lost, damaged or destroyed DND loaned materiel, in writing, to DND/DDSAL which is responsible for coming to a resolution with the contractor.

Final Payments

11.265 (2005-06-10) The total time charged under a fixed rate contract shall be verified for acceptability and accuracy of recording before the final claim is processed for payment. The findings of such verifications will be noted on the contract file.

Verification of time for acceptability should be carried out by the contracting officer or other qualified personnel designated by the sector/region concerned.

Verification of time for accuracy of recording should be carried out by qualified personnel from the financial division or section in the directorate concerned or other suitably qualified personnel with the prior approval of the Director, Cost and Forensic Accounting Directorate, who is also responsible for setting the standards of verification for the accuracy of recording.

Contract Close-Out

Cost Submissions Standards for Cost Reimbursable Contracts

11.280 (1994-06-23) The contractor will be paid, in accordance with the contract, the cost reasonably and properly incurred in the performance of the work. Upon completion of the work on all cost reimbursable contracts meeting the cost threshold, a certification by the contracting officer that the final amount paid represents a reasonable price shall be placed on the contract file. This certification shall be based on the findings of either a formal or an informal audit.

The audit provision in contracts valued over $50,000 with Canadian suppliers allows for the determination of the actual costs incurred, to determine the final contract cost of cost reimbursable contracts and the reasonableness of the price.

11.281 (1994-06-23) All cost reimbursable contracts require a cost submission upon the completion of the contract. All multi-year cost reimbursable contracts, except for Repair and Overhaul (R&O) services, will include a provision for an annual cost submission as a mandatory deliverable item.

For R&O service contracts, this is up to the discretion of the contracting officer and the audit agency.

Formal Audits

11.282 (2005-06-10) The selection of cost reimbursable contracts for formal audit will be made by Contract Audit Group (CAG), within Acquisition Program Integrity Secretariat, in accordance with the following:

(a) all contracts associated with Major Crown Projects (MCPs); and

(b) those contracts placed with contractors considered to be priority as determined by CAG.

In addition, contracting officers may request a formal audit on an ad hoc basis.

11.283 (2005-06-10) Sectors/regions will supply to CAG, for those contracts selected for formal audit, a copy of the contract document together with copies of all cost submissions received.

11.284 (2005-06-10) A copy of the audit report will be forwarded to the contracting officer, along with an audit notification form prepared by CAG detailing overpayments and/or comments requiring approval.

11.285 (2005-06-10) The contracting officer will establish a final price with the contractor based on the audit findings. Every effort will be made to do this within ninety (90) days of the audit report being received. CAG will be notified by the contracting officer of the terms of the settlement and resolution of all audit issues raised in the contract audit.

11.286 (1994-06-23) When the final price has been agreed with the contractor, the contracting officer will prepare the final price certification.

Informal Audits

11.287 (1994-06-23) Informal audits will be carried out by the contracting officer, with the assistance of a cost analyst, as soon as possible after the work is complete and the final cost submission received.

When, as a result of the informal audit, a final price is agreed to by the contractor, the contracting officer will prepare the final price certification.

Sample Audits

11.288 (2005-06-10) CAG has a random sample audit program to select contracts for formal audit.

These audits will be carried out by Consulting and Audit Canada. The findings of these audits, which are a form of quality assurance, will be sent to the appropriate sector/region.

Release of Contract Financial Security

11.295 (1994-06-23) Surety bonds, according to their terms, automatically expire when the contractor has fulfilled all obligations under the contract. When the contract has been completed, surety bonds shall be destroyed.

11.296 (2005-06-10) Where a contract, in respect of which a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) was given, has been completed or terminated through no fault of the contractor, the security deposit shall be returned to the contractor. The contracting officer is to instruct the Finance, Accounting, Banking and Compensation Branch to requisition a cheque for the amount of a bill of exchange plus accumulated interest, or to request that branch to arrange the release of bonds, letters of credit and other negotiable instruments deposited.

Financial Claims by the Crown

11.300 (1994-06-23) There are two general categories of claims by the Crown, as a result of contracting activities:

(a) legal disputes, e.g. termination for default, bankruptcy, (only when the amount owing is actually known and final); and

(b) overpayments/overclaims, e.g. as may occur when reported as a result of audit.

Either instance can only be determined when a contract has been completed.

11.301 (2002-12-13) Where monies may be owing to the Crown as a result of contracting activity, sectors/regions are to determine the liability and amount owing, with assistance as necessary from Legal Services.

There are special procedures to be followed whenever there are suggestions of unreasonably high profits from any contract placed pursuant to the *Defence Production Act* or from any contract other than competitive firm price. The procedures, which are in Annex 11.2, also deal with situations where a contractor wishes to return excess profits; for refunds from subcontractors; or where a settlement from the contractor is to be financed partly from the proceeds of its income tax refund.

The contracting officer is to liaise with the supplier to get concurrence of the final amount that is owing. Once that amount has been established, the contracting officer, following TB policy, must formally advise the client to establish an accounts receivable. The client must advise PWGSC that this has been done, and take collection action.

11.302 (2005-06-10) Many organizations have roles to play relating to these claims by the Crown.

(a) The contracting officer is responsible for reviewing the acceptability of contractor claimed amounts, responding to audit observations as required, liaising with the client as to concurrence on the final amount, and advising Contract Audit Group (CAG) of all settlements reached.

(b) Consulting and Audit Canada (CAC) provides audit reports on specific contracts,.

(c) Legal Services is responsible for:

- identifying the changes in the legal relationship between the Crown and the

contractor resulting from claims by the Crown, and the consequences in terms of risk and liability being assumed by the Crown as a result of claims against the contractor;

- informing the contractor, when requested by the contracting authority, of the Crown claim, by way of a formal legal demand;

- initiating legal action against the contractor.

(d) Industry Canada, for Technology Partnerships Canada, is responsible for:

- following up on the disposition of all audit qualifications and/or observations raised by CAC, except for audit issues involving interpretation of the Contract Cost Principles which are a PWGSC responsibility; and

- resolving issues and disputes in the case of joint Canadian Commercial Corporation and Industry Canada agreements.

Receipt and Deposit of Monies

11.350 (2005-06-10) When contracting officers receive monies directly from contractors with respect to a particular claim by the Crown, these monies must be sent, in compliance with Treasury Board Chapter 3-3, Policy on Deposits, to the departmental accounting unit as soon as possible. The monies must be accompanied by a memorandum, with copies to the client and CAG. The memorandum must include:

(a) a brief description explaining why monies are being remitted;
(b) the name of the client;
(c) the PWGSC file/contract serial number;
(d) the name and telephone number of the contracting officer.

In the National Capital Area, the monies are sent to:

Finance, Accounting, Banking and CompensationBranch
Public Works and Government Services Canada
Portage III, 12B1
Gatineau, Quebec K1A 0S5

Outside the National Capital Area, the recipient is the appropriate PWGSC regional director's office.

Vendor Performance Policy

Introduction

11.450 (1997-03-31) The goal of the Vendor Performance Policy (VPP) is to improve client service, by preventing problems with vendors from arising. While it is never possible to ensure that there is no poor performance, we can improve suppliers' performance by instituting the appropriate measures in the event of non-performance.

Principles

11.460 (1997-03-31) Public Works and Government Services Canada (PWGSC) has the authority and the duty to take reasonable measures to ensure that it can rely on its contractors to perform their obligations. The Department, within the framework of its policy that procurement be open, accessible and fair, has the same right as other purchasers in the market to assess a vendor's performance, and may take action to prevent future problems, based on the vendor's past

performance. The discretion to take such action must be exercised in a fair and reasonable manner within the policy. Any measure taken must rationally relate to the nature and severity of the problem for which it is applied.

Definitions

11.470 (1997-03-31) **Poor performance**: means anything less than full performance of a contract by a vendor.

While even minor instances of poor performance may be noted, action would normally only be taken against a vendor as the result of a major instance of poor performance on a contract, or a cumulative record of poor performance.

vendor: includes subcontractors, owners, directors, officers, employees, agents, parent corporation or subsidiary of a vendor, which may be responsible for a vendor's poor performance.

While persons other than a contractor may be treated as "vendors" under the Policy, action against them can only be taken where they have been notified of the poor performance and of any proposed measures and given the same opportunity to respond that a contractor would have.

Vendor Performance Corrective Measure (VPCM): means a condition or limitation placed on a vendor's ability to contract with (PWGSC on the basis of PWGSC's assessment of their reliability. A VPCM can be applied to a vendor overall or only in respect of certain products or services. There are three types:

(a) **Debarment** is the refusal by PWGSC to do business with a vendor for a specified period, which may be expressed in terms of a number of relevant procurements, and is generally not to exceed three (3) years;

(b) **Suspension** is the refusal by PWGSC to do business with a vendor pending the outcome of an investigation into serious or multiple instances of poor performance, or until the vendor meets conditions set for re?instatement, such as remedying a problem;

(c) **Conditions** can be imposed on vendors seeking to do business with PWGSC, for a specified period, which may be expressed in terms of a number of relevant procurements, and is generally not to exceed three (3) years, or until the vendor meets conditions set for re-instatement, such as remedying a problem.

As part of a VPCM, the vendor may also be subject to probation when the Measure ends. In such a case, if further instances of poor performance occur, the VPCM may be extended, or another applied.

Process

Monitoring

11.480 (1997-03-31) Contracting officers must enforce the terms of contracts wherever possible and appropriate. The same incident may support both enforcement of the remedies available under the contract and a VPCM. The contracting officer will document events that may be instances of poor vendor performance in the contract file.

Where the terms of the contract are enforced by notice to the contractor of its poor performance, but no further action is taken, this must be noted in the contract and vendor files, together with the facts which justify it. That the contracting officer intends to commence an action to impose a VPCM on the vendor is not a reason to decline to enforce the contract.

The approval of the relevant Director is required for noting an instance of poor performance on the vendor file for the vendor on the Vendor Information Management (VIM) system. A notation of poor performance on VIM will include the contract number, the subject of the contract, the nature of the poor performance, any remedial action taken by the vendor, its effects and the status or disposition of the problem.

The vendor must be informed of each instance of poor performance by the relevant Director and will have ten days to respond before the notation will appear on VIM.

A vendor, which may be someone other than the contractor, who is responsible for the contractor's failure to fulfil the contract, must be notified each time a poor performance notation is made on VIM, and be informed that PWGSC will take past performance into account in its future dealings with vendors.

A vendor may respond to notification of the Director's intention to have an instance of poor performance noted on VIM. The Director will consider the input of the vendor in deciding whether to enter the information.

Outstanding performance of a vendor should also be noted, as it may be useful in making an overall assessment of a contractor's performance in the event corrective measures are required.

A performance notation will generally remain on VIM for seven (7) years. After that time, a vendor may request that it be removed. Performance, good or bad, more than seven (7) years in the past will not ordinarily be relevant to a decision whether to impose a corrective measure.

Since the VPP limits itself to consideration of poor performance, being failure to fulfil a contract, contracting officers should make sure that their contracts cover all aspects of performance which they would want to consider in evaluating the vendor's performance on the contract.

Investigation for Vendor Performance Corrective Measures (VPCM)

11.490 (1997-03-31) Formal corrective measures should be considered where there is evidence that continued contracting with a vendor may pose a greater risk to the Crown than is acceptable. This may be as the result of a major instance of poor performance on a contract, or a cumulative record of poor performance. Sectors and regions may also set general or commodity-based standards, as the basis for consideration of VPCM (see 11.560).

In investigating whether corrective measures should be applied, the Sector or Region will:

(a) ensure a full review of contract file(s), and the record of the vendor in general;

(b) notify all other sectors or regions and consult those which have a particular interest in the matter;

(c) consult clients which have a particular interest in the matter, either as major purchasers of the vendor's product or as the initiator of the complaint; and,

(d) consult Legal Services, as to what evidence should be sought, and what process should be used, to ensure fairness in light of all the circumstances.

All components of an investigation and subsequent decision must be fully documented, with the disposition being noted on the vendor file in VIM.

Decision on Application of Vendor Performance Corrective Measures

11.500 (1997-03-31) A decision to apply VPCM should be made where, on the basis of the vendor's

performance history, a prudent person acting on their own behalf would not continue to deal with the vendor, or would not continue to deal with the vendor without special conditions being attached.

A VPCM may take one of the following forms:

(a) **Debarment** is the refusal by PWGSC to do business with a vendor for a specified period, which may be expressed in terms of a number of relevant procurements. Debarment would be used for problems of a criminal nature, or where there is poor performance which demonstrates a lack of good faith effort on the part of the contractor to perform its various obligations. Since the vendor has demonstrated a lack of good faith effort, it would not be realistic to allow reinstatement on the satisfaction of some requirement. Debarment would not generally be for a period exceeding three (3) years.

(b) **Suspension** is the refusal by PWGSC to do business with a vendor pending the outcome of an investigation into serious or multiple instances of poor performance, or until the vendor meets conditions set for reinstatement, such as remedying a problem. Suspension would be imposed where doing business with a vendor before an investigation is complete or before the vendor has made changes would pose too great a risk that the vendor would not carry out its obligations under future contracts.

(c) **Conditions** can be imposed on vendors seeking to do business with PWGSC. Conditions would be used in the case of problems which could be prevented by a less onerous means than a refusal to do business. Conditions would not generally be applied for a period exceeding three (3) years.

When investigating to determine if a VPCM should be imposed, consideration must be given to the extent to which the VPCM will apply to the various elements of a vendor's organization and to related organizations. As the objective of this Policy is to prevent problems with vendors from arising, the breadth of the VPCM will depend on the nature and source of the poor performance for which the VPCM is being considered.

Examples: (1) Where the source of the poor performance is dishonesty within the highest management of a vendor, then imposing the VPCM on the vendor as a whole would likely be appropriate. (2) Where the poor performance relates to problems with product quality in one of the vendor's several product lines, where there is no element of wilful failure to produce a suitable product, this would likely be more appropriately dealt with by a VPCM limited to the product line with which problems have been experienced. (3) Where the poor performance was the result of safety problems that were the result of policy set for the subsidiary vendor by its parent corporation, it may be appropriate, provided proper notice has been given, to apply a VPCM to the parent corporation and all its subsidiaries with which similar safety issues might arise. These examples are provided solely for illustration. Actual cases will depend on their particular situations.

When, on the basis of the investigation, a Director General believes that one of these measures should be applied, the Sector or Region will notify the vendor of the VPCM proposed together with the reasons for it, and give the vendor a reasonable opportunity (including a reasonable period of time) to respond.

What constitutes a "reasonable opportunity" will vary with the circumstances, and could range from an exchange of correspondence, to formal consultations. A vendor will be given access to documents relevant to its performance on the same basis as these would be available in a contract dispute. In determining whether to provide a particular document to the vendor, it should be borne in mind that if absence of that document means the vendor is not in a position to address the allegations made against it, this may allow successful court challenge of a subsequent decision to impose a VPCM.

The notice to the Vendor will include, in addition to the type of measure:

(a) a list of the instances of poor performance which form the basis for the proposed VPCM sufficient to identify them;

(b) the reasons why the vendor's performance record merits the proposed VPCM;

(c) whether the VPCM will be across?the?board (that is, affecting all aspects of the vendor's operations) or limited by product, division, geographic division, type of contract (such as urgent delivery requirement) or some other factor;

(d) when and how the VPCM will end;

(e) whether the vendor will be subject to a formal period of probation following the end of the VPCM, and who will determine if the probation has been breached;

(f) in the case of a VPCM that can end when the vendor satisfies conditions, who will decide if the conditions have been satisfied.

If, after considering the vendor's response, the Director General still believes the proposed VPCM, or some less severe measure, should be applied, that measure will be applied. If it is intended, after reviewing the vendor's response, to apply a more severe measure than originally proposed, the vendor must be notified, and given a reasonable opportunity to respond to that change.

The decision to apply a VPCM will include, in addition to the type of measure:

(a) the procurements for which the vendor is ineligible to bid or contract, that is, whether the VPCM will be across-the-board (affecting all aspects of the vendor's operations), or limited by product, division, geographic division, type of contract (such as urgent delivery requirement) or some other factor;

(b) when and how the VPCM will end;

(c) whether the vendor will be subject to a formal period of probation following the end of the VPCM, and who will determine if the probation has been breached;

(d) in the case of a VPCM that can end when the vendor satisfies conditions, who will decide if the conditions have been satisfied.

Review

11.510 (2004-05-14) Except where there is an approved Sector Program (see 11.560), the Assistant Deputy Minister, Acquisitions Branch (ADM/AB) will review all decisions to apply a VPCM, and any additional representations made by the vendor, and may decide to vary the decision. If the ADM/AB intends to apply a more severe VPCM, the vendor must be notified, and given a reasonable opportunity to respond to that change.

Enforcement

11.520 (2004-05-14) When a VPCM is applied, the ADM/AB (or appropriate Director General, where there is a Sector Program) will inform the vendor of the decision. All sectors and regions, and clients which have a particular interest in the matter, will also be informed.

The fact that a vendor is subject to a measure under the VPP will be published on the Government Electronic Tendering Service and in the *Government Business Opportunities*, together with the particulars of the measure, but not the reasons. This notice will continue to be

published while the measure is in effect.

A debarment or suspension renders a vendor ineligible to bid on or receive contracts related to certain types of procurements. Where a vendor is subject to conditions and the vendor does not meet those conditions for a particular procurement, the vendor is ineligible.

A debarred or suspended vendor will be removed from relevant source lists, automated vendor rotation systems, and standing offers. Bids received from vendors debarred or suspended from doing any business with PWGSC will not be considered for evaluation. Bids from vendors who are debarred or suspended in part will not be considered for evaluation, if the bids pertain to procurements from which the vendor has been debarred or suspended. Where a vendor is subject to special conditions, any bid from that vendor which does not conform to the conditions will not be considered for evaluation.

A VPCM does not affect existing contracts, though it does affect amendments. If a current VPCM imposed on a vendor would have been relevant to the award of the contract had the VPCM been in effect at the time, or is relevant to the subject matter of the amendment, then the amendment requires the approval of the relevant Director General as an exception to the VPCM.

Information on a VPCM will only be entered into VIM by Policy, Risk, Integrity and Strategic Management Sector (PRISMS), which will be responsible for maintenance of the information (including removal of notice where a VPCM has ended). This information will be accessible to anyone who has access to Automated Buyer Environment (ABE).

When a Measure ends, the Sector or Region that initiated it is responsible for promptly notifying the vendor.

Role of the Contracting Officer

11.530 (2004-05-14) The contracting officer must ascertain whether a bidder, or a vendor being considered for a sole source contract, is subject to any VPCM, and for determining if that measure affects the procurement the contracting officer is working on.

When accessing the VIM file on a vendor, the contracting officer will have a clear notice of any VPCM. ABE will not interfere with the issuing of a contract to a vendor subject to a VPCM. As the VPCM details area is limited to about 250 characters, additional information may be contained on VPCM type comments, which should also be consulted.

Suspensions in Cases of Urgency

11.540 (2004-05-14) Where a problem with a vendor is particularly serious (e.g., involving negligence or wilful misconduct, or carrying health or safety implications), the ADM/AB may apply an immediate suspension on the advice of a Director General, prior to a complete investigation. The suspension will remain in effect until measures have been taken to remove any unacceptable risk to the Crown or public. The vendor will immediately be notified, and given the same opportunity to respond as in a normal VPCM action.

Exceptions

11.550 (1997-03-31) In cases of emergency, or great urgency in a procurement, an exception may be made to a VPCM, by a Director General. In such cases, special care must be taken to protect the Crown. Where an exception is made, the reason must be recorded on the contract file and the vendor file. The fact that a vendor subject to a VPCM is low bidder is not enough reason to make an exception.

Sector Programs

11.560 (2004-05-14) A Sector or Region may establish a program for evaluating vendor performance and determining appropriate VPCM to apply within that Sector or Region. Where such a program has the approval of the ADM/AB, it is not necessary that the ADM/AB review each case. The decision can be made by the persons delegated that authority under the program.

The performance standards and the VPCM to be applied must be established on a commodity basis, and other areas of the department which may be affected by the proposed Program must be consulted. This is to prevent differing standards for the same commodities, in different sectors or regions. Once established, a program is administered by the Sector or Region, in accordance with the provisions of this Policy.

Use of Vendor Performance Clause

Authority to Reject a Bid

11.570 (1997-03-31) Authority to reject a bid under the Vendor Performance clause A9100T rests with the officer responsible for evaluating bids; except that in the case of bids being considered for rejection pursuant to 1(d)(2); 1(d)(3); or 1(d)(4) the authority to reject a bid rests with the appropriate Director General.

Notice to the Bidder

11.580 (1997-03-31) Notice of intent to reject a bid pursuant to this clause will be given by telephone, and followed by confirming facsimile or letter, except that a bidder excluded under 1(b) will not be notified. The call must be made to an employee of the bidder, with clear and directly related management responsibilities. Notice is considered to have been received by the rejected supplier at the time of the telephone call. The person making the call must note on the file the date and time of the call, and the person spoken to.

Contents of Notice

11.590 (1997-03-31) The notice must set out the facts and the reasons for the decision to reject the bid. For example: Where a supplier with a record of persistent lateness, but as yet not subject to a VPCM is excluded from a procurement where timeliness is critical, the notice would cite the contracts on which the supplier was late (facts) and state that this record shows an unacceptable risk in light of the critical nature of the time requirement in the present procurement (reason).

Where a bid is being rejected under 1(c), it is sufficient to cite the VPCM.

Review

11.600 (2004-05-14) A bidder, except a bidder excluded under 1(b), may have the decision to reject reviewed by the Assistant Deputy Minister, Acquisitions Branch (ADM/AB). It is entirely in the ADM/AB's discretion, whether the bid evaluation and contract award process will be held up, to give time to review the decision.

A review by the ADM/AB will result in an investigation, and a decision. Such a decision can have effect beyond the particular procurement from which the supplier has been rejected. When the decision has been made, the bidder will be informed of the results, in writing.

Annex 11.1: Preparation of a Contract Amendment Request (2003-05-30)

Contract Amendment Requests can be presented for Deputy Minister/Minister's approval in either French or English; however, Treasury Board (TB) submissions must be in bilingual side-by-side format.

Part 1 - Submission Data

Contract Amendment Request - form PWGSC-TPSGC 1151-1

The key elements that the contracting officer needs to know from a Contract Amendment Request are:

(a) the purpose of the amendment; and
(b) the amendment cost.

The preparation of Part 1 should focus on these general key elements. The following sections provide additional considerations that should be brought to the contracting officer's attention when applicable.

Subject

1. **Authority to Amend Contract**

   Form PWGSC-TPSGC 1151-1 can be used to obtain approval to utilize a standing offer that has been revised by the supplier.

Proposal

2. State the purpose of the proposed amendment and briefly describe the goods or services as provided in the original Contract Request (e.g. to amend the contract with ABC for the supply of 20 additional widgets). Include, in the case of goods or services being added, the prices, sales tax position, delivery points, etc.

3. Identify any differences between funds previously authorized and contract commitments.

4. If a large number of items are involved, state: "Unit (and/or Lot) prices totalling $ _____, sales tax _____, F0B _____, as detailed in the attached appendix or in an appendix attached to the proposed amendment."

5. If the proposed amendment involves any deviations from Cabinet or TB contracting policies not included in the original approval, describe the deviations fully.

Additional Costs (or Reduction in Cost)

6. Show total cost of the proposed amendment in Canadian dollars or foreign currency, as applicable. If using foreign currency, give the equivalent in Canadian currency.

7. Show the proposed amended estimated cost of the contract. If the previously authorized total contains an amount for specific future work or foreseen yet unscheduled work (such as design changes or work arisings), always include this amount in the total estimated cost. If not, authority for the amount set aside is lost.

8. Also, provide the name of the client involved, cash flow, etc., as explained in Annex 7.7, Preparation of a Contract Request, under the Cost section.

9. Provide a brief description of previous amendments and their cost.

Remarks

10. Give any other important information required for a proper assessment of the proposed amendment. For example, if the proposed amendment is for a substantial increase, state why this additional requirement did not form part of the original requirement. Refer to the Remarks section in Annex 7.7 for a guide to the information which should be provided, if applicable.

11. When a Contract Amendment Request requires a higher approval level than originally authorized in the contract, detail the basis for the selection of the contractor and the Basis of Payment. It is not necessary to repeat in Part 1 the present Basis of Payment if it was previously approved at a higher level or by the contracting authority being approached now for approval of this amendment.

12. If any alteration in the Basis of Payment is proposed, provide justification and support.

13. If a difference exists between funds authorized and contractual commitments, explain why.

14. If items are being added or when establishing a firm Basis of Payment for a contract previously issued on a price-to-be-negotiated basis, provide price support.

Authority

15. Show the original authority for entry into the contract and the authority for each approved amendment. When TB authority has been obtained, give the TB number and date and when the Minister's approval has been obtained, state "ministerial authority." In all other cases, state "departmental authority." Do not show amounts in Part 1.

Part 2 - Supporting Data

Contract Amendment Request - form PWGSC-TPSGC 1151-4

This part is to be completed to provide all of the supporting information requested on the form. It consists of two pages and both pages must be completed. In particular, note the following:

Section A - Physical Progress to Date

16. In this section summarize the progress of the contract, such as quantities already delivered and the percentage completed; work in process or completed; advance or progress payments made or any other preliminary expenses; other matters of a similar nature.

Section B - Authorities for and Status of Contract plus Amount of Proposed Amendment

17. Give specific authorities and authorized amounts under the "Authority and Amount" column for the contract and each amendment (i.e., TB, Minister, Deputy Minister, Director General, Director, etc.). Any differences between authorities (approvals) and commitments should be reconciled in Section B. Also, if the amount of the proposed amendment exceeds the funds available, it should be noted in this section. (Refer to Annex 7.7, Section A, Details of Contract Demand or Requisition.)

Section C - Basis and Method of Payment as Last Amended

18. Describe briefly the Basis and Method of Payment as Last Amended (including sales tax position, delivery terms [e.g. F0B], advance and progress payments) unless it is proposed to amend the Basis or Method of Payment. In this case give a detailed description of the present Basis and Method of Payment for any portion of the work for which a new Basis or Method of

Payment is being recommended.

Section D - Basis of Recommendation

D1. Support price and changes in terms or method of payment.

19. Detail all price support for any items being added or when establishing a firm Basis of Payment for a contract previously issued on a price-to-be-negotiated basis.

D2. Explain any discrepancies between (A) the amount approved for the contract and amendments (if any) and (B) the total committed.

Note: If numerous items and unit prices have not been detailed in Part 1 of form PWGSC-TPSGC 1151-1, or in an appendix to Part 1, make reference in Section D to the specific document of the file which details the information.

Annex 11.2: Refunds by Contractors of Excess Profits Earned on PWGSC Contracts (2005-06-10)

11A.1 All intimations from any source of unreasonably high profits realized from any contract placed pursuant to the *Defence Production Act* or from any contract other than competitive firm price awarded pursuant to the *Department of Supply and Services Act* and the *Department of Public Works and Government Services Act* should be reviewed in consultation with the Director, Acquisition Program Integrity Secretariat (APIS).

11A.2 Negotiated Refunds

(a) Normally the first step in negotiating a refund is for the contracting officer and APIS to review the evidence available and decide whether the profits realized by the contractor can be recommended for acceptance or are in excess of what is considered to be fair and reasonable. In the event that the evidence is incomplete or inconclusive, consideration is to be given as to whether the contractor will be approached for a statement of its position or whether a request will be forwarded to Consulting and Audit Canada for additional verification. When all the evidence necessary is assembled, a final review will be made to determine what, if any, amount is to be refunded and the method of payment.

(b) In an attempt to ensure that suppliers are being treated consistently throughout the Department, Contract Audit Group (CAG) will distribute to the Contract Audit Review Committee's members, a contracting officer's proposed action plan in respect to a contractor's excess profit identified through audit. Any comments or concerns with the action plan should be communicated to CAG within (10) working days. CAG will consolidate the input and forward it to the lead contracting authority for consideration.

(c) In some cases it will be in order to recover excess profits by deduction from current claims or a part recovery may be effected through an assignment of income tax refunds. Ordinarily, however, the contractor will be expected to remit the full amount by cheque. If it appears that this action will create an unreasonable hardship, extended terms of payment may be considered.

(d) The agreed amount to be refunded and the terms of settlement will be set out in a letter to the contractor approved by Legal Services and signed by the responsible officer of the sector/region. Copies of this letter are to be sent to the Director, APIS.

(e) After settlement is completed, it may be desirable to release the Contractor from further obligation by detailing, in a formal agreement, the contracts to which the settlement relates. This agreement should be drafted by Legal Services.

(f) Cheques forwarded by the contractor should be made payable to the Receiver General and mailed to the contracting officer. The contracting officer will pass them to CAG who will forward them to the Chief Financial Officer of the client.

11A.3 Voluntary Refunds

(a) Where a contracting officer receives notice from a contractor that it desires to return excess profits, or if a contractor voluntarily forwards a cheque in refund of such profits, the contracting officer should request a statement showing:

(i) a summary of the excess profits by contracts, and

(ii) an explanation of the principal reasons which accounts for the excess and how the amount was arrived at.

(b) Pending an appraisal of the information given by the Contractor and of the particular circumstances of the case, any cheques received should be sent immediately to the Director, APIS, accompanied where possible by a statement showing the distribution of the refund over the contracts affected. The Director, APIS, will then forward the cheques to the Chief Financial Officer of the client.

(c) In deciding how extensive a review should be carried out in each case, the determining factors will be:

(i) the value of the contracts affected and the total amount of the contracts let to the Contractor;

(ii) the explanations given by the Contractor as to the procedure followed in arriving at the amount of the refund;

(iii) the Contractor's known capacity for assembly and interpretation of costs in accordance with Contract Cost Principles 1031-2, if applicable.

(d) If there is doubt as to the accuracy of the Contractor's computations or if it appears that there may be other excess profits which have not been declared, then a full inquiry must be instituted.

(e) A final decision will be agreed upon by consultation between the sector/region concerned and the Director, APIS, and this conclusion will be communicated to the Chief Financial Officer of the appropriate customer department.

11A.4 Refunds from Subcontractors

Refunds from subcontractors will be handled in accordance with the above procedures. In addition, however, it will be necessary for Public Works and Government Services Canada (PWGSC) to keep the prime contractor informed of its negotiations with the subcontractor and in some cases it will be preferable to deal with the subcontractor through the prime contractor. If the refund results from a contractual provision in effect between the prime contractor and the subcontractor then the refund should be effected by the prime contractor. If the refund arises from circumstances not envisaged in the subcontractor's contractual arrangements with the prime contractor, the refund should be effected by PWGSC and should not result in a windfall being realized by the prime contractor.

11A.5 Assignment of Income Tax Refund

(a) In the event that a settlement from the Contractor is to be financed partly from the proceeds of its income tax refund, the sector/region concerned will endeavour to obtain a voluntary assignment of the income tax refund in the following terms:

"Receiver General of Canada
Ottawa, Ontario.

(Company) _____ of the City of _____ in the Province of _____ does hereby authorize and direct that any amounts presently due or accruing due to it in the future from the Canada Revenue Agency of the Government of Canada, be applied in reduction of its debt to Her Majesty the Queen in right of Canada in the amount of $ _____ on account of _____".

(b) In the case of a Corporation, the direction should be under the seal of the Corporation and the signature of duly authorized officers. The form, which should be a separate document and not embodied in a letter, should then be passed by the sector/region to

the Director General, Finance, Corporate Services, for processing in accordance with normal government practice. Treasury Board authorization is not required.

(c) Whether the assignment is voluntary or pursuant to section 155 (Deduction and set-off) of the *Financial Administration Act*, the Finance Sector assumes the responsibility of notifying Canada Revenue Agency (CRA) of the assignment. The manner in which money is transferred from CRA to PWGSC, or to the Department of National Defence (in the case of refunds to its own votes) is a matter for decision by the Finance Sector. However, the transfer will be made either by means of a Receiver General cheque or an interdepartmental Journal Voucher. Under either method, the transfer advice will be passed to the sector/region concerned who will forward it to the Director General, Finance.

Chapter 12 - Glossary

A

accelerated depreciation
Also known as **additional allowance in respect of capital cost**. An additional deduction over and above normal depreciation allowed on capital cost in computing income for income tax purposes. Application for such allowance can be made under Income Tax Regulations provided the taxpayer has received a certificate from the appropriate specified government authority, certifying the dollar value of the assets on which accelerated depreciation may be taken. Accelerated depreciation is not allowed as an item of cost on government contracts. (1994-06-23) ***(amortissement accéléré)***

acceptable products list

1. Lists including appropriate product identification, developed and utilized for products which conform with the applicable handbooks, specifications, standards or other descriptions and which have proven acceptance.

2. *Pharmaceuticals and medical supplies*. The Acceptable Products List includes pharmaceuticals and medical supplies; which client medical departments stipulate as the only items acceptable for administration to, or for use in the treatment of, patients for whom the federal government is responsible; which conform with the applicable handbooks, specifications, standards or other descriptions; whose suppliers shall comply with the provisions of the Food and Drugs Act and Regulations, and the Narcotic Control Act and Regulations. See also **pharmaceuticals and medical supplies**. (1994-06-23) ***(liste des produits acceptables)***

acceptance

1. A deliberate and intentional agreement or consent to accept materiel or services rated as acceptable.

2. Receipt by the consignee for a shipment, thus terminating the common carrier liability subject to claim for shortages or damages if such exist.

3. See also SACC Manual, sections 3, 4 and 5.

4. *Tender/Offer*. The action of one of the parties to a contract to make it valid, following the offer of the other party. (5) See also **contract**. (1994-06-23) ***(acceptation)***

account

1. A formal record of a particular type of transaction such as an asset, liability, proprietorship, revenue or expense, expressed in money or other unit of measurement and kept in a ledger.

2. The bookkeeping records of any organization, including journals, ledgers, vouchers and other supporting papers.

3. *Defence Production Act*. Means the Defence Production Loan Account. See Section 9E.

4. *Canadian Institute of Chartered Accountants (CICA).* Collective term for the whole set of financial statements of an organization.

5. Refers to records of the cost to the contractor of the work performed under a PWGSC contract and of all expenditures and commitments made by the contractor in connection with the contract and invoices, receipts and vouchers relating to it. (1994-06-23) ***(compte)***

accountability
The obligation of an employee, agent or other person to answer for or be accountable for, work, action,

or failure to act following delegated authority. The obvious aspect of being responsible. (1994-06-23) ***(obligation de rendre compte)***

accountable advance

1. Funds provided to a contractor to purchase spare parts which are not an item of supply in the supply system and which will be used in the repair and overhaul of government equipment.

2. Advance funds provided for a specific purpose and chargeable to the appropriation for the service in respect of which the advance is made.

3. Accountable Advance Regulations. A sum of money advanced from and temporarily changed to an appropriation, e.g. a revolving fund, working capital advance, special account. (1994-06-23) ***(avance à justifier)***

accountable items

Items of materiel for which complete accountability records must be maintained for inventory, in units and value including purchase transactions and, when items are removed from inventory, in units and value. (1994-06-23) ***(articles à comptabiliser)***

ad valorem

1. According to value.

2. Ad valorem is usually applied to a customs duty charged upon the value only of goods that are dutiable.

3. Ad valorem duty as distinguished from specific duty is calculated in percentages of the value of the goods imported. (1994-06-23) ***(ad valorem)***

additional allowance in respect of capital cost

See **accelerated depreciation**. (1994-06-23)

adjustment

1. The amount of variation permitted by an adjustment clause in the contract generally permitting a change upward or downward in the price or obligations in case certain events transpire.

2. See also **economic price adjustment**. (1994-06-23) ***(ajustement)***

advance payment

A payment made by or on behalf of Her Majesty under the terms of a contract before the performance of that part of the contract in respect of which the payment is made. (1994-06-23) ***(paiement anticipé)***

advice

The expression of counsel or opinion; an opinion expressed as to the wisdom of future conduct. (1994-06-23) ***(conseil)***

advice of shipment

Also known as **notice of shipment**. A notice sent to a purchaser advising that a shipment has been released. The notice usually contains details of packing, routing, etc. (1994-06-23) ***(avis d'expédition)***

Advisory Contracting Services

A requirement or group of requirements in which the PWGSC contracting procedures are not comprehensively applied. The client is free to accept or reject the advice or contractual services, and PWGSC does not assume full contracting responsibilities. (1994-06-23) ***(services contractuels de conseil)***

advisory projects

A project in which PWGSC systems and procedures are not comprehensively applied. (1994-06-23) ***(projets consultatifs)***

after-imposed duties
All duties that the contractor has to bear that were not applicable on the contract date. (1994-06-23) ***(droits imposés ultérieurement)***

after-imposed taxes
All applicable GST/HST exempted or excluded on the reference date but for which exemption was later removed or reduced such that the contractor is required to pay or bear additional taxes as a result of legislative, judicial or administrative action taking effect after the reference date; also includes increases announced after the reference date affecting the rate of tax, whether specific or percentage. (1998-02-16) ***(taxes imposées ultérieurement)***

after-relieved duties
All duties which were applicable on the contract date but which were no longer applicable at the time of delivery. (1994-06-23) ***(droits dégrevés ultérieurement)***

after-relieved taxes
All applicable GST/HST that would have been payable on the transaction or property covered by contract, but which the contractor is not required to pay or bear or for which the contractor obtains a refund or drawback, as a result of legislative, judicial or administrative action taking effect after the reference date. (1998-02-16) ***(taxes dégrevées ultérieurement)***

agency
A relationship established by contract whereby one party known as the principal, employs and authorizes a second party, known as the agent, to represent the principal in business dealings with third parties. The term also applies to the office of the agent. (1994-06-23) ***(agence)***

agency and resale items
Fully processed articles or component parts acquired by bona fide agents, distributors, wholesalers, jobbers or retailers for resale without further processing; however, such items may require handling, unpacking, testing, inhibiting, storing, re-packing prior to shipment. (1994-06-23) ***(articles d'agents et de revendeurs)***

agent
Persons who act on behalf of another person (the principal) by their authority, express or implied, in dealings with third parties. (1994-06-23) ***(agent)***

agreement

1. A consensus of two or more minds in respect of anything done or to be done.

2. An agreement has a wider meaning than a contract. The requisites of an agreement are: two or more persons, a distinct intention common to both, referring to legal relations and affecting the parties, and the document or instrument which evidences the agreement.

3. See also **formal agreement**. (1994-06-23) ***(accord)***

amendment
An agreed addition to, deletion from, correction or modification of a contract. See **contract amendment**. (1994-06-23) ***(modification)***

Amount
In respect of a contract, means the consideration to be given by the contracting authority under the terms of the contract, whether the consideration is fixed or estimated. (1994-06-23) ***(montant)***

appropriate minister
The "appropriate minister" means either the minister presiding over a department [i.e. any of the departments named in Schedule I of the *Financial Administration Act (*FAA)] or the minister designated by the Governor in Council as the appropriate minister in respect to any other department (i.e. any branch designated as a department for the purposes of the FAA). (1994-06-23) ***(ministre compétent)***

approved financial institution
1. any corporation or institution that is a member of the Canadian Payments Association,

2. a corporation that accepts deposits that are insured by the Canada Deposit Insurance Corporation or the Régie de l'assurance-dépôts du Québec to the maximum permitted by law,

3. a credit union as defined in the Income Tax Act,

4. a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province, or

5. the Canada Post Corporation. (2003-12-12) ***(institution financière agréée)***

approved item name
The name which has been selected, and delimited where necessary, to establish the concept of an item of supply. (1994-06-23) ***(nom d'article approuvé)***

approved personnel security screening
The administrative process used to examine a Personnel Security Screening, that has been granted by another government organization, in order to determine its applicability and acceptance for the purpose of approval by the Canadian and International Industrial Security Directorate for access to classified and/or protected information and assets provided to or produced by private organizations under contract to the Government of Canada. (2002-05-24) **(cote de sécurité du personnel approuvée)**

approved source list
1. A list of suppliers that can supply specific goods and services and are approved on the basis of the suitability of their facilities and capabilities.

2. See also **qualified products list**. (1994-06-23) ***(liste de fournisseurs accrédités)***

area buy
Regional offices are to solicit bids within their geographic area as long as that area ensures adequate sources, including suppliers of foreign goods or services, the required service to clients, and fair value for the taxpayer's dollar. (2003-05-30) (***achats régionaux***)

Assets
General. Any owned physical object (tangible) or right (intangible) having economic value to its owner. See also **production assets**. (1994-06-23) ***(actif)***

assignment
1. A transfer of a right from either party to the other, as mutually agreed.

2. *Lease*. In this context, the entire unexpired residue of the lease is transferred.

3. *For the benefit of creditors*. Regulated by the *Bankruptcy and Insolvency Act*, it is an assignment made in favour of the trustee in bankruptcy who takes it in trust for the general body of creditors of the insolvent assignor for realization and distribution in accordance with the statute.

4. *Book debts*. Right to collect and receive all accounts receivable, present and future, of the borrower. This right is exercised by the lender signifying to the debtors of the borrower that the

lender requires them to pay to it the balance outstanding on their account. (2003-12-12) ***(cession)***

assignment of contract
The transfer by the contractor of responsibility for performance of all or part of the contract from the contractor to a third party. (1994-06-23) ***(cession d'un contrat)***

associated government
Means Her Majesty's Government in the United Kingdom, any other government of the Commonwealth of Nations, the government of a country that is a member of the North Atlantic Treaty Organization (NATO) or the government of any other country designated by the Governor in Council as being a country the defence of which is vital to the defence of Canada. (1994-06-23) ***(gouvernement associé)***

audit
1. *General*. An examination, full scrutiny and verification of accounting records, usually by a third person.

2. An examination of all elements of actual costs incurred by the contractor and the determination of actual profit realized. See **discretionary audit**. (1994-06-23) ***(vérification)***

audit chapter
This is a complete chapter on a specific subject in the Auditor General's Annual Report to the House of Commons. A chapter may include all the observations and recommendations resulting from a Comprehensive Audit of a government department or the findings and recommendations from a government-wide study on a specific function. Extracts from a government-wide or any other type of study completed by the Office of the Auditor General, will be forwarded (usually in the form of an Audit Note) to PWGSC for comment prior to publication in the Auditor General's Annual Report. (1994-06-23) ***(chapitre du rapport de vérification)***

audit notes
These are individual observations that are pertinent to PWGSC which the Auditor General proposes to include in a specific chapter in his annual report to the House of Commons. This type of Audit Note may be the first indication that the Auditor General is contemplating an audit observation applicable to PWGSC operational activities. (1994-06-23) ***(note de vérification)***

audit observation
This is generally recognized as a numbered paragraph to the Auditor General's Annual Report. An audit observation may be critical of our operations or may merely provide information on activities carried out within PWGSC. (1994-06-23) ***(observation de vérification)***

authority
1. The right to perform certain acts or prescribe rules governing the conduct of others.

2. Generally, under balanced schemes of management, administrative authority represents the activation of corporate policy and is coupled with responsibility and accountability.

3. A person commonly regarded as possessing an extensive knowledge in any given field. (1994-06-23) ***(pouvoir)***

Automated Vendor Rotation System (AVRS)
Maintains a record of bid opportunities for the suppliers from each source list. AVRS records are only maintained on regional type satellites. (1994-06-23) ***(Système automatisé de rotation des fournisseurs [SARF])***

award
The notification to a bidder or tenderer of acceptance of a bid or tender which brings a contract into existence. (1994-06-23) ***(adjudication)***

B

Background information
All Technical Information that is not Foreground Information and that is proprietary to Canada, the contractor, its subcontractors or any third party. (1994-06-23) ***(renseignements de base)***

bailment
The delivery of personal property to another for some purpose on condition that the property will be returned pursuant to an agreement. (1994-06-23) ***(dépôt)***

bankruptcy
1. A condition where an insolvent company either voluntarily institutes bankruptcy proceedings by applying to have a licensed Trustee in Bankruptcy appointed or where the company's creditors are successful in petitioning the court to issue a receiving order, the effect of which is to authorize transfer of all assets of the bankrupt debtor to a licensed Trustee in Bankruptcy for realization or distribution to the creditors.

2. The state or condition of one who is bankrupt, whereby the property of a person or company, being legally declared unable to meet debts, is vested in an official trustee for distribution among creditors. (1994-06-23) ***(faillite)***

Basic Ordering Agreement
An American term meaning a written instrument of understanding negotiated between the U.S. contracting authority and the contractor that contains contract clauses applicable to future contracts between the parties during its term and contemplates separate future contracts that will incorporate by reference or attachment the terms and conditions of the basic ordering agreement. It is used when a large number of separate contracts may be awarded to a contractor, and significant and recurring negotiating problems have been experienced with the contractor. (1994-06-23) ***(accord général sur la passation des commandes)***

bid
A tender, proposal or quotation submitted in response to a solicitation from a contracting authority. A bid covers the response to any of the three principal methods of soliciting bids, i.e. Invitation to Tender, Request for Proposal and Request for Quotation. (1994-06-23) ***(soumission)***

bid bond
1. A bond given to guarantee entry into a contract. This bond is given to indemnify Her Majesty against increased costs should the bidder not carry out the specified undertaking to enter into a contract.

2. A bond given by a person to guarantee entry into a contract if the contract is awarded to that person.

3. See also **security deposit, government guaranteed bond** and **surety bond**. (1994-06-23) ***(cautionnement de soumission)***

bid protest
A complaint that is made against the methods employed or decisions made by a contracting authority in the administration of a process leading to the award of a contract. (1994-06-23) ***(réclamation relative à une offre)***

bid security
A bid bond or a security deposit given by a person to Her Majesty to guarantee entry into a contract if the contract is awarded to that person. (1994-06-23) ***(garantie de soumission)***

bid set

A package of data which identifies the article to be purchased, the quantity and delivery, and which includes designs, specifications, quality requirements and general conditions which will govern the contract resulting from acceptance of a bid. Specifications included in the package may refer to other specifications not included in the package since the bidder is normally expected to have access to these supplementary specifications. (1994-06-23) ***(documents de soumission, Ensemble de)***

bid solicitation
See **invitation for bids**. (1994-06-23) ***(demande de soumissions)***

bidders' conference
A meeting chaired by PWGSC to discuss with potential bidders, technical, operational and performance specifications, and/or the full extent of financial, security and other contractual obligations related to a bid solicitation. (1994-06-23) ***(conférence des soumissionnaires)***

bill of lading
The carrier's record of receipt of a shipment, its routing, shipper, consignee and number of pieces, e.g. air bill, ocean bill, highway probill, rail waybill. (1994-06-23) ***(connaissement)***

bill of sale
An instrument in writing under which title to personal chattel is transferred. A mere receipt for payment is not a bill of sale; the instrument must actually signify a transfer of title to the goods to the buyer. (1994-06-23) ***(contrat de vente)***

bill of exchange
Includes certified cheques, bank drafts and money orders. These are defined in the *Bills of Exchange Act* as "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 or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer." (2003-12-12) ***(lettre de change)***

blanket order cases
A supply arrangement which is negotiated with the United States Government under the auspices of Foreign Military Sales (FMS). It allows clients to submit detailed requirements directly to the identified U.S. military organization. This arrangement, which is similar in nature to the standing offer method of procurement, is normally utilized when there is no definite listing of items or of quantities required. This category of FMS cases (contracts) does not necessitate the purchase of an equity. See Chapter 9B. (1994-06-23) ***(dossier de commandes-cadres)***

breakout procedure

1. The removal of a (major) portion of a product from the responsibility of the contractor and placing it with another contractor for manufacture under a separate contract.

2. A process wherein components or subassemblies of a weapons system or major item of equipment initially obtained from the major prime contractor are separately procured. The objectives of the breakout procedure are to reduce the concentration of procurement from the contractor, to increase competition in the procurement of affected items and to reduce costs. See also **subcontractor**. (1994-06-23) ***(procédure de séparation)***

briefing pooks and position papers
Auditor General Reports. These are formalized PWGSC reports which outline the events that have occurred, the reason for their occurrence and recommend a position which should be taken by PWGSC. These reports are prepared for the benefit of senior management to apprise them of the events which have occurred, recommend changes in our system, procedures or practices, if necessary, and to prepare representatives of the PWGSC for possible discussions with the Standing Committee on Public Accounts. (1994-06-23) ***(aide-mémoire et exposés définissant la position du Ministère)***

buy for lease

A PWGSC program using the Office Automation Allotment within the Supply Revolving Fund in which EDP equipment is purchased from the supplier and subsequently leased by PWGSC to a client. The program is used where outright purchase of the equipment represents the most cost effective method of supply or where significant savings may be obtained by exercising a purchase option under a lease. See Chapter 9G. (1994-06-23) ***(achat aux fins de location)***

C

call-up
A requisition or a request for delivery which is forwarded directly to a supplier to obtain delivery of materiel from a previously negotiated contract, in accordance with their terms. See also **Call-up Against a Standing Offer**. (1994-06-23) ***(commande directe)***

Call-up Against a Standing Offer
An order issued under the authority of a duly authorized user against a particular standing offer. Communication of a call-up against a standing offer to the offeror constitutes acceptance of the standing offer to the extent of the goods, services, or both, being ordered and causes a contract to come into effect. The parties to the contract that comes into effect when a call-up against a standing offer is made are Her Majesty, the Queen in right of Canada, as represented by the Minister of Public Works and Government Services and the offeror. (2002-12-13) ***(commande subséquente à une offre à commandes)***

Canadian General Standards Board (CGSB)
A part of Public Works and Government Services Canada accredited by the Standards Council of Canada as a standard development organization and an ISO 9000 registrar. CGSB is mandated to provide a range of standardization and conformity assessment services in support of government procurement and other government requirements, such as: (a) development of standards, specifications, manuals, guides; (b) listings of prequalified products and services and (c) Quality Systems Division. (2003-12-12) ***(Office des normes générales du Canada [ONGC])***

Canadian goods

1. For the purposes of the Canada-Korea Telecommunications Equipment Agreement . Goods are considered Canadian or Korean if they are considered so under Canada's "*Determination of Country of Origin for the Purposes of Marking Goods (NAFTA Countries) Regulations*". Article 8 of these Regulations, which provides for a NAFTA tariff preference override, cannot be used to determine whether a good is Canadian.

2. For the purposes of the Canadian Content Policy. Generally, with the exception of goods covered by the International Trade Agreements, Canadian goods are those wholly manufactured or that originate in Canada or they are products containing imported components that have undergone sufficient change in Canada to be considered Canadian.

3. For the purposes of Taxes and Duties. Goods that are the growth, produce or manufacture of Canada or which are of foreign origin but are duty and tax paid and have thus been entered for consumption into Canada.

4. Addition to Canadian Goods Abroad. Goods that are exported from Canada for the purpose of being incorporated with foreign articles abroad.

5. Processing of Canadian Goods Abroad. Goods that are exported for a phase of production which cannot be completed in Canada. (2003-05-30) ***(marchandises canadiennes)***

Canadian Goods Abroad Remission Order
Order-in-Council P.C. 1970-1835 relates to the repair of Canadian goods abroad. If the collector of Customs and Excise is satisfied that repairs could not have been made in Canada, remission may be granted on the value of the Canadian goods returned to Canada. (1994-06-23) ***(Décret de remise sur les marchandises canadiennes à l'étranger)***

Canadian industry
All commercial enterprises resident and operating in Canada and incorporated, registered, or recognized as such, under federal or provincial legislation and which carry on activities in Canada. This includes

industrial research institutes jointly operated by groups of such commercial enterprises. (1994-06-23) ***(industrie canadienne)***

Canadian services
Services provided by Canadian-based personnel. (1995-07-01) ***(marchandises canadiennes)***

capital cost allowance
1. Depreciation of fixed assets over a number of accounting periods.

2. See also **capital cost recovery**. (1994-06-23) ***(allocation du coût en capital)***

capital cost recovery
When a contractor plans the acquisition of specialized capital equipment to undertake a government contract, the government may provide full recovery of the relevant capital cost, either through a granting of accelerated depreciation or, in the event of any termination of the contract, under a specific contract provision pursuant to sections 25 and 26 of PWGSC general conditions 1026A and 1026B respectively. (2004-05-14) ***(recouvrement d'investissement)***

capital lease
Capital lease is a lease that, from the point of view of the lessee, transfers substantially all the benefits and risks incident to ownership of the property to the lessee. (1994-06-23) ***(bail de location-acquisition)***

carrier
Any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes. (2003-12-12) ***(transporteur)***

cash flow
A tracing, in successive steps, of individual items or aggregates of income or expenditure from their first recognition in the accounts to their final disposition or loss of identity. (1994-06-23) ***(mouvements de trésorerie)***

ceiling price
The maximum price that is to be paid to the contractor as established in the contract and beyond which the contractor will not receive additional compensation for the defined work. In such cases, both parties agree prior to the award of the contract that the price may be subject to downward revision based on a pre-established payment formula. (1994-06-23) ***(prix plafond)***

Certificate of Commitment
Constitutes a written statement from suppliers committing them to the implementation of employment equity. These certificates are available from the offices of Human Resources and Skills Development Canada. (2004-05-14) ***(attestation d'engagement)***

Certified Products List (CPL)
The CPL is identical to the Qualified Products List (QPL) except that there are more frequent audits and tests. This higher level of product assurance permits the qualifying authority, as a certification agency, to enter into a licensing agreement with supplier(s) allowing them to use a registered certification mark on their products and promotional literature. (1994-06-23) ***(liste des produits certifiés [LPC])***

classified contract
Includes all contractual processes that require or will require access to protected/classified information, assets or controlled areas by the contractor or its employees in the performance of the contract. A contract may be classified for security reasons even though the contract document itself is not classified. (2002-12-13) ***(contrat classifié)***

classified information
Information related to the national interest that may qualify for an exemption or exclusion under the *Access to Information Act* or *Privacy Act* and the compromise of which would reasonably be expected to cause injury to the national interest. (2002-12-13) ***(information classifiée)***

client
A department, agency, branch, division, Crown corporation or other entity which purchases or otherwise obtains goods or services from a common service organization or other supplier. (1994-06-23) ***(client)***

Co-operative Supply
The federal government and provincial governments may, where it is advantageous for them to do so, provide goods and services to each other. (1994-06-23) ***(approvisionnement coopératif)***

collusion
A secret understanding between two or more persons to take advantage of another with the object of depriving him or her of a right or property. (1994-06-23) ***(collusion)***

Co-operative Logistics (COLOG)
A supply arrangement which is negotiated with the United States Government under the auspices of Foreign Military Sales (FMS). It enables the Canadian Department of National Defence to obtain directly from the supply systems operated by the United States Department of Defense, spare parts and accessories needed for Crown-owned military equipment of U.S. origin. This category of FMS cases (contracts) necessitates the purchase of an equity in the supply system of the appropriate military organization. See Section 9B (FMS) and 9C (COLOG). (1994-06-23) ***(COLOG)***

commercial products
Products of a class or kind: which are used regularly for other than government purposes and are sold by the contractor in the course of carrying out normal business operations; which are regularly sold by the contractor to clients other than the government in sufficient quantities to constitute a real commercial market; and for which there is sufficient number of buyers other than the government for their purchases to establish a going-price for the products. (1994-06-23) ***(produits commerciaux)***

commercial services
Services of a class or kind: which are used regularly for other than government purposes and are sold by the contractor in the course of carrying out normal business operations; which are customarily provided by the contractor with personnel regularly employed and equipment, if necessary, regularly maintained for the purpose of supplying such services; and for which there is a sufficient number of buyers other than the government for their purchases to establish a going-price for the services. (1994-06-23) ***(services commerciaux)***

commingling of goods
The intermingling of the goods of two or more persons by either of the owners to such an extent that it is not possible for a third party to determine who owns the goods. The person so commingling has the duty to distinguish his or her own property. (1994-06-23) ***(entreposage en commun)***

commodity
Raw material, perishable goods, fabricated article or item of production or supply utilized in everyday endeavours and which is identified by contents, physical nature or characteristics. (1994-06-23) ***(produit)***

commodity class (NATO)
A property class containing similar commodities, items related because of their physical or performance characteristics, or general type items normally stored and issued together. (1994-06-23) ***(classe d'articles {OTAN})***

common ownership control

Determined by reference to the latest issue of appropriate trade surveys, (e.g. Financial Post Survey of Industrials, Moody's Industrials, etc.), as confirmed by means of a certification from the company as to control (use SACC Manual clause K9000C). Ownership control is presumed in cases where at least 50 per cent of the voting rights are held by the affiliate. (1994-06-23) ***(contrôle collectif)***

common carrier
Any person who undertakes and is authorized to transport persons or goods as a regular business. (1994-06-23) ***(transporteur commun)***

Common Service Agency
1. An agency whose activities are directed mainly toward serving other departments and agencies.

2. Public Works and Government Services Canada is a common service agency. (1994-06-23) ***(organisme de services communs)***

company
See **corporation**. (1994-06-23) ***(compagnie)***

competitive contract
See Chapter 6, Annex 6.1.6. (1997-03-31)

competitive bid solicitation
Where two or more qualified sources are solicited. (1994-06-23) ***(demande de soumissions en régime de concurrence)***

competitive bidding
Offers submitted by individuals or firms competing for a contract, privilege or right to supply specified services or merchandise. (1994-06-23) ***(soumission en régime de concurrence)***

compliance review
A compliance review of a representative selection of contractors will be conducted periodically by Human Resources and Skills Development Canada to assess compliance with the employment equity program criteria and the results obtained. (2004-05-14) ***(vérification de conformité)***

COMSEC
Cryptographic, transmission and emission security measures applied to information stored, processed or transmitted electronically; a subset of information technology security. (2002-12-13) **(*COMSEC*)**

condition
1. *Contract law.* A term in the contract the breach of which entitles the aggrieved party not only to damages but to avoid the contract, i.e. an obligation in the contract which goes so directly to the substance of the contract or is so essential to its very nature that its non-performance may be fairly considered by the other party as a substantial failure to perform the contract at all. A warranty is a collateral term which entitles a party only to damages.

2. *Implied condition*. One created by law without any words used by the parties, whether the parties had it in their minds at the time or not. (1994-06-23) ***(condition)***

confidential
Level of classification that applies to information and assets whose compromise could reasonably be expected to cause injury to the national interest. (2002-12-13) **(*confidentiel*)**

consignee
1. The person to whom goods are shipped.

2. See **consignment**. (1994-06-23) ***(destinataire)***

consignment
Goods shipped for future sale or other purpose. The ownership of the goods (title) remains with the shipper (consignor). The receiver (consignee) is accountable for the goods after accepting them. Consigned goods are a part of the consignor's inventory until sold. The consignee may be the eventual purchaser, may act as the agent through whom the sale is effected or may otherwise dispose of the goods in accordance with its agreement with the consignor. (1994-06-23) ***(expédition)***

construction contract

1. Includes an agreement for the supply and erection of a prefabricated structure. The mere purchase of a prefabricated structure would be a "goods contract." However, a subsequent erection contract would be a "construction contract."

2. A contract entered into for the construction, repair, renovation or restoration of any work except a vessel and includes: a contract for the supply and erection of a prefabricated structure; a contract for dredging; a contract for demolition; or a contract for the hire of equipment to be used in or incidentally to the execution of any contract referred to in this definition. (1994-06-23) ***(marché de travaux publics)***

consultant

1. An individual who serves in an outside independent advisory capacity to an officer or department of the Crown, as distinguished from one who serves as an employee in performance of a department's duties and responsibilities. A consultant expresses views or gives opinions on problems or questions as requested, but does not perform, supervise, nor take responsibility for the performance of operating functions. Ordinarily, consultants are experts in a particular field in which advice is given. A consultant need not be a specialist; the expertise may consist of broad administrative, professional or technical experience indicating ability and knowledge which will make the advice provided of distinctive value to the client. The work performed under contract is the provision of advice.

2. *Treasury Board*. Anyone who is qualified to provide specialized advice. (1994-06-23) ***(expert-conseil)***

contingent liability
A legal or financial obligation that may arise as a result of a future event that may be possible but not probable. (1994-06-23) ***(dette éventuelle)***

contract

1. A contract is an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. It is essential to the creation of a contract that the parties intend that their agreement shall have legal consequences and be legally enforceable. The essential elements of a contract are: an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent or consensus ad idem; legality of purpose; sufficient certainty of terms.

2. An express contract is a contract stated orally or in writing.

3. A contract under seal is created by the execution of a deed binding the party executing it to a further act of self-control and derives legal effect solely from the formality of sealing and delivery.

4. An executed contract is a contract where both parties have performed their obligations.

5. An executory contract is when, although one party has performed its obligations, something remains to be done by the other party. Sometimes referred to as a continuing contract.

6. Under the *Government Contracts Regulations* a “contract means a construction contract, a goods contractor a service contract entered into on behalf of Her Majesty by a contracting authority”. (2003-12-12) ***(contrat {ou marché})***

contract amendment
An agreed addition to, deletion from, correction or modification of a contract. (1994-06-23) ***(modification de contrat)***

contract approval authority
The authority delegated by the Minister of PWGSC to the person designated to occupy a position, that is, the incumbent of a position, to approve on his/her behalf submissions to enter into contracts, to amend contracts or to issue Standing Offers up to specified dollar limits subject to the applicable legislation, regulations, PWGSC General Conditions and procedures in effect at such time, and constitutes approval to accept the terms and conditions stipulated in the submission on behalf of the Crown. See **contract signing authority**. (1994-06-23) ***(pouvoir d'approbation des contrats)***

Contract Claims Resolution Board (CCRB)
The CCRB was formed in January 1994 by the integration of the Contracts Settlement Board (CSB) of the former Supply and Services Canada and the Contract Disputes Advisory Board (CDAB) of the former Public Works Canada. A summary of the dispute resolution processes of the CSB and the CDAB is set forth in 11.201 and 11.202 respectively. (2002-12-13) ***(Conseil de règlement des différends contractuels)***

contract date
The date set for bid closing or, if it is a negotiated contract or a modification, the effective date of the contract amendment. (1994-06-23) ***(date du contrat)***

contract dispute
A matter of dispute in respect of a contract that cannot be resolved between the contractor or its authorized representative and the contracting officer designated in the said contract. (1994-06-23) ***(différend relatif au contrat)***

contract financial analysis
An assessment of a proposed supplier's financial capability to complete a specific contractual requirement in a given time frame. (1994-06-23) ***(analyse financière d'un contrat)***

contract for service

1. A contract for service exists when an individual is retained to achieve a prescribed objective with no day-to-day supervision by the contracting authority, i.e. the contractor has the latitude of how to achieve a specified amount of work.

2. A contract in which one party agrees that certain specified work will be done for the other. It normally implies the accomplishment of a specified job or task.

3. An employer/employee relationship does not exist in contracts for services. (1994-06-23) ***(contrat de services)***

contract of service

1. A contract in which one party, the employee, agrees to work for the other party, the employer. It does not normally imply the accomplishment of a specified amount of work but does normally suggest that the employee puts their services at the disposition of the employer during some period of time.

2. Treasury Board and separate employers have authority to issue contracts of service under the Public Service Staff Relations Act and the Public Service Employment Act. (1994-06-23) ***(contrat d'emploi)***

contract issue materiel
Any item of materiel and/or parts purchased by PWGSC or a client for incorporation into the end items described in the related contract and provided to the contractor; either (a) on a free-issue basis as government-supplied materiel or government-furnished equipment; or (b) on payment of the cost (unless

otherwise provided by the contract) thereof to PWGSC, on the basis that the cost will be recovered by the contractor as a profit-bearing element of the cost of the article produced. (1994-06-23) ***(matériel fourni sous contrat)***

contract price

1. *General*. The price or price formula stipulated in a contract of purchase or sale, such as firm price, target price, cost price, etc.

2. PWGSC General Conditions. The amount expressed in the contract to be payable to the contractor for the finished work. (1994-06-23) ***(prix du contrat)***

contract security

A payment bond or a performance bond given on behalf of a person to Her Majesty to make good on any default by that person under the contract by compensating Her Majesty therefor, or completing the performance of the contract to the extent required by the terms and conditions of the payment bond or performance bond; or a security deposit given by the person to Her Majesty to secure the performance of the contract to the extent required by the terms and conditions of the contract. (1994-06-23) ***(garantie contractuelle)***

contract settlement

A settlement arising from extra payment or termination claims. (1994-06-23) ***(règlement de contrat)***

contract signing authority

The authority delegated by the Minister to the person designated to occupy a position, that is, the incumbent of a position, to sign on his/her behalf contract, contract amendment or Standing Offer documents after ascertaining that the approval authority has been duly granted and ensuring that the terms and conditions written in the documents reflect those approved by the contract approval authority. See **contract approval authority**. (1994-06-23) ***(pouvoir de signature des contrats)***

contract warranty

An undertaking or stipulation, in writing or verbally, that a certain fact in relation to the subject of a contract is or shall be as it is stated or promised to be. It is an express or implied statement of something undertaken as part of a contract but collateral to its object. See **warranty**. (1994-06-23) ***(garantie du contrat)***

contract with security requirements

Includes all contractual processes (including pre-contractual processes) that require or will require access to protected or classified information, assets or controlled areas by the contractor or its employees in the performance of the contract. A contract may be designated or classified for security reasons even though the contract documentation itself is not sensitive. (2002-12-13) **(*contrat comprenant des exigences relatives à la sécurité*)**

contracting authority

1. The appropriate Minister as defined in paragraph (a) or (b) of the definition "appropriate Minister" in section 2 of the *Financial Administration Act*.

2. A corporation named in Schedule II to the *Financial Administration Act*.

3. Defence Construction (1951) Limited, the National Capital Commission or the National Battlefields Commission. See also **contract approval authority** and **appropriate minister**. (1994-06-23) ***(autorité contractante)***

contractor

1. *General.* Any one of the parties to a contract.

2. One who contracts to perform work or furnish materiels in accordance with a contract. (1994-06-

23) ***(entrepreneur)***

contractor-furnished materiel
Materiel supplied by a contractor during the production, repair, modification or overhaul of materiel. (1994-06-23) ***(matériel fourni par l'entrepreneur)***

contribution agreement
A contractual document reflecting a contribution arrangement which is an undertaking between a donor department (client) and a recipient of a contribution, describing the obligations of each and conditions for payment. (1994-06-23) ***(accord de contribution*)**

control
The process by which the activities of a project or organization conform to a desired plan of action. Examples of control elements are: authority and capacity for its exercise, common understanding of purpose, objectives, plan of organization and action, assumption of responsibility by organizational units, policies governing courses of action, standards of performance appraisals and monitoring of performance, and ability to convert or modify performance. (1994-06-23) ***(contrôle)***

controlled goods
Controlled goods are defined under the schedule to the *Defence Production Act*. The following goods are listed in the Export Control List (Group 2, not all; Group 5, Item 5504 only; and Group 6, all) (2004-12-10) **(marchandises contrôlées)**

1. **examine** means, in respect of controlled goods, to investigate controlled goods by any means so as to provide a person with detailed knowledge of the controlled goods inherent properties and performance characteristics that would allow that person to use this knowledge so that the good could be reproduced or replicated, or the performance of a similar article could be improved. **(examiner)**;

2. **exempt person**, in respect of controlled goods, includes temporary workers or visitors. These two categories of individuals are non-Canadians who must be sponsored by the registered person and in the case of a temporary worker, must undergo a security assessment. The registered person will make an application for exemption for these individuals. Approval of exemption resides within Public Works and Government Services Canada, Controlled Goods Program (CGP). Also exempt are those individuals who are directors, officers, or employees of a person registered under the International Traffic in Arms Regulations (ITAR). Such individuals are exempt from the day they supply evidence of the:

   (a) individual's employment status as a director, an officer or an employee of the person registered under ITAR;

   (b) ITAR registration and eligibility of that person under ITAR;

   (c) eligibility of the individual under the ITAR. **(personne exemptée)**;

3. **possess** means, in respect of controlled goods, either actual possession, where the person has direct physical control over a controlled good"at a given time, or constructive possession, where the person has the power and the intention at a given time to exercise control over a controlled good, either directly or through another person or persons. **(posséder)**;

4. **transfer** means, in respect of controlled goods, to dispose of it or disclose its content in any manner. **(transférer)**

5. **excluded persons**, under the CGP, are individuals occupying a position in the federal public service, employed by Her Majesty in right of a province or federal Crown corporation or prescribed by regulation. ***(personnes exclues)***

controlled item
Items of supply, both accountable and non-accountable which, for administrative purposes, require special controls beyond those normally employed. (1994-06-23) ***(articles contrôlés)***

conversion factor
See **exchange rate factor**. (1994-06-23) ***(facteur de conversion)***

copyright
1. An exclusive statutory right of those such as authors, publishers, composers, etc. to control the publication/ dispositions of their works of art, literature, music, films, pictures, etc., which is protected by the *Copyright Act* of Canada. Under the Geneva Convention of 1952 to which Canada became a party in 1962, international copyright is obtained without any formalities by placing on the work the symbol ©, identifying the name of the copyright holder in the year of the first publication.

2. The exclusive right of printing or otherwise multiplying copies of information and data.

3. See section 3 of the *Copyright Act* for a more comprehensive definition. (1994-06-23) ***(droit d'auteur)***

CORCAN
CORCAN includes the Correctional Services Canada (CSC) Industries, and the Automated Document Processing and Agribusiness programs. Purchases by PWGSC, on behalf of clients, from CSC will be conducted through CORCAN. See Section 9A. (1994-06-23) ***(CORCAN)***

corporate financial analysis
An assessment of a selected supplier's financial capability to complete contracts on an ongoing basis or within a given time frame. (1994-06-23) ***(analyse financière intégrée)***

corporation
A legal entity operating under a grant of authority from a provincial or federal government jurisdiction in the form of articles of incorporation or a charter. The corporation, as a separate legal entity, has the capacity to have a name of its own, as well as the right to buy, sell, lease and mortgage its property in its own name. (1994-06-23) ***(société)***

cost
1. *General*. The price paid for anything, outlay, expense. When a contract refers to actual cost, the term means the amount, not including any profit, which was in fact paid out for materials and for labour;

2. PWGSC General Conditions. Costs determined in accordance with Contract Cost Principles 1031-2 ;

3. Considered as total price in contract proposals for approval authority. (2004-05-14) ***(coût)***

cost accounting
The classification, recording, analysis, reporting and interpretation of expenditures associated with the production and distribution of goods and services. (1994-06-23) ***(comptabilité du prix de revient)***

cost analysis
1. An examination or review of cost data to determine if costs are charged in accordance with prescribed criteria or regulations, for example Contract Cost Principles 1031-2;

2. A study of cost data for the purpose of identifying the causes of inefficiency or the improvement desirable in cost recording, supervision or management;

3. The estimation of production costs by the bidder;

4. The examination, prior to price negotiation, of the cost estimates presented by a potential supplier. Such analysis is for the purpose of checking that only permitted types of cost are included, that no significant cost category has been omitted, and that time, labour rates and other details are reasonable. (2004-05-14) ***(analyse du prix de revient)***

cost centre
An administrative unit selected within an organization for the purpose of accumulating and controlling costs. It usually consists of a natural grouping of machines, methods, processes or operations; is identified with single management responsibility; and is made up of elements which have common cost characteristics. (1994-06-23) ***(centre de coûts)***

cost control
The employment of management devices in the performance of any necessary operation so that pre-established objectives of quality, quantity and time may be attained at the lowest possible outlay or cost for goods and services. Such devices include a bill of material, instructions, performance standards, competent supervision, cost limits on items and operations, and studies, interim reports and decisions based on these reports. (1994-06-23) ***(contrôle du coût)***

cost of direct imports
That portion of the selling price associated with directly imported materiels. It includes the tariffs and the cost of transportation to the Canadian place of importation (place where materiels first landed in Canada). (1994-06-23) ***(coût des importations directes)***

cost of goods
Stocked Item Supply. The price FOB supplier plus inbound transportation. (1994-06-23) ***(coût de la marchandise)***

cost of indirect imports
That portion of the selling price associated with the costs of materiels that, while obtained through a Canadian supplier, in fact originated outside Canada. (1994-06-23) ***(coût des importations indirectes)***

cost of service
Stocked Item Supply. All expenses (other than cost of goods) incurred by PWGSC in providing the Stocked Item Supply service. (1994-06-23) ***(coût du service)***

cost plus fixed fee
A basis of price in which the contractor is paid costs reasonably and properly incurred as determined by audit together with an agreed upon fixed fee (or a percentage of cost) by way of profit. (1994-06-23) ***(coût plus honoraires fixes)***

cost reimbursable
Covers the following types of bases of payment:

1. cost reimbursable with incentive fee;

2. cost reimbursable with pre-determined fixed fee;

3. cost reimbursable with fee based on actual costs, and

4. cost reimbursable with no fixed fee. See 10.119. (1994-06-23) ***(frais remboursables)***

costs incurred
Costs allowed under the Contract Cost Principles 1031-2 applicable to a particular contract. See **cost**. (2004-05-14) ***(frais engagés)***

counter offer
An offer to enter into a transaction on terms differing from those first proposed. A supplier's acknowledgement form given to a purchaser in response to a purchase order may be, in fact, a counter offer if it changes any of the terms given in the purchase order. (1994-06-23) ***(contre-proposition)***

country of origin
The country in which the product is mined, produced or manufactured. A product of domestic origin is a product mined, produced, or manufactured in Canada. (1994-06-23) ***(pays d'origine)***

covenant
An agreement or promise under seal. A covenant, being a contract, is in many respects subject to the same rules as other contracts. A covenant may be either express or implied. An express covenant is one created by the parties and an implied one is that which is created by the law irrespective of the intention of the parties. (1994-06-23) ***(convention)***

critical path method
A method of network analysis in which normal duration time is estimated for each activity within a project. The critical path identifies the shortest completion period based on the most time-consuming sequence of activities from the beginning to the end of the network. (1994-06-23) ***(méthode du chemin critique)***

Crown property
Property to which title is vested in the Crown. This includes Crown-owned property usually in the care, custody and/or control of contractors. Examples of Crown property usually in the custody of contractors are: capital assistance assets, special production tooling, special test equipment, equipment undergoing repair and overhaul, contract issue materiels and equipment, work-in-process and finished work to which title is vested in the Crown as a result of progress payments, accountable advances or by any other means. (1994-06-23) ***(biens de la Couronne)***

cultural industries
Persons engaged in any of the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale or exhibition of film or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services. (1995-07-01) ***(industries culturelles)***

Customer Address Directory
A directory which uses five-character codes to identify the addresses of all PWGSC clients. (1994-06-23) ***(répertoire des adresses des clients)***

customs
Duties charged on commodities on their import into or export from a country by a governmental authority. (1994-06-23) ***(douane)***

customs bonded warehouse
A warehouse approved by Canada Border Services Agency, and under bond or guarantee for the strict observance of revenue laws. Used for safekeeping of merchandise until duties are paid or goods are

otherwise properly released. (2004-05-14) ***(entrepôt en douane)***

customs drawback
There are two types:

1. *Export drawback*. The return of duty and/or taxes paid on imported goods which are subsequently exported.

2. *Home consumption drawback*. The return of duty paid on specified imported goods used in Canada for certain purposes. (1994-06-23) ***(drawback)***

customs duty - defence
Tariff Code 9982.00.00 of the Schedule to the Customs Tariff provides for the remission of customs duty on all defence supplies imported under contracts of $250,000 or more, by the Department of National Defence and Public Works and Government Services Canada (PWGSC) as well as the private sector provided that the person claiming remission provides certification by the Minister of PWGSC that the goods supplied under the contract are defence supplies. (1998-06-15) ***(droit de douane - défense)***

customs tariff
A schedule of charges assessed by the government on imported goods. (1994-06-23) ***(tarif des douanes)***

D

damages

1. Compensation, usually in money, for injury to persons, or damage to goods or property.

2. General damages are such as the law will presume to be direct, natural and probable consequences of the act complained of.

3. Special damages are such as the law will presume to be exceptional in character.

4. See also **liquidated damages**. (1994-06-23) ***(dommages-intérêts)***

defect

1. *General*. A lack, want, deficiency or absence of something necessary for completeness, perfection or adequacy in form or function.

2. An imperfection, fault or error in manufactured materiel and service.

3. *Critical defect*. A defect that judgment and experience indicate is likely to result in hazardous or unsafe conditions for individuals depending on, using or maintaining the product.

4. *Major defect*. Other than critical defect which is likely to result in failure or to reduce materially the usability of the unit product for its intended purpose.

5. *Minor defect*. A defect that is not likely to reduce materially the usability of a unit product for its intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the unit.

6. *Latent defect*. A hidden or concealed defect, one which could not be discovered by reasonable and customary inspection; one not apparent on face of goods, product or a document. (1994-06-23) ***(défaut)***

defence contract

A contract or sub-contract with Her Majesty or an agent of Her Majesty, or with an associated government, that in any way relates to defence supplies or to defence projects or to the designing, manufacturing, producing, constructing, finishing, assembling, transporting, repairing, maintaining or servicing, or storing of, or dealing in, defence supplies or defence projects. (1994-06-23) ***(contrat de défense)***

Defence Production Act

An Act which gives to the Minister of PWGSC "exclusive authority to buy or otherwise acquire defence supplies". All PWGSC contracts for defence supplies or projects are governed by the provisions of the *Defence Production Act*. (1994-06-23) ***(Loi sur la production de défense)***

Defence Production Loan Account

An account which may be used to make loans or advances to aid in defence procurement such as working capital loans or advance payments on contracts and to make payment for such. See Section 9E. (1994-06-23) ***(compte de prêts de la production de défense)***

Defence Production Revolving Fund

An account in the Consolidated Revenue Fund which may be used by PWGSC to designate and operate the DPRF for other than loan transactions. The DPRF provides PWGSC with a budgetary account to purchase defence supplies, to make payment for such and to get reimbursed out of an appropriation of a client (e.g. DND) or by an agent of Her Majesty or by an associated government. See Section 9E. (1994-06-23) ***(Fonds renouvelable de la production de défense)***

defence projects
Buildings, aerodromes, airports, dockyards, roads, defence fortifications or other military works, or works required for the production, maintenance or storage of defence supplies. (1994-06-23) ***(entreprises de défense)***

defence supplies
Has the same meaning as in the *Defence Production Act* and covers:

1. arms, ammunition, implements of war, vehicles, mechanical and other equipment, watercraft, amphibious craft, aircraft, animals, articles, materiels, substances and things required or used for the purposes of the defence of Canada or for cooperative efforts for defence being carried on by Canada and an associated government;

2. ships of all kinds;

3. articles, materials, substances and things of all kinds used for the production or supply of anything mentioned in 1. or 2. or for the construction of defence projects; and

4. requirements necessary or appropriate to promote national defense, which means programs for military and atomic energy production or construction, military assistance and directly related activities. (1994-06-23) ***(approvisionnements de défense)***

delayed bid
A bid delivered to the specified bid receiving area after the closing date and time but before the contract award date may be considered, provided the delay can be proven to have been due solely to a delay in delivery that can be attributed to the Canada Post Corporation (CPC) (or national equivalent of a foreign country) or to incorrect handling by PWGSC. The only pieces of evidence relating to a delay in the CPC system that are acceptable are: a CPC cancellation date stamp; a CPC Priority Courier Bill of Lading, and a CPC Xpresspost Label that clearly indicate that the bid was mailed prior to the bid closing date. (2003-05-30) ***(soumission retardée)***

delivery
1. *Actual.* The transfer of possession.

2. *Sale of goods*. Delivery takes place when the goods are placed under the control of the person who has to receive them. Alternatively, the presence of the goods at the seller's place of business, ready to be delivered, and the purchaser notified, may be termed a delivery.

3. *Shipping*. Occurs when lading is surrendered and title to goods passes to the receiver or consignee. (1994-06-23) ***(livraison)***

department
1. The same meaning as in the *Financial Administration Act* and includes any of the departments named in Schedule I and any corporation in Schedule II of the *Financial Administration Act*, the staffs of the Senate, the House of Commons, and the Library of Parliament. It includes further any division or branch of the public service of Canada, including a commission appointed under the *Inquiries Act*, designated by the Governor in Council as a department for the purposes of the *Financial Administration Act.*

2. Department of Public Works and Government Services. (1996-12-02) ***(ministère)***

Department of National Defence (DND)
Acts as a qualifying authority for certain commodity groups and items having direct military application. DND, in the person of Director General Quality Assurance (DGQA), is the military QA authority and is recognized as such by NATO and other national governments. DGQA maintains a military quality system listing. (1994-06-23) ***(ministère de la Défense nationale [MDN])***

Department of Public Works and Government Services (DPWGS) Act
An Act creating the Department of Public Works and Government Services which shall be operated as a common service agency for the Government of Canada. Its activities shall be directed mainly toward providing clients with services in support of their programs. (1996-12-02) ***(Loi sur le ministère des Travaux publics et des Services gouvernementaux)***

Departmental Individual Standing Offer (DISO)
A Departmental Individual Standing Offer is used by PWGSC as a method of supply to: analyze customer demand, determine quantities and quality, standardize products used by government, manage complex requirements and satisfy requirements for data collection for reports to Treasury Board and the Auditor General's Office. Only PWGSC may issue call-ups against a DISO upon receipt of a funded requisition from a customer department. (2003-12-12) ***(offre à commandes individuelle et ministérielle)***

depreciation

1. Decrease in value, particularly the deterioration or the loss in value arising from age and use of a property.

2. The gradual exhaustion of the service capacity of fixed assets which is not restored by maintenance practices. It is the consequence of such factors as use, obsolescence, inadequacy and decay.

3. A proportionate charge as an expense for a period based on the cost or other recorded value of fixed assets.

4. See also **accelerated depreciation**. (1994-06-23) ***(amortissement)***

design authority
The component of the client or its delegated agency responsible for determination of design parameters. (1994-06-23) ***(responsable des études)***

design change
A permanent change or modification to the governing technical data. (1994-06-23) ***(modification par rapport au modèle)***

design deviation
A temporary departure from governing technical data. (1994-06-23) ***(écart par rapport au modèle)***

direct cost
Any item of cost, or the total of such items, which can be directly related to a particular product, service, program, function or project; usually, but not necessarily limited to items of material and labour and direct overhead. (1994-06-23) ***(coûts directs)***

direct labour
The labour applied to the material that will form an integral part of the final product in a manufacturing process. (1994-06-23) ***(main-d'oeuvre directe)***

direct labour rates
The approved direct labour rates applicable to the estimated costs of a negotiated contract. Negotiated labour costs for a lengthy contract may include predicted increases in labour rates. (1994-06-23) ***(frais de main-d'oeuvre directe)***

direct material
The material that will form an integral part of the final product in a manufacturing process. (1994-06-23) ***(matières directes)***

direct overhead costs
Overhead costs which are traceable to the specific part of the organization which is the focus of attention. (1994-06-23) ***(frais généraux directs)***

direct salaries
Service contracts. Those paid by a contractor to its personnel for time actually spent on the work, excluding bonuses and other profit-sharing schemes. (1994-06-23) ***(frais de salaires directs)***

discount
1. A reduction from a list price or a stated amount offered by the seller to the buyer.

2. A cash discount is an allowance extended to encourage payment of invoice on or before a stated date which is earlier than the net date. The percent of discount allowed is as agreed between buyer and seller and is often established by industry or trade custom.

3. To compute the present value of a future sum. (1994-06-23) ***(escompte)***

discretionary audit
1. Verification by the government of profit on a contract or a series of contracts, on a discretionary basis.

2. Alternatively, verification that the Crown is not being charged in excess of the lowest price charged anyone else. This verification is employed in conjunction with a price certification on negotiated firm price contracts. (1994-06-23) ***(vérification discrétionnaire)***

discretionary verification
Means the independent verification by Audit Services Bureau or other qualified personnel as approved by Acquisition Program Integrity Secretariat, to supplement the checks and verifications carried out by the contracting officers and/or cost analysts to ensure the timeliness of payments by contractors to workmen, subcontractors and suppliers. (2004-05-14) ***(vérification discrétionnaire)***

disposal
The removal of materiel from a supply system by sale, trade-in or destruction. Within the federal government, disposal is normally arranged through the PWGSC Crown Assets Distribution Directorate/Centre. (1994-06-23) ***(aliénation)***

distributor
A supplier who acquires goods for resale to a wholesaler, retailer or ultimate consumer. A distributor may sell goods from their own inventory, from a consignment inventory, or directly from the manufacturer's stock. (1994-06-23) ***(distributeur)***

domestic contract
Canadian Commercial Corporation. The contract between CCC and the Canadian supplier. (1994-06-23) ***(contrat interne)***

due care
Standard of conduct which is exercised by an ordinary, reasonable, prudent person. (1994-06-23) ***(soins requis)***

duty
1. General. A tax levied by a government on the importation, exportation, or use and consumption of goods.

2. Any duties or taxes levied on imported goods under the Customs Tariff, the *Excise Tax Act*, the *Excise Act*, the *Special Import Measures Act*, or any other law relating to customs.

3. *All Applicable Duties*. All duties in effect on the contract date imposed and collected by the

taxing authority on the transaction or property covered by contract. (1994-06-23) ***(droit)***

duty-paid value

1. *General*. The value for duty plus the applicable duty, if any.

2. *Excise Tax Act*. The value of the article as it would be determined for the purpose of calculating an ad valorem duty upon the importation of such article into Canada under the laws relating to customs and the customs tariff whether such article is in fact subject to *ad valorem* or other duty or not, plus the amount of the customs duties, if any, payable thereon. (1994-06-23) ***(valeur à l'acquitté)***

E

economic price adjustment
Price adjustments, both upward and downward, that are necessary either to protect the Crown and the contractor against significant economic fluctuations in labour and material costs, including services and supplies, or in the event of changes in the contractor's established prices attributable to industry-wide economic factors. (1994-06-23) ***(indexation des prix)***

economy
Auditor General. Refers to the terms and conditions under which the Government acquires human and material resources. An economical operation acquires these resources in appropriate quality and quantity at the lowest cost. (1994-06-23) ***(économie)***

efficiency
1. *Auditor General*. The relationship between goods or services produced and resources used to produce them. An efficient operation produces the maximum output for any given set of resource inputs or it has minimum inputs for any given quantity and quality of service provided.

2. *General*. A measure of how well a person, group, function or program uses its time and resources to achieve certain results, i.e. total resources consumed. (1994-06-23) ***(efficience)***

effectiveness
1. *Auditor General*. The extent to which a program achieves its goals or other intended effects. For example: to increase income in a particular area, a program might be devised to create jobs. The jobs created would be program output. This contributes to the desired program effect of increased income which can be measured to assess program effectiveness. Of course, not all programs are equally evaluated. Also, management procedures for measuring and reporting effectiveness will differ between programs.

2. *General*. The measure of how well a group, person, function or program reaches its objectives or achieves results. (1994-06-23) ***(efficacité)***

electrical equipment
Any apparatus, appliance, device, instrument, fitting, fixture, machinery, material or thing used in or for, or capable of being used in or for, the generation, transformation, transmission, distribution, supply or utilization of electrical power or energy, and without restricting the generality of the foregoing, includes any assemblage or combination of materials or things which are used or are capable of being used or adapted, to serve or perform any particular purpose or function when connected to an electrical installation, notwithstanding that any of such materials or things may be mechanical, metallic or non-electric in origin. (1994-06-23) ***(appareillage électrique)***

employee-employer relationship
A relationship which exists where persons, for pay or other consideration, enter into the service of others and devote their personal labour for any given period. It is essential for such a relationship that employers have the order and control of the work done by employees, i.e. employers not only prescribe to employees the end of their work but also direct or control the work. See 6D.468. (1994-06-23) ***(relations employé-employeur)***

employment equity
A concept that encourages the removal of employment barriers; identifies and removes discriminatory policies and practices; seeks the goal of fair representation for all Canadians, in particular women, native people, disabled persons and visible minorities; and promotes economic development through the full utilization of the talents of all Canadians. (1994-06-23) ***(équité en matière d'emploi)***

employment equity criteria

Defines the elements of the employment equity program and stipulates that contractors' actions to put these elements in place will be subject to review. The employment equity criteria are available from Human Resources and Skills Development Canada. (2004-05-14) ***(critères de mise en oeuvre de l'équité en matière d'emploi)***

end Item of equipment
A final combination of end products, component parts and materials which is ready for its intended use, e.g. tank, mobile machine shop, airplane. (1994-06-23) ***(matériel complet)***

Engineering Change Proposal (ECP)
The ECP procedure is the design change procedure used in aircraft procurement. The ECP form provides the data concerning a proposed change and, when signed by design and procurement authorities, becomes a change order. (1994-06-23) ***(projet de modification technique)***

equipment
Major items of materiel that are not expendable except through depreciation or wear and tear and which, although they may be fixed or positioned in prescribed places, do not lose their identity or become integral parts of other equipment and installations. Items in this category are normally susceptible to running maintenance. Equipment items are usually procured, issued and replaced on the basis of planned departmental capital acquisition programs, e.g. aircraft vehicles, vessels, boats, workshop machinery, electronics systems. (1994-06-23) ***(équipement)***

equivalent Item
Items are equivalent when, without actually being identical, they have sufficient in common as to be capable of being used for the same purpose. (1994-06-23) ***(articles équivalents)***

escalation
See **economic price adjustment** or **adjustment**. (1994-06-23) ***(alignement)***

escrow
An agreement whereby a deed, money or other property is deposited with a third party to be held until certain conditions are fulfilled. A document is said to be delivered in escrow if it is delivered in circumstances which show that it is to take effect only when the specified condition has been performed. If the condition is not performed, then the document does not take effect. A software source code or a sum of money are examples of items which may be held in escrow. (1994-06-23) (dépôt fiduciaire)

established firm of professionals
Service contracts. A corporate or registered organization that employs on a full-time, permanent basis:

1. individuals recognized as professionals by membership in a regulatory association established pursuant to federal or provincial statute;

2. individuals with recognized credentials in a scientific, technical or managerial field;

3. both of the above;

4. suppliers that function simply to provide individuals with convenient corporate or other comparable qualifying status do not meet the definition of established firm of professionals. (1994-06-23) ***(firme reconnue)***

estimated cost
The estimated cost to be used as the basis for the sourcing decision is that cost determined, through consultation between PWGSC and the client, as being representative of all known work and expected unscheduled work arising out of the requirement, i.e. the total estimated contract value. (1994-06-23) ***(coût estimatif)***

ex gratia payment

A payment made pursuant to the Treasury Board of Canada Secretariat, Policy on Claims and Ex gratia Payments, dated June 1, 1998. A benevolent payment made by the Crown under the authority of the Governor in Council. The payment is made to anyone in the public interest for loss or expenditure incurred for which there is no legal liability on the part of the Crown. An ex gratia payment is an exceptional vehicle used only when there is no statutory, regulatory or policy vehicle to make the payment. (2000-12-01) ***(paiement à titre gracieux)***

exchange rate adjustment amount
This amount represents, on a per unit basis and in Canadian funds, the difference between the FCC at the time of payment and the FCC determined at the time of contract award or bid solicitation. (1994-06-23) ***(facteur de rajustement du taux de change)***

exchange rate factor
The exchange rate to be applied to the FCC to arrive at the value of the FCC in Canadian funds. (1994-06-23) ***(facteur de conversion)***

executory costs
Executory costs are costs related to the operation of the leased property (e.g. insurance, maintenance cost and property taxes). (1994-06-23) ***(coûts à exécuter)***

exigible taxes
Taxes that are liable to be exacted or demanded under the provisions of applicable laws and orders-in-council or by Canadian government budget resolutions. (1994-06-23) ***(taxes exigibles)***

expert
1. An individual with required qualifications and a high degree of attainment in a professional, scientific, technical or other field. Their knowledge and command of the principles, practices, problems and techniques of their field, or an area of specialization in that field, are clearly demonstrated. A contract for the services of an expert envisages the accomplishment of specific work or tasks.

2. See also **consultant**. (1994-06-23) ***(spécialiste)***

export permit
A permit issued on application, by Industry Canada, to a resident of Canada for the export of certain goods covered by the Export Permit Regulations. (1994-06-23) ***(permis d'exportation)***

extra payment claim
These are defined as claims by a contractor against the Crown in respect of firm or ceiling price contracts where a legal liability does not exist or where there is uncertainty that a legal liability exists under the contract. (1994-06-23) ***(demande d'indemnisation)***

extract file
An extract file is created when a requisition is formally subdivided and involves procurement action by a contracting officer other than the main file holder. (1994-06-23) ***(dossier d'extraits)***

F

facility

1. A physical plant or installation, e.g. base, arsenal or building, used to make easier the performance of a function.

2. The materiel resources needed to facilitate any action or operation. (1994-06-23) ***(installation)***

facility evaluation
A survey/examination of any or all of the capabilities of a supplier that pertain to competence as a source of supply or recipient of aid. Pre-award surveys are made in cases of doubt regarding productive capability, quality control or financial strength before a contract is awarded. (1994-06-23) ***(évaluation de capacité)***

facility security clearance
A determination by the Canadian and International Industrial Security Directorate that, from a security viewpoint, an organization is eligible for access to Canadian and foreign government information or assets which are Classified or Protected at the same level as the clearance being granted or to a lower level. (2002-12-13) ***(Attestation de sécurité d'installation)***

fair market value

1. 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.

2. The word fair implies a concept of a market which is not disturbed by unpredictable economic factors, e.g. boom or depression. (1994-06-23) ***(juste valeur marchande)***

FAS Free Alongside Ship (...named port of shipment)
The book containing the International Chamber of Commerce (ICC) official rules for the interpretation of trade terms is entitled "Incoterms 2000" and a summary for the description of FAS can be found. The responsible obligations of the Buyer and Seller cannot be found on the ICC Website, that information may only be found in the Incoterms 2000 book. (2003-12-12) ***(FAS franco le long du navire {...port d'embarquement convenu})***

FCA Free Carrier (...named place)
The book containing the International Chamber of Commerce (ICC) official rules for the interpretation of trade terms is entitled "Incoterms 2000" and a summary for the description of FCA can be found. The responsible obligations of the Buyer and Seller cannot be found on the ICC Website, that information may only be found in the Incoterms 2000 book. (2003-12-12) ***(FCA franco transporteur {... lieu convenu})***

Federal Supply Classification (FSC)
PWGSC uses the U.S. FSC System as the basis for assigning commodity procurement responsibilities and the Goods and Services Identification Number (GSIN) System permits the definitive assignment of responsibilities for item groupings within FSC. (1994-06-23) ***(classification fédérale des approvisionnements [FSC])***

file final close out
See **procurement**. (1994-06-23) ***(fermeture du dossier)***

final payment
Payment made in satisfaction of a final invoice. A payment which completes the monetary settlement in accordance with the terms of the contract. (1994-06-23) ***(paiement final)***

financial analysis
The process of selecting relevant financial information about the supplier, developing significant relationships (ratios), studying these relationships and interpreting the results. See **corporate financial analysis**. (1994-06-23) ***(analyse financière)***

financial opinion
A carefully thought out conclusion based on financial facts consisting of a formal judgment made by a qualified person, such as a cost analyst. (1994-06-23) ***(avis sur la situation financière)***

Financial Administration Act
R.S.C. 1985, Chapter F-11. An Act to provide for the financial administration of the Government of Canada, the establishment and maintenance of the accounts of Canada and the control of Crown corporations. (1994-06-23) ***(Loi sur la gestion des finances publiques)***

firm base price or firm base price elements
The otherwise firm price or firm price elements identified within the contract basis of payment from which economic price adjustments will be made on the occurrence of certain specified contingencies. (1994-06-23) ***(prix de base ferme* ou *éléments de prix de base ferme)***

firm hourly rate
Service contracts. A time rate whereby the contractor is paid a fixed rate inclusive of payroll and overhead costs for each hour worked. The rate may include an allowance for profit. (1994-06-23) ***(taux horaire fixe)***

firm (fixed) price
A method of pricing in which the total amount payable is a fixed lump sum or is an amount determinable in accordance with fixed unit prices. In such cases, both parties agree prior to the award of the contract as to the price payable thereunder. (1994-06-23) ***(prix fixe [ferme])***

firm price contract
A contract that sets the total amount payable thereunder or pursuant to which the total amount payable is the product obtained by multiplying the number of identical units of work performed or identical items delivered by a predetermined fixed price for each unit or item. (1994-06-23) ***(contrat à prix ferme [forfait])***

fitness for a particular purpose
Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is, unless excluded or modified, an implied warranty that the goods shall be fit for such purpose. (1994-06-23) ***(convenance à une utilisation prévue)***

fixed time rate
A method of pricing in which the amount payable is determined in accordance with the combined cost of labour, overhead and profit as expressed by a fixed amount by time period. (1994-06-23) ***(taux fixe basé sur le temps)***

fixed unit price
A method of pricing in which the total amount payable is the product of the number of identical units of work performed or identical items delivered, multiplied by a predetermined fixed price for each unit or item. (1994-06-23) ***(prix unitaire fixe)***

FOB (Free on Board)
A mercantile term used extensively in both domestic and international trade.

1. As a domestic trade term, used in both Canada and the United States, FOB ordinarily determines the place where the seller effects delivery of the goods, where title and risk of loss

will pass and whether the seller or the buyer is required to pay freight charges (e.g. FOB New York) unless otherwise specified in the contract. Specific application of the term FOB either with reference to transfer of title, risk, or burden of freight charges, may vary according to applicable law, custom and usage or agreement of the parties concerned.

2. As an Incoterm, FOB is defined by the International Chamber of Commerce and can only be used for shipments by seagoing vessels. (**Note**: There are 13 Incoterms, 6 of which can only be used for shipments by seagoing vessel.) The contractual rights and obligations of this and similar mercantile terms are used in international commerce. (2003-12-12) ***(FOB {franco bord})***

FOCI
See **Foreign Ownership, Control or Influence**. (2002-12-13) (**PCIE)**

foreground information
Any Invention first conceived, developed or reduced to practice as part of the Work under the contract and all Technical Information developed or produced as part of the work under the contract. (1994-06-23) ***(renseignements originaux)***

foreign contract
Canadian Commercial Corporation. The contract between CCC and the foreign government, their agencies or international organizations. (1994-06-23) ***(contrat avec le client étranger)***

Foreign Currency Component (FCC)
The element of the price which will be directly affected by exchange rate fluctuations. It could include the net price FOB foreign manufacturer's plant, costs associated with applicable duty, excise and goods and services tax/harmonized sales tax, entry fees, transportation costs or delivery charges payable in a foreign currency and any other charges associated with being the importer of record if they originated from and are required to be paid in a foreign currency. It does not, however, include profit, customs brokerage fees, material handling, outgoing transportation charges or costs associated with a Canadian-based company's factory overhead, general and administrative expenses. (1998-02-16) ***(montant en monnaie étrangère)***

Foreign Military Sales (FMS):
FMS is a Security Assistance Program which is administered by the United States Department of Defense and which allows eligible foreign governments and international agencies to purchase defense-related articles and services from the United States Government. See 9B (FMS). (1994-06-23) ***(ventes de matériel militaire à l'étranger [FMS])***

foreign content
1. Non-Canadian content.

2. That portion of the contract price which is not Canadian content. (1994-06-23) ***(teneur en éléments étrangers)***

Foreign Ownership, Control or Influence (FOCI)
Assessments are designed to ensure that no third party, individual, firm, or government is assumed to possess dominance of, or authority over, a Canadian facility to such a degree that a third party individual, firm, or government could gain unauthorized access to INFOSEC information. (2002-12-13) **(participation, contrôle et influence étrangers [PCEI])**

formal agreement
An agreement which has been reviewed by Legal Services, and which has been signed by the appropriate parties and has had affixed thereto all required seals. (1994-06-23) ***(accord officiel)***

formal contract

1. A contract under seal, usually drawn up by Legal Services.

2. See **agreement**. (1994-06-23) ***(contrat en due forme)***

formal evaluation
A systematic collection and examination of evidence to determine whether necessary provision has been made for the assurance of quality and that control is consistently applied. (1994-06-23) ***(évaluation officielle)***

former public servant
An individual who has been employed in the Public Service and whose pensionable employment was with an organization listed in the schedules of the *Financial Administration Act*, branches designated as departments by the Governor in Council, departmental corporations, and those Crown corporations not included in the schedules and whose pension or annual allowance is paid under the *Public Service Superannuation Act* (PSSA) and the *Supplementary Retirement Benefits Act* as it affects the PSSA. (1994-06-23) ***(ancien fonctionnaire)***

forms
Includes forms (which are any printed or electronic which contains blank spaces for the insertion of additional information), letterhead stationary, calling cards, complimentary slips and cards, and envelopes. (2003-12-12) ***(formulaires)***

forms management
The continuing systematic review of all "forms" to ensure compliance with related departmental policies. (2003-12-12) ***(gestion des formulaires)***

G

General and Administrative (G&A) rate
Estimated general and administrative expenses are a percentage of material, labour and overhead costs. (1994-06-23) ***(coefficient de dépenses générales et administratives)***

Generally Accepted Accounting Principles (GAAP)
Those accounting principles which have been given formal recognition or authoritative support in any particular jurisdiction. (1994-06-23) ***(principes comptables reconnus)***

Goods and Services Identification Number (GSIN)
A system of material and services categorization used within PWGSC. The system is used in conjunction with the Federal Supply Classification (FSC) code. (1994-06-23) ***(NIBS)***

goods contract
An agreement for:

1. the purchase of articles, commodities, equipment, goods, materials or supplies and includes:

2. printing or the reproduction of printed matter, and

3. the construction or repair of a vessel. (1994-06-23) ***(contrat de fournitures)***

Government Contract Regulations
Statutory Orders and Regulations (SOR)/87-402, relating to the administration of Crown contracts, made pursuant to sections 34 and 73 of the *Financial Administration Act*. (2003-12-12) ***(Règlement sur les marchés de l'État)***

Government Electronic Tendering Service (GETS)
The service used by the Federal government to post notices (e.g. Notices of Proposed Procurement, Advance Contract Award Notices and Contract Award Notices) and to distribute bid documents. This service is provided through MERX. For information about MERX, call 1-800-964-MERX (6379) or visit its Website. (2003-05-30) ***(service électronique d'appels d'offres du gouvernement (SEAG)***

government furnished equipment
Equipment supplied by the Crown to be used in the production process, e.g. tooling, jigs, dies, production equipment. See **Crown property, special production tooling, special test equipment** and **production assets**. (1994-06-23) ***(équipement fourni par le gouvernement)***

government guaranteed bond
A bond of the Government of Canada or a bond unconditionally guaranteed as to principal and interest by the Government of Canada that is:

1. payable to the bearer;

2. accompanied by a duly executed instrument of transfer of the bond to the Receiver General in the form prescribed by the Domestic Bonds of Canada Regulations, or

3. registered in the name of the Receiver General. (1994-06-23) ***(obligation garantie par le gouvernement)***

government issue
1. *Defence Production Act.* Means machinery, machine tools, equipment or defence supplies furnished, acquired or purchased by or on behalf of the government or associated government with funds provided by the government or associated government.

2. *PWGSC General Conditions*. All materials, parts, components, equipment, specifications, articles and things which may be supplied to a contractor by the government for purposes of the (contract) work. (1994-06-23) ***(fournitures d'État)***

Government Quality Assurance (GQA) at Source
The activity of the inspection authority or the GQA authority in monitoring or observing at the contractor's plant, prior to delivery, to verify whether a product, service and/or quality system complies with the technical requirements stipulated in the contract. (1994-06-23) ***(assurance officielle de la qualité [AOQ] à la source)***

Government-Supplied Materiel (GSM)
Any item of materiel acquired by the government of Canada and provided on a "free issue" basis to contractors for embodiment in materiel under production or for incorporation into Crown-owned equipment undergoing modification, repair or overhaul. (1994-06-23) ***(matériel fourni par le gouvernement)***

grant
An unconditional transfer payment made to a recipient, for which the Crown will not receive any goods or services. (1994-06-23) ***(subvention)***

gross negligence
1. The lack of even slight care.

2. See also **due care** and **negligence**. (1994-06-23) ***(faute lourde)***

GSIN
See **Goods and Services Identification Number**. (1994-06-23)

guarantee clause
A provision in a contract, deed or mortgage by which one person promises to perform or to pay the obligation of another in the event of non-performance by the principal obligee. (1994-06-23) ***(disposition de garantie)***

H

holdback
An amount withheld under a contract pursuant to section 35 of the *Financial Administration Act* to ensure the performance of the contract and also to avoid overpayments in relation to progress of work. (1994-06-23) ***(retenues)***

hypothecate
To pledge as collateral. To pledge personal property as security for a debt without transfer of possession. Used in relation to bid/security deposits and performance bonds. (1994-06-23) ***(hypothéquer)***

I

identified individuals
Service contracts. Individuals referred to in the contract by name with or without position title. (1994-06-23) ***(particuliers)***

implied contract
1. A contract may be implied when the conduct of the parties indicates that they were proceeding on the basis of some legal relationship.

2. An obligation imposed by law independently of an actual agreement between the parties, and which may be imposed notwithstanding any expressed intention by one of the parties to the contrary. (1994-06-23) ***(contrat implicite)***

implied terms
Terms that, although not expressly agreed upon between parties, the law would infer to be part of the agreement between them, either from the words or conduct of the parties or from a statute. (1994-06-23) ***(conditions implicites)***

import permit
A permit issued by Industry Canada authorizing an importer to purchase foreign exchange to pay for goods and to allow entry of the goods. (1994-06-23) ***(permis d'importation)***

importer
Contractor, subcontractor or a supplier thereto who actually imported the goods or materiel. (1994-06-23) ***(importateur)***

importer of record
The consignee or importer shown on the import entry form and on the Canada Customs Invoice or commercial invoices who is responsible for customs clearance and payment of the GST/HST. (1998-02-16) ***(importateur enregistré)***

in bond
The storage or transport of goods in the custody of a warehouse or carrier from whom the goods can be taken only upon payment of taxes or duties to a government agency. (1994-06-23) ***(en entrepôt)***

inbound logistics
The definition of inbound logistics is a matter of perspective. Shipments to Canadian Forces from Repair and Overhaul facilities and shipments off new acquisitions are considered inbound. Inbound logistics does not have an agreed-upon definition in the industry. A shipment is inbound to the receiver; conversely, shipments that are sent out – as a raw materiel supplier, manufacturer or vendor might do – are outbound from the sender. For inbound logistics planning, the focus of transportation management is on planning the receipt of the shipment. The definition of inbound logistics, then is related not only to the controller of the shipment process, but also who takes ownership of the goods shipped. (2003-12-12) ***(logistique interne)***

income
The return in money from one's business, labour or capital invested; gains, profits or private revenue. The excess of revenues over expenses for a period, usually referred to as net income. (1994-06-23) ***(revenu)***

Incoterms
Incoterms are standard trade definitions most commonly used in international sales contracts. They are protected by ICC copyright. (2003-12-12) ***(Incoterms)***

indemnify

1. To save harmless against loss or damage incurred by another; to reimburse another for such loss or damage.

2. The word indemnify may mean either to prevent loss so that it does not occur, or to make reimbursement or compensation after the loss has occurred. (1994-06-23) ***(tenir à couvert, indemniser)***

independent contractor

The test which distinguishes an independent contractor from an agent is the degree of control which the contractor is entitled to exercise, i.e. existence of the right of control over the agent in respect of the manner in which the work is done. An independent contractor is one who exercises discretion as to the mode and time of doing the work. The contractor is bound by its contract, not by the orders of the party for whom the contract is being performed. (1994-06-23) ***(entrepreneur indépendant)***

indirect cost

An item of cost that cannot be reasonably identified with a specific unit of product or with a specific operation or other cost centre. An indirect cost is usually allocated to several cost objectives. (1994-06-23) ***(coûts indirects)***

indirect labour

The labour expended which does not directly affect the construction or composition of the finished product of a manufacturing process. (1994-06-23) ***(main-d'oeuvre indirecte)***

indirect material

The material that is necessary to the production of a manufacturing company's goods for sale but does not form part of the final product. (1994-06-23) ***(matières indirectes)***

indirect overhead costs

1. Overhead costs which are not traceable to the specific part of the organization which is the focus of attention.

2. See **overhead costs**. (1994-06-23) ***(frais généraux indirects)***

industrial security

Covers all that relates to security requirements under the terms of a contract, subcontract, standing offer, agreement or other arrangement which will demand that identified private sector suppliers and their personnel be security screened and, if required, that the physical premises of the proposed contractor be inspected and approved to safeguard, produce or process Protected or Classified information, assets or data, prior to gaining access to such information or assets. (2002-12-13) ***(sécurité industrielle)***

INFOSEC

All Communications-Electronic Security (COMSEC) information and material entrusted to or developed/evaluated by or for the Communications Security Establishment. (2003-05-30) (***INFOSEC***)

insolvency

A condition where a supplier, though not bankrupt, is either unable to meet its obligations as they generally become due, or has ceased paying current obligations in the ordinary course of business, or whose assets have a realizable value insufficient to pay all its obligations. (1994-06-23) ***(insolvabilité)***

inspection

1. *General*. A close scrutiny, an examination. The process of determining conformance to the applicable requirements.

2. *100%*. Inspection of each unit of product or the whole material as opposed to any form of sampling inspection.

3. *Final*. The last of several inspections at successive stages of manufacture, repair, modification, etc.

4. *Normal*. Inspection which is used when there is no statistically significant evidence that the quality of the product being submitted is higher or lower than the specified quality level.

5. *Original*. First inspection of a particular quantity of product as distinguished from inspection of a product that is resubmitted after prior rejection.

6. *Receiving*. Inspection by a client of materials and manufactured products as delivered.

7. *Reduced*. Provision in a sampling procedure for switching to a less severe sampling plan when there is evidence that the submitted quality level is higher than the specified quality level.

8. *Source*. The inspection of supplies or services at the point of manufacture or point of shipment.

9. Activities such as measuring, examining, testing, gauging one or more characteristics of a product or service and comparing these with specified requirements to determine conformity.

10. The activity of monitoring or observing prior to delivery to verify whether a product, service and/or quality system complies with the technical requirements stipulated in the contract. (1994-06-23) ***(inspection)***

inspection at source
See **government quality assurance (GQA) at source**. (1994-06-23) ***(inspection à la source)***

inspection authority
The person designated as such in the contract. Includes any person acting on behalf of Canada or the Minister as the inspection authority in relation to the contract. For purposes of contracts for the Department of National Defence, inspection authority includes quality assurance authority. (1994-06-23) ***(responsable de l'inspection)***

insurance
A contract of indemnity whereby one party (the insurer) undertakes to indemnify the other (the insured) against damage or loss, on a specified subject by specified perils in consideration of a payment received (a premium). The instrument by which the contract is entered into is called the policy. (1994-06-23) ***(assurance)***

intellectual property
Includes inventions, patents, copyrights, trade secrets, trademarks, technical data, know-how (e. g., engineering, Technical Documentation, Technical Information and technical assistance and services) and industrial designs. (1994-06-23) ***(propriété intellectuelle)***

inter-company transfers
Transfers between a company and its subsidiary or affiliate enjoying separate legal status but otherwise under common ownership control. (1994-06-23) ***(transferts inter-compagnie)***

interest
Money, the return or consideration, or compensation for the use or retention by one party of a sum of money or other property belonging to another. It may take the form of a lump sum payment or periodical payments at a rate percent. (1994-06-23) ***(intérêt)***

interest rate implicit in the lease
This is the discount rate that, at the inception of the lease, causes the aggregate present value of: the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor and any profit on such costs, and the unguaranteed residual value accruing to the benefit of the lessor, to be equal to the fair value of the leased property to the lessor at the inception of

the lease. (1994-06-23) ***(taux d'intérêt implicite dans le bail)***

intra-company transfers
Transfers between divisions of the same legal or corporate entity. (1994-06-23) ***(transferts intra-compagnie)***

invention
1. *Patent law*. The creation of something which did not exist before, by the exercise of a creative mind, possessing elements of novelty and utility in kind and measure different from anything that preceded the same.

2. *PWGSC General Conditions*. Any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter. (1994-06-23) ***(invention)***

inventory
An itemized list of goods showing the number and usually the value of the goods. (1994-06-23) ***(stock)***

invitation for bids
1. A request, verbal or written, which is made to prospective suppliers for their quotation, tender or offer on goods or services desired by the prospective purchaser.

2. Synonymous with bid solicitation. (1994-06-23) ***(invitation à soumissionner)***

Invitation to Tender (ITT)
A bid solicitation document used by PWGSC when the estimated value of the requirement exceeds $25,000; two or more sources are considered capable of supplying the requirement; the requirement is adequately defined in all respects to permit the evaluation of tenders against clearly stated criteria; tenders can be submitted on a common pricing basis; and it is intended to accept the lowest-priced responsive tender without negotiations. (1994-06-23) ***(appel d'offres)***

invoice
A billing document prepared by the seller setting out the details of goods sold or services rendered to the purchaser including quantity, price, terms of payment, etc. (1994-06-23) ***(facture)***

irrevocable standby letter of credit
1. Any arrangement, however named or described, whereby a financial institution, acting at the request and on the instructions of a customer, or on its own behalf, is to make a payment to or to the order of Canada, as the beneficiary, or is to accept and pay bills of exchange drawn by Canada, or another financial institution to effect such payment, or accept and pay such bills of exchange, or 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. Irrevocable letters of credit cannot be amended or cancelled by the Issuer at any moment and without prior notice to Canada as beneficiary. The letter of credit must clearly state that they are irrevocable or are deemed to be irrevocable pursuant to article 6 c) of the International Chamber of Commerce (ICC) Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500.

2. A form of security deposit for bid or contract financial security. (1997-09-15) ***(lettre de crédit de soutien irrévocable)***

item description (item identification, line item)
The data necessary to establish the identity of an item of supply for materiel management purposes. (1994-06-23) ***(description d'article)***

item of supply
Commodities managed in the supply system either by stocking or repetitive purchasing. An item of

supply may be the product of a single manufacturer or may include the interchangeable products of several manufacturers. (1994-06-23) ***(article d'approvisionnement)***

J

jobber
A middleman or dealer who purchases goods from manufacturers or importers for resale to retailers. Also called dealer or wholesale merchant. (1994-06-23) ***(revendeur)***

joint venture
An association of two or more parties who combine their money, property, knowledge, skills, experience, time or other resources in a joint business enterprise, agreeing to share the profits and the losses and each having some degree of control over the enterprise. Joint ventures may be carried on in a variety of legal forms divided into three main categories:

1. the incorporated joint venture;

2. the partnership joint venture; and

3. the contractual joint venture where the parties combine their resources in the furtherance of a single business enterprise without actual partnership or corporate designation. (1994-06-23) ***(consortium)***

L

laid-down cost
The cost incurred by a supplier to acquire a specific product or service for resale to the government. This includes the supplier's invoice price (less trade discounts), plus any applicable charges for incoming transportation, foreign exchange, customs duty and brokerage, but excludes the GST/HST. (1998-02-16) ***(prix de revient effectif)***

late bid
Late bids are not to be accepted and will be returned. See 7.304 and SACC Manual Section 1. (1994-06-23) ***(soumission en retard)***

lease
1. *Government Contracts Regulations*. An agreement 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.

2. *The Canadian Institute of Chartered Accountants (CEIC)*. The conveyance, by a lessor to a lessee, of the right to use a tangible asset usually for a specified period of time in return for rent.

3. *Capital lease*. A lease that, from the point of view of the lessee, transfers substantially all the benefits and risks incident to ownership of the property to the lessee.

4. *Operating lease*. A lease in which the lessor does not transfer substantially all the benefits and risks incident to ownership of property. (1994-06-23) ***(bail)***

letter of credit
See **"irrevocable standby letter of credit"**. (1997-09-15) **(lettre de crédit de soutien irrévocable)**

letter of intent
A commitment on behalf of the Minister to place a contract with a designated contractor. It is used to enter into a binding agreement authorizing commencement of the work before issuance of a contract in those cases where the principal contract provisions require time consuming negotiations and the timely delivery of goods or services would be jeopardized by awaiting the award of the contract. A Letter of Intent is issued subsequent to approval of those terms and conditions which have been already agreed to between the Crown and the contractor, but before obtaining approval of all appropriate terms and conditions of the proposed contract. (1994-06-23) ***(déclaration d'intention)***

Letter of Interest (LOI)
An LOI or Request for Information (RFI) is used when the buyer is interested in receiving feedback from suppliers and may re-open or re-issue an opportunity as an open tender at a later day. LOIs may include attached documents. (2002-12-15) **(*lettre d'intérêt*)**

liability
1. A broad legal term. In general, a debt owed. The condition of being actually or potentially subject to an obligation; a condition of being responsible for a possible or actual loss, penalty, evil, expense or burden; a condition which creates a duty to perform an act immediately or in the future.

2. *Primary liability*. A liability for which a person is directly responsible.

3. *Secondary liability*. A liability of a contingent nature such as the liability of a guarantor. A guarantor's liability does not arise until the principal debtor has failed to pay the creditor. (1994-06-23) ***(responsabilité)***

license
A grant of permission, a power or authority given to another to do some lawful act. It may be written or verbal; when written the paper containing the authority is called a licence, e.g. software licence, export or import licence. (1994-06-23) ***(licence)***

license agreement
A contract by which permission is given by the owner of a right to another for the use of that right free from legal recourse. (1994-06-23) ***(contrat de licence)***

lien
1. The right given by law or contract to a person to have a debt or duty satisfied out of the property belonging to the person owing the debt or duty.

2. The right of a bank to which the *Bank Act* applies to take possession of and sell property owned by its debtor and covered by its security as a result of a default in payment of the loan or loans for which security was given to the bank by its debtor, the whole subject to the provisions of the *Bank Act*. (1994-06-23) ***(droit de rétention)***

liquidated damages
This term represents a genuine pre-estimate of the loss that will be caused to one party if the contract is broken by the other. It constitutes the amount, no more and no less, that the plaintiff is entitled to recover in the event of breach without being required to prove actual damages. (1994-06-23) ***(dommages-intérêts fixés en argent)***

listing program
The entire process by which a specific product/service/supplier is designated as conforming to the requirements of standards or specifications including those for quality assurance and identified for subsequent procurement on a qualified products list. See **QPL, CPL.** (1994-06-23) ***(programmes de listage)***

loan
Anything lent or given to another on condition that it be returned or repaid, either with or without interest. (1994-06-23) ***(prêt)***

loan agreement (PWGSC)
Equipment owned by the Department of National Defence which is loaned by PWGSC to contractors. (1994-06-23) ***(convention de prêts de TPSGC)***

low dollar value (LDV)
Requirements that are generally low risk and less complex, with an estimated total cost below $25,000 (including all applicable taxes). (2004/05/14) ***(achat de faible valeur [AFV])***

lump sum
The price agreed upon between vendor and purchaser for a group of items without breakdown of individual values; a lot price. (1994-06-23) ***(somme globale)***

M

machine tools
A class of production tools basic to many manufacturing industries; power-driven, precision metal-working machines which remove metal in the form of chips by cutting or grinding, such as lathes, drill presses, boring mills, planers, milling machines, shapers and grinders. (1994-06-23) ***(machines-outils)***

maintenance
1. *Materiel*. All action to retain materiel in a serviceable condition or to restore it to serviceable condition or to restore it to serviceability. It includes inspection, testing, servicing, classification as to serviceability, repairs, rebuilding and reclamation.

2. The cost of keeping a property in efficient working condition. (1994-06-23) ***(maintenance)***

make or buy
A program that defines the manner in which the work will be performed. A "**make item**" is any item produced or work performed by the prime facility. A "**buy item**" is one not made by the prime facility but which is obtained from another source, generally in a finished form. (2003-12-12) ***(faire ou faire faire)***

manufacturing
The production of articles for use from raw or prepared materials by giving to these materials new form, qualities and properties or combinations thereof whether by hand or machinery. (1994-06-23) ***(fabrication)***

margin
1. The excess of the market value of collateral over the loan it secures.

2. *PWGSC Stocked Item Supply*. The difference between the selling price and cost of goods expressed as a percentage of selling price. (1994-06-23) ***(marge bénéficiaire)***

market price
1. The price at which a seller is ready and willing to sell and a buyer is ready and willing to buy in the ordinary course of trade. It is the actual price at which a given commodity is currently sold or has recently been sold in the open market, that is, not a forced sale. See also **fair market value** and **market value**.

2. *Accounting*. The prevailing or last quoted price under conditions applicable in the circumstances. Net realizable value. (1994-06-23) ***(prix du marché)***

market rate
Service contracts. Rates paid for similar work under the same conditions, in the immediate geographical areas and by the majority of individuals providing the same service. (1994-06-23) ***(taux du marché)***

market value
The price which a product or property might be expected to bring if offered for sale in a fair market, i.e. a market that is not temporarily prone to fluctuations. It is the price that would be fixed by negotiation and mutual agreement between a willing buyer and a supplier who is willing but not compelled to sell. (1994-06-23) ***(valeur marchande)***

mark-up
1. *Defence Production Act*. The amount added to cost in determining the selling price to cover overhead and profit.

2. The difference between the contractor's laid-down cost for a product and its resale price to the

Crown exclusive of the Goods and Services Tax and/or the Harmonized Sales Tax. Mark-up includes applicable purchasing expense, internal handling and general and administrative expenses plus profit.

3. The amount added to the cost of merchandise to arrive at the price at which it will be offered for sale. An addition to a previously established selling price of goods for sale. (1998-02-16) ***(majoration)***

materiel and services to military specifications

1. Includes all materiel and services, including repair and overhaul, as well as research and development for which a military or other DND specification or requirement is included in procurement documentation. Also included in this category are materiel and services which are not covered by DND or military specifications but which are of sufficiently significant concern to DND as to require the allocation of responsibilities annotated under this heading.

2. Includes the range of items covered by commercial or Canadian General Standards Board (CGSB) standards and specifications. It also includes those items or services which are not specifically identified by DND, in its procurement documentation, as requiring special military or other DND specifications or requirements. (1994-06-23) ***(matériel et services assujettis aux spécifications militaires)***

material and services to non-military specifications
Includes the range of items covered by commercial or Canadian General Standards Board (CGSB) standards and specifications. It also includes those items or services which are not specifically identified by DND, in its procurement documentation, as requiring special military or other DND specifications or requirements. (1994-06-23) ***(matériel et services assujettis aux spécifications non militaires)***

merchantability
Means that the article sold shall be of the general kind described and reasonably fit for the general purpose for which it shall have been sold. Where the article sold is ordinarily used in but one way, its fitness for use in that particular way is impliedly warranted, unless there is evidence to the contrary. (1994-06-23) ***(vendable)***

milestone payment
Is a method of making a progress payment which relates to a measurable and/or defined item or work package for which a price can be assigned with a good probability that such assigned price will turn out to be within reasonable limits of predictive accuracy for the value of the work. (1994-06-23) ***(paiement d'étape)***

Minister
Means the Minister of Public Works and Government Services . (1996-12-02) ***(Ministre)***

misrepresentation
A representation which is not true. It can be either fraudulent or innocent. It is fraudulent when it is made knowing that the same is false or without belief in its truth. A party induced by fraudulent misrepresentation to enter into a contract may repudiate the contract. Where a misrepresentation is an innocent one, it may be a ground for refusing specific performance to the party who made the misrepresentation and may also be a ground for rescission of the contract. The misrepresentation should, however, be a material one on which the other party relied. (1994-06-23) ***(déclaration inexacte)***

mobile repair party
Individual or group of individuals who perform repair work away from a contractor's plant, generally at outside client locations. (1994-06-23) ***(service mobile de réparation)***

modification
Equipment. An engineered alteration to an item of supply which changes the design characteristics or

capabilities of the end item, major or subassembly component part, or accessory. Normally a modification is made after an item of equipment is delivered whereas a design change is made prior to delivery during production. (1994-06-23) ***(modification)***

monopoly
The ownership or control of so large a part of the market supply or output of a given commodity or service as to unduly prevent or lessen competition in that commodity or service. (2003-12-12) ***(monopole)***

mutual Assent
In every contract each party must agree to the same thing. Each must know what the other intends; consensus ad idem. (1994-06-23) ***(consentement mutuel)***

N

National Individual Standing Offer (NISO)
A National Individual Standing Offer is for the use of a specific department or agency throughout Canada. NISOs are arranged by PWGSC on receipt of a funded requisition. (2003-12-12) ***(offre à commandes individuelle et nationale (OCIN)***

National Master Standing Offer (NMSO)
A National Master Standing Offer is for the use of many departments or agencies throughout Canada. NMSOs are arranged by PWGSC without any requisitions from customer departments or agencies. (2003-12-12) ***(offre à commandes principale et nationale (OCPN)***

National Supplier Information System (NASIS)
NASIS is a master database containing information about companies listed as sources of supply with PWGSC. The database provides the standard supplier identification code (Vendor Code) assigned by PWGSC and, where applicable, the GSIN for the items for which a supplier has been identified as the potential source. NASIS is an integral component of the Procurement and Acquisition Support System (PASS)/Acquisition Design and Support System (ADSS). (1994-06-23) ***(SYNINFO [Système national d'information sur les fournisseurs])***

NATO codification system
An item identification and cataloguing system applied to all moveable assets that have a repetitive, recurring and continuing requirement or are subject to supply accounting. This includes items of warehouse stock and articles in use. (1994-06-23) ***(système de codification de l'OTAN)***

NATO standard item
An item selected by an officially constituted NATO standardization group which would, when manufactured in any NATO country, always meet the same performance, application and quality standards. (1994-06-23) ***(article standard de l'OTAN)***

NATO Stock Number (NSN)
A 13-digit number, e.g. 5305-21-111-3333 broken down as follows:

1. Digits 1-4, e.g. 5305, the NATO supply classification consisting of Group 53 (which covers all items of hardware) followed by the class within the group 05 (screws), 06 (bolts), etc., the whole being known as the supply class.

2. Digits 5-6, e.g. -21-, the NATO code for the National Codification Bureau that assigned the stock number, e.g. 00 U.S.A., 21 Canada, 14 France, 99 U.K., etc.

3. Digits 7-13, e.g. 111-3333, the National Item Identification Number; non-significant, but sequentially assigned by each National Codification Bureau to a unique item of supply.

4. Digits 5-13, e.g. 21-111-3333, the NATO Item Identification Number; including both the NATO code of the National Codification Bureau and its item identification number. The last 9 digits of the number remain with the item throughout its life even though the NATO supply classification may change as a result of reclassification and consequent conversion of stock numbers, e.g. 5305-21-111-2222 converted to 2805-21-111-2222. (1994-06-23) ***(numéro de nomenclature de l'OTAN)***

need-to-know
The need for someone to access and know information in order to perform his or her duties. (2002-12-13) **(besoin de connaître)**

negligence

The failure to do that which an ordinary, reasonable and prudent person would do or the doing of some act which an ordinary, reasonable and prudent person would not do. Reference must always be made to the situation, the circumstances and the knowledge of the parties. See also **due care** and **gross negligence**. (1994-06-23) ***(négligence)***

negotiated final overhead rates
A percentage or dollar factor which expresses the ratio(s) mutually agreed upon by the government and the contractor, at the close of a regularly stated period (preferably the contractor's fiscal year), of indirect expense incurred in the period of direct labour, manufacturing cost, cost of sales or other appropriate base of the same period. Such rate is used as a means of determining the amount of reimbursement under a contract for the applicable indirect costs. (1994-06-23) ***(taux de frais généraux définitifs négociés)***

negotiation
The process of reaching agreement between contracting officer and supplier on the terms and conditions of a contract. (1994-06-23) ***(négociation)***

no substitute
Requisition in which the customer describes the product by brand name or model number or by using a restrictive specification, and states that a substitute product is not acceptable. (1994-06-23) ***(aucun succédané)***

non-consulting services contract
An agreement for the provision of services other than consulting services and includes the hiring of personal property. (1994-06-23) ***(contrat de services autres que de conseil)***

non-resident contractor
Is an individual not engaged in regular and continuous employment in Canada and who does not maintain a permanent residence or office in Canada. Also, a partnership or a corporation not maintaining a permanent office in Canada. (1994-06-23) ***(entrepreneur non résidant)***

non-stocked item
An item of supply which is not held in a supply system inventory for issue to clients but which will be purchased for the clients on request. (1994-06-23) ***(article non-stocké)***

nonconformance
A deviation from the requirements of drawings, specifications or other technical data. (1994-06-23) ***(non-conformité)***

Notice of Proposed Procurement (NPP)
This is a notice of an opportunity to participate in a procurement. The NPP is published on the Government Electronic Tendering Service (see MERX) and includes general information such as a description of the requirement, and how bid sets can be obtained. (13/12/02) **(*avis de projet de marché*)**

O

objective evidence

1. Any written record of the results of measurements, tests or observations that provide facts pertaining to the quality of goods, processes or services. Objective evidence may consist of supplier quality data concerning product or process, source inspection documents, receiving inspection records, quality audit data, quarantine review reports, supplier/commodity quality histories or such other verifiable data as may be available to supply centres.

2. A written record, prepared by a source deemed to be reliable, of the results of measurements, tests or observations which provides facts pertaining to the quality of goods, processes or services. (1994-06-23) ***(preuves objectives)***

obsolete
The condition of becoming out-of-date, obsolete or useless as a result of new discoveries, improvements or changes in consumer demand. (1994-06-23) ***(désuet)***

offer
A promise or a proposal made by one party to another intending the same to create a legal relationship upon the acceptance of the offer by the other party. An offer, in this sense, is an essential ingredient for the formation of a contract. (1994-06-23) ***(offre)***

offeror
In contracts, the party that makes the offer and looks for acceptance from the offeree. (2002-05-24) **(offrant)**

operating lease
Operating lease is a lease in which the lessor does not transfer substantially all the benefits and risks incident to ownership of property. (1994-06-23) ***(bail de location-exploitation)***

order
Defence Production Act (DPA). A general or specific order, requirement, direction or prescription in writing made or issued under this Act or a regulation. (1994-06-23) ***(arrêté)***

Order-in-Council (OIC)
A decision, instruction, order, proclamation, etc. issued under the authority of the Governor in Council. (1994-06-23) ***(décret du conseil)***

organization
From a security perspective, an organization is any institution, other than a Canadian government department, agency or crown corporation, holding or seeking a security clearance. The majority are commercial corporations, but other institutions are also included such as university faculties, partnerships, consultants, and other levels of government and their agencies. (1996-06-03) ***(organisation)***

overclaims
Claims by the supplier for costs and profits in excess of the audited final amount as determined by Consulting and Audit Canada and/or sector/region verification. (1994-06-23) ***(réclamations en trop)***

overhead

1. Indirect expenses or burden; one of many terms given to expenses which are incurred in the production of a commodity or the rendering of a service, but which cannot conveniently be measured by unit of production or service. These expenses are sometimes classified as manufacturing overhead, selling and distributive overhead, and general and administrative overhead.

2. *Service contracts*. Indirect costs associated with the operation of the contractor's business and included, unless otherwise stated, in a percentage factor that is applied to payroll cost. Salary bonuses may be included as overhead costs, unless they are paid under profit-sharing schemes, in which case they will be treated as a distribution of profit. (1994-06-23) ***(frais généraux)***

overpayments
Payments by the Crown in excess of the audited final amount as determined by Consulting and Audit Canada and/or sector/region verification. (1994-06-23) ***(paiements en trop)***

overtime
Time worked by a contractor's employee in excess of the employee's normal working day or working week. (1994-06-23) ***(heures supplémentaires)***

overtime premium
The difference between the employee's regular rate of pay and the higher rate paid for overtime. (1994-06-23) ***(prime d'heures supplémentaires)***

overtime premium costs
The amount of overtime premium and any profit thereon. (1994-06-23) ***(frais de rémunération des heures supplémentaires)***

P

part file
A main or extract file is subdivided into part files when more than one solicitation is issued resulting in separate contracts. Each part file may only have one active solicitation in progress. Part files must be created when more than one solicitation is required under a main or extract file. (1994-06-23) ***(dossier partiel)***

part name
A part name is applied by a government activity or manufacturer when no approved item name exists. It is used to designate an item of production by the manufacturer or designer of that item. It may, in certain circumstances, be used as an item name, either as it stands or with suitable modifiers added to differentiate between item concepts for items bearing the same part name. (1994-06-23) ***(nom de pièce)***

patent
The exclusive right granted under the Patent Act (Canada) to make, use and sell an invention for a period of seventeen years. (1994-06-23) ***(brevet)***

payment bond
1. A bond given by a contractor to guarantee the payment for labour to be given or materials to be supplied in connection with a contract awarded to that contractor.

2. A bond given to ensure that the sub-contractor providing labour or supplying materials to a contractor will be paid their proper charges up to the value of the bond.

3. A type of surety bond. (1994-06-23) ***(cautionnement de paiement)***

payroll costs
Direct salaries paid plus costs associated with direct salaries, e.g. provision for statutory holidays, vacations with pay, the contractor's contribution for unemployment insurance and workmen's compensation, health and medical insurance, group life insurance and pension. See also **direct salaries**. (1994-06-23) ***(coûts de la rémunération)***

per diem
A latin phrase meaning by the day. (1994-06-23) ***(quotidien)***

per diem fee
Service contracts. A time rate whereby the contractor is paid a fixed rate inclusive of payroll and overhead costs and profit, for each normal working day as defined in the contract. (1994-06-23) ***(honoraires quotidiens)***

performance (in the context of a contract)
The fulfillment or accomplishment of that which is required by a contract or under a condition. See 7A.021. (1994-06-23) ***(exécution [dans le cadre d'un contrat])***

performance (in the context of advance payments)
(1) The funds received will be used solely for the purpose of the contract; (2) the amount of the payment is ascertained or ascertainable under the terms of the contract; (3) the contractor is not in default of its obligations under the contract; and (4) the payment is related to an identifiable part of the contractual undertakings. (1994-06-23) ***(exécution [dans le cadre de paiements anticipés])***

performance (in the context of a progress payments)
1. All authorizations required under the contract have been obtained, the claim is consistent with

the progress of the work and is in accordance with the terms of the contract;

2. indirect costs have been paid for or accrued in the accounts;

3. direct materials and work under subcontract have been received, accepted and either paid for or accrued in the accounts following receipt of invoice from contractor/subcontractor, and have been or will be used exclusively for the purpose of the contract;

4. all direct labour costs have been paid for or accrued in the accounts and all such costs were incurred exclusively for the purpose of the contract;

5. all other direct costs have been paid for or accrued in the accounts following receipt of applicable invoice or expense voucher and all such costs were incurred exclusively for the purpose of the contract; and

6. no liens, encumbrances, charges or other claims exist against the work except those which may arise by operation of law such as a lien in the nature of an unpaid contractor's lien and in respect of which an advance and/or progress payment has been or will be made by the Crown. (1994-06-23) ***(exécution {dans le cadre d'acomptes})***

performance bond
A bond given to guarantee the performance (completion) of a contract (in accordance with its terms and conditions). (1994-06-23) ***(cautionnement d'exécution)***

personnel security screening
The administrative process used to examine an individual's reliability, trustworthiness, and loyalty to Canada when granting an individual's security clearance or Reliability Status for access to protected and/or classified information and assets provided to or produced by private organizations under contract to the Government of Canada. (2002-12-13) **(cote de sécurité du personnel délivrée)**

personnel security screening/clearance
The security screening of persons who are likely to have access, on a need-to-know basis, to classified information, assets or controlled areas in order to provide a clearance for undertaking the work. (2002-12-13) ***(sécurité du personnel)***

PERT (Program Evaluation and Review Technique)
A method of network analysis in which three time estimates are made for each activity the optimistic time, the most likely time and the pessimistic time and which gives an expected completion date for the project within a probability range. (1994-06-23) ***(PERT)***

pharmaceuticals and medical supplies
Include the following:

1. items for the medical and allied professions; and

2. drugs, chemicals of medicinal grade, and preparations subject to the Food and Drugs Regulations, the Controlled Drugs and Substances Act and the Narcotic Control Regulations, which may be listed in the Canadian Formulary (CF), the United States Pharmacopoeia (USP), the National Formulary (NF), the British Pharmacopoeia (BP) and the British Pharmacopoeia Codex (BPC); medicated cosmetics and toiletries; surgical dressing materials; medical and surgical instruments, equipment and supplies; first aid kits and related items. See also **Acceptable Products List**. (2003-12-12) ***(produits pharmaceutiques et fournitures médicales)***

physical security
The use of physical safeguards to prevent and delay unauthorized access to assets, detect attempted and actual unauthorized access and activate appropriate response.. (2003-12-12) **(sécurité**

matérielle)

point rating
An evaluation procedure in which a list of criteria, to which values have been assigned, is used to ascertain the individual merits of proposals that have met the mandatory factors specified in a Request for Proposal. (1994-06-23) ***(cotation numérique)***

pre-qualification financial analysis
Refers to a potential supplier (source listing) and its financial capability to supply its type of products and services. (1994-06-23) ***(analyse financière préalable à l'acceptation)***

preservation
The application and use of preservative measures to prevent deterioration resulting from exposure to atmospheric conditions during shipment and storage. (1994-06-23) ***(préservation)***

price
1. The consideration given in exchange or sale of anything.

2. *Defence Production Act*. Includes rate or charge for any service. (1994-06-23) ***(prix)***

price and availability (P&A) enquiry
A P&A enquiry is a request to the trade for information which is needed by PWGSC or a client for program planning or budgetary purposes. P&A enquiries must clearly indicate that the request is not a bid solicitation. (1994-06-23) ***(prix et disponibilité (P et D), Demande de)***

price fixing
1. An illegal collusion by tendering suppliers to avoid competition in prices.

2. *Competition Act*, Part VI, section 45.(1), Conspiracy: "Every one who conspires, combines, agrees or arranges with another person... (b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,...." (2003-12-12) ***(fixation de prix)***

price protection
An agreement between a supplier and a purchaser to grant the purchaser any reduction in price which the supplier may establish on its goods prior to shipment of the purchaser's order. Price protection is sometimes extended for an additional period beyond the date of shipment. (1994-06-23) ***(protection de prix)***

priority procedures
See **U.S. Defense Priorities and Allocations System**. (1994-06-23) ***(procédures prioritaires)***

private sector
All individuals resident in Canada, all private organizations resident in Canada and incorporated, registered, or recognized as such, under federal or provincial legislation, and which carry on activities in Canada. Non-profit organizations, universities and other public or para-public institutions resident in Canada, such as provincial research organizations, are considered to be private organizations. (1994-06-23) ***(secteur privé)***

privity
The relationship which exists between the immediate parties to a contract. (1994-06-23) ***(lien de droit)***

protected information
Information related to other than the national interest that may quality for an exemption or exclusion under the *Access to Information Act* or *Privacy Act*. *Protected:* indicates that the information qualifies as protected information and requires more than basic protection. Personal information is a sub-set of

other protected information, and deserves enhanced protection.

(a) ***Protected A*:** low-sensitive protected information, a sub-set of protected information that could reasonably be presumed to cause injury if compromised.

(b) ***Protected B***: particularly sensitive protected information, a sub-set of protected information that could reasonably be expected to cause serious injury if compromised.

(c) ***Protected C:*** extremely sensitive protected information, a sub-set of protected information that could reasonably be presumed to cause extremely serious injury, such as loss life, if compromised. (2002-12-13) **(renseignements protégés)**

pro forma
Latin phrase. According to a prescribed form or model. (1994-06-23) ***(pro forma)***

pro forma invoice
An invoice prepared by a client in advance of a sale to show the form and amount of the invoice which will be rendered to the purchaser if the sale is consummated. Pro forma invoices are often used in export transactions to support the purchaser's request to governmental authorities for import permits and foreign exchange. (1994-06-23) ***(facture fictive)***

probity
Integrity and uprightness. Uncompromising adherence to the laws, regulations and policy imperatives concerning government contracting. (1994-06-23) ***(probité*)**

PROC
The Product, Resource, Operating and Contingency cost factors associated with the total product life cycle:

1. *Product costs*. Costs paid for the supply of goods to a specified delivery point.

2. *Resource costs*. The total government resource cost of acquiring, distributing and accounting for the goods.

3. *Operating costs*. The costs of operating, maintaining and repairing the goods and the depreciation incurred.

4. *Contingency costs*. Those costs incurred by not having the goods available when they are required. PROC analysis is used when best value for the money spent on the acquisition over its useful life is required. (1994-06-23) ***(PREI)***

procurement
The process of obtaining materiel and services which includes the determination of requirements and acquisition from a supply system or by purchase from the trade. The procurement process has four phases:

1. *Pre-contractual phase*. Includes activities related to requirement definition and procurement planning.

2. *Contracting phase*. Includes all activities from bid solicitation to contract award.

3. *Contract administration phase*. Includes activities such as progress monitoring, delivery follow-up, payment action, etc.

4. *Post-contractual phase*. Includes file final action (e.g. client satisfaction, contractor agreement to final claim, final contract amendment, completion of financial audits, proof of delivery, return of performance bonds) and close out (e.g. completeness and accuracy of file documentation and

adherence to file presentation standards). (1994-06-23) ***(approvisionnement)***

Procurement Allocation Directory (PAD)
It is a list of key purchasing contacts in Public Works and Government Services Canada (PWGSC) offices. The Directory lists the names, addresses and telephone numbers of managers for PWGSC purchasing organizations. It matches these managers with the goods and services for their divisions buy. The Directory also includes the complete list of the goods and services that PWGSC buys. (2003-12-12) ***(Répertoire des attributions des approvisionnements {RAA})***

Procurement Business Number (PBN)
The PBN is a unique identifier that is assigned to each supplier when they register in the Contracts Canada Supplier Registration Information service. It is based on the nine-digit Canada Revenue Agency Business Number assigned to a supplier for the Agency's tax programs. (2004-05-14) ***(numéro d'entreprise - approvisionnement)***

Procurement Review Committee (PRC)
The PRC carries out a detailed review of procurements strategies for goods and services valued between $2M and $100M for potential socio-economic benefits. The reviews are conducted within parameters that are fully consistent with the Treasury Board Policy on procurement review and subject to Canada's national commitments under the AIT, plus the international commitments under WTO-AGP, NAFTA, CKTEA and other international trade rights and obligations. While PRC membership may vary slightly, there is core representation from the client department, the contracting authority, Treasury Board Secretariat, National Research Council, Industry Canada, Atlantic Canada Opportunities Agency, Western Economic Diversification Canada, Canada Economic Development (for Quebec Regions), Department of Indian and Northern Affairs, Environment Canada, Department of National Defence, International Trade Canada, and Transport Canada. (2004-12-10) ***(Comité d'examen des acquisitions [CEA])***

product liability
Refers to the legal liability of manufacturers and sellers to compensate buyers, users and on occasion bystanders for damages or injuries suffered because of defects in goods purchased. (1994-06-23) ***(responsabilité du produit)***

product life or life cycle
Time from product selection or conception, design and specification development, purchasing, manufacturing, packaging, delivery, warehousing, maintenance, repair and overhaul, through to use and disposal. (1994-06-23) ***(durée utile du produit)***

product quality audit
An independent examination and assessment of a product's conformance to the specified requirement after it has been received. (1994-06-23) ***(vérification de la qualité du produit)***

Product Quality Management (PQM)
PQM is the process applied to ensure the required quality of goods and services. PQM refers to all considerations which are undertaken within the procurement process to provide clients with quality goods and services that conform to the stated requirements. Inherent to PQM are such actions as proper requirements definition; judicious sourcing, as applicable; thorough supplier evaluation; and the inclusion of proper quality related bid solicitation and contract clauses. The concept of PQM embodies quality assurance, quality control and inspection. See also: **quality assurance, quality control, inspection,** and **quality**. (1994-06-23) ***(gestion de la qualité des produits)***

production
See **manufacturing**. (1994-06-23) ***(production)***

production assets
Means and covers Special Production Tooling, Special Test Equipment, DND Loaned Equipment, U.S.

Government Property, and any other Crown property for which PWGSC has been specifically or directly charged with assets management responsibility. (2002-12-13) ***(biens de production)***

productivity
The ratio of some output to some input. A measure of how well resources are combined and utilized to achieve a particular desirable result. Productivity ratios may be measured in one of three ways as follows:

(1) Total Output ÷ Total Input

(2) Total Results Achieved ÷ Total Resources Consumed

(3) Effectiveness ÷ Efficiency

The concept of productivity recognizes the interplay between various factors in the workplace. The output or results achieved may be related to different inputs or resources in the form of various productivity ratios, for example, output per labour hour, output per unit of material (as in kilometres driven per litre of gas) or output per unit of capital. Each of these productivity ratios may be influenced by a combination of factors, such as quality and availability of materials, scale of operations, rate of capacity utilization, availability and throughput capacity of capital equipment, attitude and skill level of the work force, motivation and effectiveness of the management. The manner in which these factors interrelate will have a bearing on the resulting productivity ratio. Productivity improvements or gains are generally realized in terms of increased revenue or profit, better quality or performance, or lower prices. (1994-06-23) ***(productivité)***

profit
1. *General*. Benefit or advantage in money or in money's worth.

2. *Income tax law*. That surplus in the taxation period by which the receipts from a trade or business exceed the expenditures necessary for the purpose of earning those receipts.

3. A general term for the excess of revenue, proceeds or selling price over related costs.

4. Net income. (1994-06-23) ***(bénéfice)***

Program Evaluation and Review Technique
See **PERT**. (1994-06-23)

progress payment
A payment made by or on behalf the Crown under the terms of a contract after the performance of the part of the contract in respect of which the payment is made but before the performance of the whole contract. (1994-06-23) ***(acompte)***

prohibited articles
Articles which, because of their dangerous characteristics, will not be handled by commercial carriers. (1994-06-23) ***(articles interdits)***

promissory note
An unconditional written promise, made by one person to another, to pay a certain sum in money on demand or at a fixed or determinable future date, either to the bearer or to the order of a designated person. (1994-06-23) ***(billet à ordre)***

proper accounts
The maintenance, in easy retrievable form, of all the records necessary to establish, at any time, the allowable costs or time for the work performed under a PWGSC contract. Such records will include requisite supporting documentation for costs, such as time cards, labour distribution tabulation runs, journal vouchers, lists of subcontracts, purchase invoices, pay vouchers, overhead distribution sheets,

etc. (1994-06-23) ***(comptes bien tenus)***

proposal
An offer, submitted in response to a request from a contracting authority, that constitutes a solution to the problem, requirement or objective in the request. (1994-06-23) ***(proposition)***

proprietary
1. Belonging or pertaining to ownership.

2. *Rights*. Those rights which an owner of property has by virtue of their ownership. (1994-06-23) ***(propriété)***

prototype
Includes any item designated as such in the contract and includes models, patterns and samples. (1994-06-23) ***(prototype)***

provisional standard
A standard published to satisfy a clear and urgent need without passing through all the procedural and review processes required for Canadian General Standards Board (CGSB) standards or National Standards of Canada. (1994-06-23) ***(norme provisoire)***

prudence
1. Proceeding from caution and good judgment. In the process of awarding and administering PWGSC contracts, taking the trouble and the time to think out the various aspects of the proposal, the risks that may arise and planning ahead to deal with these risks.

2. *Treasury Board*. Standards of prudence and probity include such requirements as those for verifying materiel, obtaining proper authorization for expenditures and adopting a policy of open contracting. (1994-06-23) ***(prudence)***

public property
Financial Administration Act. All property, other than money, belonging to Her Majesty in right of Canada. (2003-12-12) ***(biens publics)***

purchase description
A statement of requirements to identify and describe a particular product or service, but which may be less detailed than a specification. The description includes sufficient data to enable the supply and evaluation of the item either by means of reference to a specification or standard, or by the inclusion of critical performance data. (1994-06-23) ***(description d'achat)***

purchase order
A purchaser's written offer to a supplier formally stating all terms and conditions of a proposed transaction. (1994-06-23) ***(commande)***

purchase requisition
A formal request to obtain materiel or services made to PWGSC by the requesting client. (1994-06-23) ***(demande d'achat)***

purchasing
The buying process within the procurement cycle. (1994-06-23) ***(achat)***

Q

qualification program
The entire process by which products are obtained from suppliers, examined and tested and then identified on a qualified products list. The qualification process includes an evaluation of the manufacturer's facilities and capabilities to meet requirements on a continuing basis. (1994-06-23) ***(programme d'homologation)***

qualified financial opinion
A financial opinion (provided pursuant to a contract financial analysis) which is classified as "Not Recommended." It also means a financial opinion which is classified as "Recommended Conditionally," when the condition specified is not met within a reasonable period of time. (1994-06-23) ***(opinion sur la situation financière (avec commentaires)***

qualified product
A product produced under controlled and substantially unchanged conditions which met the requirements and procedures specified to enable that product to be listed in the applicable qualified products list. (1994-06-23) ***(produit homologue)***

Qualified Products List (QPL)
A listing of products qualified as conforming to the requirements of standards or specifications by the appropriate panel. A QPL identifies the qualifying authority and includes the appropriate product identification and reference data together with the name of the supplier of the qualified product. (1994-06-23) ***(liste des produits homologués [LPH])***

qualifying authority
The agency or organization responsible for the maintenance of a listing program, including the development and implementation of policies and procedures, and which is responsible for the accuracy and integrity of listings. (1994-06-23) ***(autorité d'homologation)***

quality
The totality of features and characteristics of a product or service that bear on its ability to satisfy a given need. (1994-06-23) ***(qualité)***

quality assurance
A system of activities whose purpose is to provide assurance that the quality control is in fact being done effectively. For a specific product or service, this involves verification, audits and the evaluation of the quality factors that affect the specification, production, inspection and distribution. See **government quality assurance**. (1994-06-23) ***(assurance de la qualité)***

quality audit
The monitoring of quality levels at any stage to provide information for management. (1994-06-23) ***(vérification de la qualité)***

quality control
A range of activities the purpose of which is to ensure and verify that the specific quality of the product or service has been met. (1994-06-23) ***(contrôle de la qualité)***

quality of conformance
A measure, taken at the point of acceptance, which determines the degree to which the final product conforms to the design. (1994-06-23) ***(qualité de conformité)***

quality of design
The value inherent in the design; a measure of the excellence of the design in relation to the client's

requirements. (1994-06-23) ***(qualité technique)***

Queen's printer
Performs the printing and publishing functions for the Government of Canada. (1994-06-23)
(imprimeur de la Reine)

quotation
Is the bid submitted in response to a Request for Quotation from a contracting authority. (1994-06-23)
(présentation de prix)

R

rate audit of a fixed time rate
See **verification of time for acceptability** and **verification of time for accuracy of recording**. (1994-06-23) ***(vérification des taux fixes basés sur le temps)***

rationalization
The term is used to denote an approach whereby companies structure their affairs by selecting, from the whole product spectrum, a more limited range of products (both goods and services) for which the operations in Canada would function as single worldscale or major regional producers, with a view to reducing unit costs through longer production runs and economies of scale. For the selected range of products within the operations in Canada, the process ideally involves the development of an autonomous capability for technological innovation, including research, development, engineering, industrial design and preproduction activities as well as the production, purchasing, marketing and finance activities associated with a full or limited international products mandate. In addition, the process implies the maximization of management autonomy of the operations in Canada within the corporate structure. (1994-06-23) ***(rationalisation)***

rationalized products
A product not manufactured in Canada but treated for sourcing purposes as if it were made in Canada, pursuant to an agreement between PWGSC and the firm which accords such treatment on the basis of, and commensurate with, the economic benefits to Canada resulting from the firm's rationalized operations in Canada. (1994-06-23) ***(produits rationalisés)***

4easonable
Generally, that which is just and proper in the given circumstances of a case. That which is fit and appropriate to the end in view. That which is according to reason, not immoderate or excessive. Equitable. (1994-06-23) ***(raisonnable)***

4eceiver manager
See **trustee in bankruptcy**. (1994-06-23)

receivership
Being in receivership defines the status of a company during the period of the winding up of its affairs after the appointment of a Trustee in Bankruptcy. (1994-06-23) ***(mise sous séquestre)***

receiving inspection
The process of verifying, on receipt, that shipments are satisfactory in terms of quantity and condition and that goods accepted for stock comply with defined acceptance criteria. (1994-06-23) ***(inspection de réception)***

reference date
Date of submission of bid, as indicated by the postmark date; or, in the case of a negotiated contract, the effective date of the contract; or, in the case of a contract amendment, the date of such amendment. (1994-06-23) ***(date de référence)***

Regional Individual Standing Offer (RISO)
A Regional Individual Standing Offer is for the use of a specific department or agency within a specific geographic area. RISOs are arranged by PWGSC on receipt of a funded requisition. (2003-12-12) ***(offre à commandes individuelle et régionale (OCIR)***

Regional Master Standing Offer (RMSO)
A Regional Master Standing Offer is for the use of many departments or agencies within a specific geographic area. RMSOs are arranged by PWGSC without any requisitions from customer departments

or agencies. (2003-12-12) ***(offre à commandes principale et régionale (OCPR)***

Registered Quality Systems List (RQSL)/DND-Certified Quality Systems List (CQSL)
The RQSL/CQSL is a listing of suppliers that have had their quality system audited by an approved auditor against the appropriate quality standard, are found to meet all of the criteria of the standard and are registered by the applicable certifying agency. (1994-06-23) ***(liste des systèmes d'assurance de la qualité inscrits [LSAQI])***

reliability
The measures expressed as a probability of the ability of a product to function successfully when required, for the period required, in the specified environment. (1994-06-23) ***(fiabilité)***

reliability status
Indicates successful completion of a reliability check; allows regular access to government assets and, with a need-to-know, to Protected information. (2002-12-13) **(*cote de fiabilité*)**

remedy
Contract. The means by which a contractual right or obligation is enforced or the violation of such a right is prevented, reduced or compensated. Remedies may be defined in the contract, by agreement between the parties such as by accord and satisfaction, by arbitration, by operation of law or judicial remedy such as by action or suit. (1994-06-23) ***(recours)***

remission
1. Exemption from payment of customs duties and excise taxes ordinarily payable on goods or materiel imported into Canada.

2. A partial or total refund or the non-payment of taxes, which otherwise would be payable, authorized by Order-in-Council. (1994-06-23) ***(remise)***

renegotiation
A redetermination of agreed contract or pricing terms due to changed requirements or conditions or in accordance with a previous agreement. Some contracts provide for renegotiation at a stated time or under stated conditions. (1994-06-23) ***(révision du contrat)***

repair
Includes the adjustment of a machine, instrument, electrical device, etc., in order to restore the article to its original operating condition, as well as any minor physical alterations necessary to complete such restoration. (1994-06-23) ***(réparation)***

repair and overhaul
The repair of an item of equipment to return it to serviceable condition; overhaul may or may not be coincident with repair. Repair normally involves the correction of specific defects only, whereas overhaul will entail replacement of both worn and damaged parts or parts for which service life has expired. Overhaul is normally effected only after expiry of service life due to hours of use or elapsed time. (1994-06-23) ***(réparation et révision)***

representation
1. *General*. A statement made expressly or by implication such as by conduct.

2. *Contract*. In the law of contracts, it is a statement made by one of the parties to the contract to the other, before or at the time of entering into the contract, of some matter relating to the contract. (1994-06-23) ***(présentation)***

Request for Information (RFI)
An RFI or Letter of Interest (LOI) is not open for bidding. The buyer is interested in receiving feedback from suppliers and may re-open or re-issue an opportunity as an open tender at a later day. RFIs may

include attached documents. (2002-12-13) **(*demande de renseignements*)**

Request for Proposal (RFP)
An RFP, while generally used for requirements of $25,000 or more, is often employed for requirements where the selection of a supplier cannot be made solely on the basis of the lowest price. AN RFP is used to procure the most cost-effective solution based upon evaluation criteria identified in the RFP. See 5.142. (2002-12-13) ***(Demande de proposition [DP])***

Request for Quotation (RFQ)
Solicitation document used to solicit bids for low dollar value requirements below $25,000 (including all applicable taxes) from one or more suppliers. It is a request to bidders which is evaluated with the objective of accepting the lowest-price responsive quotation. An RFQ may not include all of the terms and conditions required to form a contract and the response or quotation provided by the bidder is information that may be used to form the applicable contract document, along with the terms and conditions and final pricing. Negotiations should be avoided; however, when the requirement has not been adequately defined due to the constraints of time and cost some negotiations may be necessary to obtain best value. See 5.148. (2004-05-14) ***(demande de prix [DPrix])***

Request for a Standing Offer (RFSO)
An RFSO is a bid solicitation document used by the contracting authority to solicit offers for standing offers. As with any other bid solicitation document, it must clearly state the requirement, the bid evaluation method and selection criteria, the call-up procedures, the ranking methodologies whenever applicable to be used for making call-ups against the authorized standing offer(s) and all terms and conditions applicable to the contract brought into effect as a result of any such call-up. (2002-12-13) (***Demande d'offre à commande [DOC]***)

requisition
A request to obtain materiel or services and authority to commit funds to cover the purchase. (1994-06-23) ***(demande)***

rescission
Contract. Means that a contract may be set aside (rescinded) in specific situations, generally where one party is guilty of misinterpretation, duress, undue influence and certain instances of mistake. It is limited to contracts where it is possible to rescind the contract and substantially restore all parties to their respective positions before the contract was made. (1994-06-23) ***(rescision)***

responsibility
1. Acceptance of, and carrying out of, assigned authority.

2. The obligation to exercise authority delegated to an individual or group.

3. See also **accountability** and **authority**. (1994-06-23) ***(responsabilité)***

responsive bid
1. A tender, proposal or quotation that meets all the mandatory requirements stipulated in the solicitation document.

2. Synonymous with valid bid. (1994-06-23) ***(soumission recevable)***

Review (qualification listing) Panel
A committee of knowledgeable representatives appointed to review and evaluate applications for listing, to decide on product/service/supplier conformance to the standard or specification and to authorize inclusion of acceptable suppliers on the program list. The panel may be composed as necessary of representatives of federal, provincial and municipal government agencies, industry or business associations, institutional users or individuals, but excludes anyone who has a direct vested interest in supplying or marketing a product being considered. (1994-06-23) ***(Comité d'examen des listes d'homologation)***

revolving fund supplies contract
A contract to cover the supply of goods or services where payment will be made using the Defence Production Revolving Fund. (1994-06-23) ***(contrat de fournitures imputables sur le Fonds renouvelable)***

royalties
Include:

1. Licence fees and all other payments similar to royalties, whether or not payable under any contract, that are calculated as a percentage of the cost or sale price of defence supplies or as a fixed amount per article produced or that are based on the quantity or number of articles produced or sold or on the volume of business done.

2. Claims for damages for the infringement or use of any patent.

3. A monetary consideration to the owner of intellectual property for the use of that property by a second party. (1994-06-23) ***(redevances)***

S

sale

1. A transfer of a property in a thing from one person to another for a price in money. A sale of goods is different from an exchange or barter where no funds are involved. In order to determine at what point property in the goods sold rests in the purchaser, the terms of the contract have to be considered to ascertain in whom the property is vested. The property may pass at once or at a future time contingent on the fulfillment of some condition.

2. Includes consignment or other disposition of materials and the supplying of any service. (1994-06-23) ***(vente)***

salvage

1. Damaged, worn, aged or specialized equipment or materiel that cannot economically be repaired or adapted for further use but has possible value other than the scrap or material content.

2. The saving or rescuing of materials contained in condemned, discarded or abandoned equipment for reuse, refabrication or scrapping.

3. *Accounting*. That portion of the residual value of an asset representing the value of parts reclaimed for future use after retirement of the asset. (1994-06-23) ***(récupération)***

sample

1. *General*. A relatively small quantity of material, or an individual object, from which the quantity of the mass, group, bulk, etc. which it represents may be inferred. A specimen, a small quantity presented or sold to buyers as a specimen of goods offered for sale.

2. Where goods are sold by sample, three conditions are implied in the sale:

   (a) the bulk shall correspond with the sample in quality,

   (b) the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and

   (c) the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. (1994-06-23) ***(échantillon)***

scheduled overtime

Overtime experienced by a contractor through their usual business operations. Any resulting overtime premium costs are usually included in the contractor's overhead account. (1994-06-23) ***(heures supplémentaires prévues)***

scrap or waste materiel

1. Material that has no real value except for its basic or raw material content.

2. Scrap and waste materiel resulting from production; cuttings or turnings from lathes, screw machines, etc.; punching from punch presses, turret presses, etc.; ends of rod or bar stock which are too short for further use in production; ends of rod, bar or sheet stock marked by chuck or lathe jaws or machine holding clamps to such an extent as not to be of further use in production; strips or clippings of material from raw stock resulting from squaring-up operations at shear or saw; ends sheared from commercial-size raw stock which are uneconomical to select, store or handle; drop-outs caused by accidental loss of small parts or damage due to piling, rough handling, falls or abrasions; and test samples supplied to Engineering or Inspection Staff and damaged beyond use.

3. Scrap and waste materiel resulting from reconditioning, refitting, modification, change of design or specification or reduction to spares of miscellaneous equipment: damaged or broken parts resulting from any of these operations, such as broken castings, fittings, and parts of no recoverable value in original form and certified as "Scrap" by the Canadian Forces Technical Services Detachment (CFTSD) of DND or a technical inspector of the prime contractor approved by the client; and cannibalized small units of equipment or instruments which through modification and/or reduction to spares, having no recoverable value other than scrap and are certified as "Scrap" by the CFTSD of DND or a technical inspector of the contractor approved by the clients.

   Note: The above definitions do not include major equipment items such as airframes, airframe components, engines, ships and boats, machine tools, jigs and fixtures. (1994-06-23) ***(rebuts et matériel inutile)***

seal
See **under seal**. (1994-06-23) ***(sceau)***

secret
Level of classification that applies to information or assets when compromise could reasonably be expected to cause serious injury to the national interest. (2002-12-13) **(*secret*)**

secured creditor
A person holding a mortgage, pledge, charge, lien or privilege on or against the property of the debtor as security for a debt, or a person whose claim is based upon, or secured by, a negotiable instrument held as collateral security and upon which the debtor is only indirectly or secondarily liable. (1994-06-23) ***(créancier garanti)***

security deposit
The deposit by the bidder/contractor of securities including government guaranteed bonds, bills of exchange and irrevocable standby letters of credit which the contracting authority may convert to complete the bidder's/contractor's obligations. (1997-09-15) ***(dépôts de garantie)***

Security Requirements Check List (SRCL)
Form used to identify security requirements associated with a contract containing protected or classified security requirements. (2002-12-13) **(*Liste de vérification des exigences relatives à la sécurité*)**

SELECT
A procurement tool used to identify qualified firms and individuals for low dollar value construction, maintenance and real property consulting (architectural and engineering services). (2003-05-30) **(SELECT)**

seller's market
A seller's market is considered to exist when goods cannot easily be secured and when the economic forces of business tend to cause goods to be priced at what the seller considers the market will bear. (1994-06-23) ***(marché vendeur)***

selling price
The net selling price to the buyer after all discounts. It includes all applicable provincial sales taxes, GST/HST, excise taxes and tariffs. (1998-02-16) ***(prix de vente)***

semi-variable cost
1. An operating expense, as an item of indirect factory expense that varies, but not proportionately in total, with costs of manufactured quantities.

2. An indirect cost which varies with production or activity but not in direct proportion to the volume. (1994-06-23) ***(coût semi-variable)***

services
Includes field service representatives, out-of-plant technical services and mobile repair parties away from the contractor's plant. (1994-06-23) ***(services)***

shelf life
The length of time that an item of supply can be stored under specified environmental conditions and continue to remain suitable for its intended use. (1994-06-23) ***(durée utile)***

shipping permit
1. Authority issued by carriers to shippers to forward specific shipments contrary to existing embargoes.

2. Permits issued by steamship lines to shippers authorizing specific shipments to be accepted at pier receiving locations. (1994-06-23) ***(permis d'expédition)***

shipping release
A form used by the purchaser to specify shipping instructions of goods purchased for delivery at an unstated future date or to an undisclosed destination. Also used to specify quantities to be shipped when the purchase was for an unspecified quantity or when delivery is to be made in partial lots at the purchaser's discretion. (1994-06-23) ***(autorisation d'expédition)***

Short Range Acquisitions Plan (SRAP)
The SRAP is an annual forecast over a two year horizon, completed by major clients at the request of the Procurement Strategy Committee, consisting of planned procurements of goods and services over $2M. (1994-06-23) ***(Plan annuel d'achats à court terme [PACT])***

site visit
A meeting held on site and conducted by either PWGSC or the client to provide potential bidders with an opportunity to view and assess aspects of the work that cannot be adequately described in performance specifications or the statement of work. (1994-06-23) ***(visite de l'installation)***

sole source
1. The client specifies that a particular supplier or person is the only one acceptable.

2. Non-competitive situations arise:

   (a) when there is only one Canadian source capable of supplying the product or service (referred to as sole source); or

   (b) when, although a number of Canadian sources exist which are capable of supplying the product or service, it is decided for any reason to direct the purchase to a particular source (referred to as single source directed). See Chapter 8. (1994-06-23) ***(fournisseur exclusif)***

special production tooling
Tools such as jigs, dies, fixtures, molds, patterns, taps, gauges and other like items which are of such a specialized nature that, without substantial modification or alteration, their use is peculiar to the production of supplies or the parts thereof which are required by the Crown. (1994-06-23) ***(outillage spécial de production)***

special test equipment
Either single or multipurpose integrated test units engineered, designed, fabricated or modified to meet the test requirements of the specifications peculiar to the end items of equipment which are required by the Crown. Also included are associated computer software programs. The term "Special Test Equipment" does not include: special production tooling; buildings and non-severable structures (except foundations and similar improvements necessary for the installation of special test equipment); and test equipment loaned from a client's inventory. (1994-06-23) ***(matériel spécial d'essai)***

specification
A concise statement of requirements to be satisfied for materiel, a product or service, including the identification of test methods or the procedures which will determine whether the requirements have been met. (1994-06-23) ***(spécification)***

standard
1. A formal specification, for recurring major interests, utilizing the consensus process, and published by a recognized standards-issuing agency. In particular, a Canadian General Standards Board (CGSB) standard is one developed in accordance with procedures set out in the CGSB manual, Policy and Procedures Preparation of Standards.

2. A formal statement of requirements established by authority, custom or general consent of those affected, and intended for general recurrent use. Normally, a standard is developed through a consensus process by a committee widely representative of major interests and is published by an accredited standards-writing agency as determined by the Standards Council of Canada or recognized standards-issuing agency. (1994-06-23) ***(norme)***

standard costing
1. A costing procedure which permits the comparison of actual costs of production with predetermined standards; cost, time and quantity variations provide the basis for comparison and provide a measure of production efficiency.

2. The projected cost of an activity, process or item of product, established as a basis for control and reporting.

3. A costing method in which costs for non-distinguishable units of production are determined by accumulating the costs of the production process over a period of time and dividing by the number of units produced. (1994-06-23) ***(calcul normalisé du prix de revient)***

Standing Committee on Public Accounts
The House of Commons refers the Auditor General's Annual Report to this Committee for further investigation and discussion with the departments, as applicable. (1994-06-23) ***(Comité permanent des comptes publics)***

standing offer
A Standing Offer is not a contract. It is an offer from a supplier to provides goods and/or services to clients at prearranged prices or pricing basis and under set terms and conditions for a specified period on an as-and-when requested basis. A separate contract is entered into each time a call-up is made against a Standing Offer. When a call-up is made, the terms and conditions are already in place and acceptance by Canada of the supplier's offer is unconditional. Canada's liability shall be limited to the actual value of the call-ups made within the period specified in the Standing Offer.. (2002-12-13) ***(offre à commandes)***

Standing Offer and Call-up Authority (SOCA)
A SOCA is a document issued by the contracting authority that serves two primary purposes: 1) notification to the Offeror, that authority to call-up against a standing offer has been given to specific authorized users in respect of its standing offer; and 2) notification to clients, that, in respect to a specific standing offer, authority to call-up against the said standing offer has been granted to them, subject to the call-up authority set therein. (2002-12-13) **(*autorisation de passer une offre à commandes et des commandes subséquentes*)**

standing offer method of supply
The sanding offer method of supply is one in which offers for the supply of goods and/or provision of services are solicited based on a volume of business given in good faith. One or more standing offers may then be authorized for use such that one or more authorized users (client departments and agencies) are enabled to acquire goods, services, or both, as and when required, directly from the offeror (supplier, or provider, as applicable), at prearranged prices, or, on a prearranged pricing basis,

during a specified period of time and in accordance with set terms and conditions. This method of supply is best suited to situations in which the goods, services, or both, to be supplied or provided, are well-defined and are required repetitively, by one or more clients, but, for which the actual demand of individual requirements (quantity, delivery date and delivery location) is not known at the outset. The advantages of this method of supply are increased efficiency in the procurement process and reduced administrative burden for both the client and PWGSC. (2002-12-13) (***méthode d'approvisionnement de l'offre à commandes***)

stock control
That aspect of inventory control which includes the control of stock items through the maintenance of accounting records. (1994-06-23) ***(contrôle des stocks)***

stock item
An item of supply carried at storage points in a supply system to meet anticipated demand. (1994-06-23) ***(article stocké)***

stocked item supply
Are those items of supply carried in stock at a PWGSC supply centre and recorded as items of supply in PWGSC inventory control accounting records. (1994-06-23) ***(approvisionnement en articles stockés)***

storage
A function of warehousing which involves the receipt of an item, putting it away for safekeeping and subsequent retrieval when required for use, sale or disposal. (1994-06-23) ***(entreposage)***

strategic source
A source of supply of strategic defence material or services for which assured supply arrangements are required to meet defence needs under normal and mobilization conditions. (1994-06-23) ***(fournisseur de matériel stratégique)***

strict liability
A concept applied by the courts in product liability cases in which a seller is liable for any and all defective or hazardous products which unduly threaten a consumer's personal safety. This concept applies to all members involved in the manufacturing and selling of any facet of the product. The concept is founded on the premise that when the manufacturer presents its goods they are suitable for their intended use and, to invoke the doctrine of strict liability, it is essential to prove that the product was defective when placed in the stream of commerce. (1994-06-23) ***(responsabilité stricte)***

subassembly
Two or more parts which form a portion of an assembly or a unit replaceable as a whole but having a part or parts which are individually replaceable. (1994-06-23) ***(sous-ensemble)***

subcontractor
1. A party who contracts with a contractor to perform all or any part of the contractor's obligations in a particular contract.

2. The contractor is accountable for the work performed by the subcontractor. (1994-06-23) ***(sous-traitant)***

supplier financial assessment
An assessment by a qualified person of a proposed supplier's financial capability to complete a specific contractual requirement in a given time frame. (1994-06-23) ***(évaluation financière du fournisseur)***

Supplier Last Awarded (SLA)
The supplier recorded in PASS/ADSS as having last been awarded a contract for a particular source list. (1994-06-23) ***(dernier fournisseur retenu [DFR])***

Supplier of Least Opportunity (SLO)
The supplier recorded in PASS/ADSS as having received the least amount of bid opportunities (recorded in terms of estimated dollar value of the bid solicitation) for a particular source list. (1994-06-23) ***(fourniseur ayant le moins de possibilités [FMP])***

supply
The operations normally involved in furnishing, providing, affording or distributing items of supply to a user to satisfy stated requirements. The function includes all actions from the initial determination of requirements as to kind and quality through testing, standardization, adoption, modification, procurement, acceptance, receipt, storage, issue, maintenance, distribution, salvage, reissue, disposal, accountability, responsibility and stock control. (1994-06-23) ***(approvisionnement)***

supply schedules
An American program directed under the General Services Administration known as Federal Supply Schedule Contracting. Used when it is not practical to forecast definite quantity requirements, industry distribution facilities can serve a wide number of clients and price advantages can be obtained. (1994-06-23) ***(barèmes d'offre)***

Supply Transfer Order
A document which is used when goods and services are to be provided by a provincial government. (1994-06-23) ***(demande de transfert de biens et de services)***

surety bond
A written undertaking under seal by a third party to indemnify the contracting authority, within specified financial limits, against a bidder's/contractor's failure to carry out its obligations. Bonds are acceptable only from surety companies which are approved by Treasury Board. The types of bonds used in connection with bid/contract financial security are bid bond, payment bond and performance bond. (1994-06-23) ***(cautionnement)***

surplus materials
1. Materials, including raw materials, parts and equipment, purchased or manufactured by a contractor specifically for a contract but which remain unused after completion of the contract.

2. Materials purchased or manufactured by the contractor specifically for a Crown contract but not used and left over after completion of the contract. (1994-06-23) ***(matériel excédentaire)***

T

take-out rate
The negotiated rate applied to laid-down cost for the recovery of overhead costs applicable to resale business, when the resale business does not account for all functions of the particular cost centre. The resulting rate will be somewhat less than that which applies to other work using the cost centre facilities. A take-out rate is normally used only as an expedient when the contractor does not have sufficient resale business to warrant a separate burden or cost centre. (1994-06-23) ***(taux de recouvrement)***

target incentive
Contract. A contract where a bonus is paid on the basis of agreed sharing of savings relative to the target price. May also provide for reduction in profits where target cost is exceeded. (1994-06-23) ***(stimulant indicatif)***

target price
Fixed fee and incentive fee formula. A method of pricing in which the contractor is paid costs reasonably and properly incurred as determined by audit, together with an agreed upon fixed fee as profit supplemented by an incentive fee which will be paid to the contractor 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 provision for a ceiling price. (1994-06-23) ***(prix visé)***

tariff
A published schedule showing the rates, charges, classification, rules, regulations and other provisions applicable to transportation and incidental services. (1994-06-23) ***(tarif)***

technical authority
Individual responsible for providing information, guidance and advice on the technical aspect of a product. (2002-12-13) **(*responsable technique*)**

technical documentation
Any and all recorded information of a scientific or technical nature relating to the work performed under the contract, and includes all designs, technical reports, photographs, drawings, plans, specifications, and computer software, whether susceptible to copyright or not. (1994-06-23) ***(document technique)***

technical information
All information of a scientific or technical nature relating to the work performed under the contract whether oral or recorded in any form or medium including but not limited to Inventions, designs, methods, processes, techniques, know-how, reports, drawings, plans, specifications, photographs, models, prototypes, patterns, samples, schematics, experimental or test data, and computer software, data files, and documentation, and whether or not copyrightable and whether or not held as a trade secret. (1994-06-23) ***(donnée technique)***

Telephone buy
A purchase whereby the telephone is used to solicit bids for requirements valued up to $25,000 (including all applicable taxes) and whereby a contract is placed over the telephone and confirmed in writing. (2004-05-14) (***achat par téléphone***)

temporary help services
1. Services provided under contract to the government for assignments in which employees of a firm work under the direction of public servants or of other persons acting in a capacity that is an integral function of the operation of a government organization.

2. Although contracts for these services are contracts of service, i.e. employment, Treasury Board has agreed to allow government departments, through PWGSC, to enter into them provided the

period of the contract does not exceed eight weeks. (1994-06-23) ***(services de travail temporaire)***

tender
A proposal, bid or offer that is submitted in response to an Invitation to Tender, Request for Proposal, or Request for Quotation from a contracting authority. (1994-06-23) ***(offre)***

term
1. Contract. That portion of an agreement which relates to a particular matter, i.e. almost every clause in a contract is a term, hence the word term includes conditions or warranties.

2. A fixed period, a prescribed duration. (1994-06-23) ***(condition - durée)***

termination for default
Termination for Default is when the contractor breaches the contract, usually through non-performance or delayed delivery. "Default by Contractor" in the general conditions provides the basis for Termination for Default. See 11.133. (1994-06-23) ***(résiliation pour inexécution)***

territory of a party
1. *For Canada*. The territory to which its customs laws apply.

2. *For the United States of America*. The United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, including its foreign trade zones, but does not include trust territories or leased bases. (1994-06-23) ***(territoire d'une partie)***

test methods
Detailed technical descriptions of procedures according to which conformance to the requirements stated in specifications and standards is determined. (1994-06-23) ***(méthodes d'essai)***

testing
An element of inspection. Generally denotes the determination by technical means of the properties or elements of supplies or components thereof and involves the application of established scientific principles and procedures. (1994-06-23) ***(essai)***

third party damages
Damages incurred by one who is not a party to an agreement or transaction. (1994-06-23) ***(dommages causés à un tiers)***

third party liability
Insurance. That type of insurance protection which indemnifies one from liability to third persons as opposed to insurance coverage for losses sustained by the insured. (1994-06-23) ***(responsabilité pour un tiers)***

time payment
1. A method of making progress payments which provides for specified payments to become due at the times specified in the contract, subject to certification by the inspection and contracting authorities that progress of the work conforms to schedule.

2. The method of making progress payments based on physical progress of the work on a monthly basis as determined by the inspection and contracting authorities without any set monthly goals. (1994-06-23) ***(paiement à terme)***

title
The right of ownership in a property, including right of possession. The term title is used to denote a vested right as opposed to a contingent right. (1994-06-23) ***(titre)***

top secret
Level of classification that applies to information or assets when compromise could reasonably be expected to cause exceptionally grave injury to the national interest. (2002-12-13) ***(très secret)***

Total Life Cycle Costs (PROC)
The sum of the Product (P), Resource (R), Operating (0), and Contingent (C) costs. (1994-06-23) ***(coûts associés à la vie utile des produits [PREI])***

trade usage
Custom or usage of the particular trade in which usage or custom is ordinary and reasonable. Evidence of a trade usage may be given in aid of interpreting a contract. (1994-06-23) ***(pratique commerciale)***

trademark
A mark used in trade to distinguish the goods of the person who uses it. To constitute a trademark, it must contain a combination of elements giving it distinctiveness and the trademark as a whole must be considered. (1994-06-23) ***(marque déposée)***

transfer price
The price charged to a seller to the Crown by another division, subsidiary or affiliate of the seller under common ownership control or otherwise not dealing at arm's length with the seller to the Crown. (1994-06-23) ***(prix de transfert)***

trigger price
A price expressed in Canadian dollars representing the cost of articles offered by the U.S. DoD, increased by a factor representing administrative costs, foreign exchange, sales tax, transportation, duty, the GST/HST, contractor overhead and profit, etc. This price is intended as a reference point to assist DND and PWGSC contracting officers in determining whether it would be more advantageous for Canada to acquire an item from sources in Canada (i.e. item of Canadian manufacture) or from the U.S. government. See 9B.9. (1998-02-16) ***(prix-seuil)***

trustee in bankruptcy
A person licensed under the terms of the Bankruptcy Act appointed by court to take possession of the assets of a bankrupt debtor. A trustee becomes in effect a temporary manager of a business who may carry on the business or alternatively sell the assets. In managing the business, a trustee may be referred to as the Receiver Manager. (1994-06-23) ***(syndic de faillite)***

U

U.S. contracting officer
Canadian Commercial Corporation. The U.S. government employee responsible for administration of the U.S. contract with CCC. (1994-06-23) ***(agent de négociation des contrats des É.-U.)***

under seal
Having the corporate seal affixed for corporate entities or a paper wafer seal for sole proprietors or partnerships. (1994-06-23) ***(scellé)***

unscheduled overtime
Any unexpected additional overtime experienced on Crown contracts. Payment for unscheduled overtime requires an amendment to the contract as it is not included in the overhead rate but is usually direct charged after the contract has been signed. (1994-06-23) ***(heures supplémentaires imprévues)***

unsolicited offers
Written offers to supply goods or to perform services by suppliers which were not requested to submit such offers. Unsolicited offers are normally received in either of the following circumstances:

(a) PWGSC has issued a bid solicitation for an existing requirement, and a supplier which was not solicited submits a bid; and

(b) a supplier, on its own initiative, offers to supply goods or to perform a service for which PWGSC holds no current requirement. (1994-06-23) ***(soumission spontanée)***

unsolicited proposal
1. A proposal made to a contracting authority by a non-governmental organization or agency without prior formal or informal solicitation and which contains an offer to conduct research, development or production.

2. A written proposal submitted by an individual or an organization in the private sector on its own initiative to satisfy or endeavour to satisfy a science and technology requirement of the government in a unique manner. (1994-06-23) ***(proposition spontanée)***

U.S. Defense Priorities and Allocations System (DPAS)
A system in existence in the United States to ensure the timely flow of goods, materials and services and the prompt delivery of defense and defence-related needs. (1994-12-16) ***(Système américain régissant les priorités et les attributions en matière de défense [DPAS])***

V

valid bid

1. *Government Contracts Regulations*. Valid tender. A proposal, bid or offer that is submitted in response to an invitation from a contracting authority and meets all the requirements stipulated in the invitation.

2. Synonymous with responsive bid. (1994-06-23) ***(soumission valide)***

value analysis

A broad term used to identify all actions which discern and eliminate unnecessary cost in the requirement, design, development and procurement of materiel without sacrificing essential quality, reliability, maintainability, performance or mission accomplishment. It is a functionally oriented, planned effort by trained personnel using specific techniques. It encompasses activities variously referred to as value improvement and value engineering. (1994-06-23) ***(analyse de la valeur)***

value for duty

1. *Customs*. The price in Canadian currency on which the appropriate rate of customs duty is applicable for goods imported into Canada. See also **duty-paid value**.

2. *Customs Act*. The value of the article as it would be determined for the purpose of calculating an ad valorem duty upon the importation of such article into Canada under the laws relating to the customs and the customs tariff, whether such article is in fact subject to ad valorem or other duty or not. (1994-06-23) ***(valeur imposable)***

variable cost

A cost that varies directly with volume of production or activity, as in the case of raw material costs varying with the volume of production. Sometimes the term refers to all such costs as a group; sometimes it is limited to the indirect expenses that vary with production or with the scale of operations. (1994-06-23) ***(coût variable)***

variance

The difference between the budgeted or expected performance and the actual performance. (1994-06-23) ***(variance)***

verification of time for acceptability

An examination of the contractor's records to: determine the actual time charged for carrying out the work in accordance with the terms of the contract; ensure that the amount of time thus determined was required in the performance of the work under the contract; and ascertain that the time charged reflects the performance of the work under the contract in an efficient and economical manner. (1994-06-23) ***(contrôle du temps en vue de l'acceptation)***

verification of time for accuracy of recording

An examination of the contractor's records to: determine that time taken has been recorded in a manner consistent with the contractor's cost accounting system; and ensure that the time charged to the contract is only that of the employees who normally charge their time directly to contracts under the contractor's cost accounting system and as reflected in the contractor's determination of the agreed rate. (1994-06-23) ***(contrôle du temps en vue de la vérification de l'exactitude de l'enregistrement)***

W

warehousing
The performance of those physical and administrative functions incidental to and required in the conduct of the storage activity, i.e. receipt, sorting, identification, inspection, preservation, putting away, safekeeping, retrieval for issue and preparation for shipment of materiel. (1994-06-23) ***(entreposage)***

warranty

1. A promise that a proposition of fact is true. It is a promise that certain facts are truly as they are represented to be and that they will remain so, subject to any specified limitation.

2. *Express warranty.* The seller has made an express warranty when making some specific statement concerning the nature, quality, character, use or purpose of the goods which induces the buyer to make its purchase of them, and the seller intends to the buyer to rely on its statement.

3. *Implied warranty*. A promise arising by operation of law, that something which is sold shall be merchantable and fit for the purpose for which the seller has reason to know that it is required. A contract to do certain work, such as a building contract, contains within itself an implied warranty that the work shall be done in a workmanlike manner.

4. *Breach of warranty*. Generally, the consequences that flow from a breach of warranty entitles the innocent party to damages while a breach of a condition may entitle the innocent party to rescind the contract.

5. *Full warranty*. A warranty as to full performance covering generally both labour and materials. Under a full warranty, the warrantor must remedy the product within a reasonable time and without charge after notice of a defect or malfunction.

6. *Limited warranty*. A written warranty which fails to meet one or more of the minimum standards for a full warranty. (1994-06-23) ***(garantie)***

wholesaler
A merchant middleman who sells chiefly to retailers or industrial, institutional and commercial buyers for their resale or business use. (1994-06-23) ***(grossiste)***