

**FINANCIAL CONSUMER AGENCY OF CANADA**

**CONTRACTING POLICY**

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## **1.0 Purpose**

Government policy on the use of service contracts is established by the Treasury Board and is set out in the *Treasury Board Contracting Policy*. The purpose of this policy is to describe FCAC policy and procedures developed to meet the requirements of government policy. The FCAC policy has been designed to interpret government policy in relation to the needs of the FCAC and to set out the circumstances and conditions under which a service contract may be entered into. This policy also defines the steps and procedures involved in the preparation of contracts. Additional information on any of the policies covered by this document can be found in the *Treasury Board Contracting Policy*.

## **2.0 Policy**

Service contracts may be used to meet program requirements when existing staff cannot perform the contractual commitment and it is more cost-effective to be done by the private sector.

### **2.1 Policy Objective**

The objective of the contracting process is to acquire services in a manner that enhances access by suppliers, competition and fairness and results in best value or, if appropriate the optimal balance of overall benefits to the Canadian People.

### **2.2 Policy Statement**

Government contracting must be conducted in a manner that will 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. It is the FCAC policy to normally solicit at least three bids from suppliers for all contracts exceeding a total value of \$10,000.00 unless the conditions identified in 10.3 (a), (c) and (d) are met. All directed (non-competitive) contracts must be thoroughly documented on the contract file.

## **3.0 Definitions**

*Abatement* - refer to Section 12.3.

*Advance contract award notice (ACAN)* - notification through the electronic bidding methodology of the intent to award a directed contract.

*Advertising services* - refer to Section 14.1.

*Competitive contract* - a contract where the process used for the solicitation of bids enhances access, competition and fairness and assures that a reasonable and representative number of suppliers are given an opportunity to bid by:

Either

- (a) giving public notice, using traditional bidding procedures (such as a list of suppliers, etc.) and in a manner that is consistent with generally accepted trade practices, of a call for a proposed contract, and where:
  - (i) in the case of services, at least two valid bids were received, the lowest or the bid that offered best value, as determined by the contracting authority, was accepted; or, if only one valid bid was received, fair value to the Crown, as determined by the contracting authority, was obtained.

or

- (b) giving public notice, using electronic bidding methodology, possibly supplemented by traditional bidding procedures, of a call for bids for a proposed contract or of an intention to award a contract for a good or services to a pre-selected contractor (a directed contract advertised by an ACAN), and where:
  - (i) in the case of a call for bids, the lowest or the bid that offered the best value, as determined by the contracting authority, was accepted; or
  - (ii) in the case of an ACAN, no indications of interest or challenges to the proposed award were received within 15 days.

*Consultant* - an individual or firm, which provides either advice or a professional service.

*Consulting and professional services* - services provided by individuals with significant training, qualifications and expertise in a professional, scientific, technical or managerial field. For example, the term “professional” has legal connotations for certain professions; for other occupations it denotes an accepted as evident degree of competence. Consulting and professional usually include: research and scientific studies including interpretation, architectural and engineering services, planning and development, data collection, auditing and certain aspects of electronic data processing. This listing is not exhaustive and each situation should be interpreted on a case-by-case basis.

*Contract* - an agreement between a contracting authority and a person or firm to provide a good, perform a service, construct a work, or lease real property for appropriate consideration.

*Contract amendment* - an agreed addition to, deletion from, correction or modification of a contract.

*Contract costs* - for purposes of the Treasury Board Contracting Policy, the *Government Contracts Regulations* and other related instruments or documents, the costs include all elements that are included in the consideration, which is to be paid by the Crown to a contractor under the terms of a contract. For greater certainty these elements include all fees and taxes that are legally levied and become payable by the contractor as a result of the performance of the contract.

*Contract splitting* - the practice of unnecessarily dividing an aggregate requirement into a number of smaller contracts, thereby avoiding controls on the duration of assignments or contract approval authorities.

*Contracting authority* - for the purposes of this policy, the contracting authority is either the FCAC Administrative Services Division or Public Works and Government Services Canada.

*Responsibility centre managers* - managers, as outlined in the departmental financial signing authority chart, responsible and accountable for spending funds.

*Directed contract* - a contract awarded to a pre-selected contractor in circumstances where the contracting authority has justifiably set aside the requirement to solicit bids under the provision of one or more of the exceptions to competitive solicitation in Section 10.3. It is strongly encouraged to provide public notification of these contracts through an ACAN using the electronic bidding methodology. If this is done and if there are no valid challenges received to the ACAN within 15 days, the directed contract is deemed to be competitive and may be awarded using the higher electronic bidding contracting authority levels.

*Electronic bidding* - a method of procurement that promotes suppliers’ access to, and transparency in, the procurement process and facilitates the Crown’s receipt of best value, by using:

- (a) public notice by means of an approved electronic information service of procurement opportunities (e.g., MERX);
- (b) public notice by means of an electronic information service of proposed directed procurements by means of ACAN;
- (c) public notice in the “Government Business Opportunities” publication; or
- (d) other procurement methods that may be approved by the Treasury Board.

*Former public servants* - any former member of a department as defined in the *Financial Administration Act*, a former member of the Canadian Armed Forces or a former member of the Royal Canadian Mounted Police.

*Lump sum payment period* - 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 was terminated because of downsizing.

*Non-competitive contract* - a contract for which bids were not solicited or, if bids were solicited, the conditions of a competitive contract were not met.

*Pressing emergency* - a situation where delay in taking action would be injurious to the public interest.

*Prevailing rate* - rate charged for similar work under similar conditions in the immediate geographical location.

*Project authority* - departmental official who has been delegated financial signing authority to initiate and sign contracts.

*Proposal* - tender, bid or offer which may be either unsolicited or submitted in response to an invitation from a contracting authority. A proposal is usually requested when a contractor is to be chosen on the basis of the performance offered rather than on price alone. Proposals require details such as the firm's qualifications and experience, the approach to the project, and the identification of problems and proposed solutions in addition to details of price.

*Public opinion research services* - refer to Section 14.1.

*Service contract* - a contract for the provision of service but does not include an agreement whereby a person is employed as an officer, clerk or employee of Her Majesty.

#### **4.0 Elements to Consider before Entering into a Contract**

Public servants who have been delegated authority to negotiate and conclude contracts on behalf of the Crown must exercise this authority with prudence and probity so that the contract authority (the Minister) is acting and is seen to be acting within the letter and the spirit of the *Government Contracts Regulations*, the Treasury Board Contracts Directive and the government's procurement policies, the *North American Free Trade Agreement* (NAFTA), the *World Trade Organization - Agreement on Government Procurement* (WTO-AGP), and the *Agreement on Internal Trade* (AIT). Where applicable, contracting authorities must also observe the requirements of the Procurement Strategy on Aboriginal Business (PSAB).

With respect to contracts for services, managers must:

- (a) Ensure that they have obtained the best value possible for the money spent in meeting program requirements and that the fees paid do not exceed the appropriate market rate for the service provided;
- (b) Ensure that an employer-employee relationship will not result when contracting for the services of individuals;
- (c) Ensure that contracts for the services of former public servants reflect sound contracting practices, including fairness in selection and compensation. No contract for the services of a former public servant may be entered into unless the contracting authority is satisfied that it is in the public interest (refer to Section 12.0 for further details); and
- (d) Ensure that the statement of work or the requirements description clearly describes the work to be carried out, the objectives to be attained and the time frame.

## **5.0 Cost Effectiveness**

Cost effectiveness is not merely obtaining services at the lowest cost; rather, it is choosing that alternative which yields the greatest value for the least cost. This means that consideration must be given to all the relevant costs as well as the benefits of each alternative. These costs are frequently difficult to calculate with respect to service contracts, particularly those where the requirements are not well defined.

Cost effectiveness will be more readily assured when:

- (a) the requirements of a project are carefully defined;
- (b) all reasonable sources of supply in both the public and private sectors are identified;
- (c) all cost and benefit aspects of the various alternatives are considered; and
- (d) contractual negotiations are pursued in a professional and businesslike manner to obtain the most favourable arrangement possible.

While cost effectiveness is the indispensable element of the government's contracting policy, all contracts must be predicated on:

- a clear justification for the work; and
- conformity with the law.

## **6.0 Employer-Employee Relationship**

The project authority is responsible for ensuring that an employer-employee relationship does not develop during the performance of a contract.

Essentially, an employer-employee relationship exists when the employer can specify when, where, how and under what conditions the work will be performed. Rather than envisaging the accomplishment of a specified amount of work, such a relationship normally contemplates the contractor putting his personal services at the disposal of the

manager during some period of time. On the other hand, an acceptable relationship exists when an individual is retained to achieve a prescribed objective or task with no day-to-day supervision exercised by the contracting authority. In other words, the contractor is afforded the latitude required to achieve the objective of a specified amount of work.

When contracting for services, the following criteria should be used as a guide to determine if an employer-employee relationship exists. The courts have used these criteria, and their importance varies according to the nature of the contract.

- (a) The project authority exercises supervisory control over conduct of the work and achievement of objective (as distinct from inspection and acceptance or rejection) and has the power to discipline the contractor's personnel.
- (b) The project authority is responsible for furnishing facilities, tools, support services and materiel needed to perform the work.
- (c) The contractor is not exposed to risk of loss and has no opportunity to profit from contract performance.
- (d) The contractor has no opportunity to subcontract or hire other persons, under its own authority, to achieve the objective.
- (e) The work to be performed is an integral part of the work of the organization and is comparable to the work being carried out by public servants.
- (f) Payment is made on a time basis and at regular intervals, or is made directly to the contractor's personnel with deductions for taxes, pensions, etc., made by the Crown.
- (g) Provision is made for holidays, holiday pay, sickness or injury.
- (h) The contract lasts longer than 20 weeks and one or more of the above criteria apply.

If a firm consists of an individual who has incorporated, any contract with this firm should be considered as a contract for the services of an individual, not as a contract with the firm. The contract should, therefore, not exceed 20 weeks.

## **7.0 Length of the Contract**

The length of time required to complete a task is one of the key factors used in determining whether an employer-employee relationship exists. Any decision to award a contract for the services of an individual must receive the most serious and thorough consideration. The same applies to temporary help services contracts. When requesting contracts for the services of individuals in excess of 20 weeks, including any extensions of existing contracts, managers must recognize the increased possibility that an employer-employee relationship will develop and they must be prepared to defend their recommendation for longer-term contracts or extensions.

## **8.0 Statement of Work**

The Statement of Work is the basic document for any contract since government regulations require that the terms of reference of a service contract be clear and unambiguous. That is, there must be certainty of terms in order for the contract to be enforceable in law.

Developed by the manager, the document should provide the following information:

- (a) a background statement outlining the situation leading to the requirement;
- (b) a statement describing the objective to be achieved;
- (c) a description of the range, extent and bounds of the work;
- (d) details of available support and responsibilities of project manager;
- (e) time schedules for the completion of each stage of the work and for the entire work;
- (f) financial report requirements and other control procedures;
- (g) progress report requirements and other control procedures; and
- (h) approval and acceptance requirements relating to performance of the stages and of the work as a whole.

## **9.0 Total Cost of Contract**

The total cost of the contract will include remuneration, travel, hospitality and administrative expenses and applicable taxes.

### **9.1 Remuneration**

Remuneration for services will be negotiated on the basis of the prevailing rate for the type of work required and the contractor's established market rate.

### **9.2 Expenses**

If applicable, travel and hospitality expenses will be paid in accordance with Treasury Board directives. Administrative expenses for direct out-of-pocket costs incurred by the contractor in providing the required services will be reimbursed with no allowance for profit. A reasonable estimate of expenses must be determined when developing the terms of reference.

### **9.3 Taxes**

All applicable taxes, including the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST), are considered part of the total value of the contract. All dollar levels in this Policy are inclusive of all taxes.

## **10.0 Soliciting Bids and Selecting a Contractor**

In the selection of a contractor, cost effectiveness must be carefully considered while obtaining the required expertise to satisfy the complexity and time constraints of the project.



Selection criteria must be established and will be based on the methodology or approach to the work, level of experience in the field required, previous achievements, writings and publications, access to supporting resources, capacity to complete work within the required time, sensitivity of work, established reputation of the individual in his or her specialized field and security level required.

The selection criteria must be established at the same time and in relation to the terms of reference and be attached to it. Furthermore, the evaluation of all potential contractors must be done in writing in accordance with those predetermined criteria.

### **10.1 Equal Opportunity for all Contractors**

In accordance with the government's policy to reflect fairness in spending public funds and the requirements under the trade agreements, the method of procurement used for a particular acquisition must, within the limits of practicality, give all qualified firms an equal opportunity for access to government business. For all procurements, especially those subject to the *North American Free Trade Agreement*, the *World Trade Organization - Agreement on Government Procurement*, and the *Agreement on Internal Trade*, all parties must be given an equal opportunity to access government business. Therefore, it should be ensured that potential contractors are identified. Whenever projects are advertised, the area of coverage should not be so narrow that it inhibits free competition. If fewer than three respondents are reached by established advertising practices, the advertising coverage or bid solicitation should be increased.

Selection methods that may be used include advertisement in the public press, mailing lists, source lists, electronic bidding (including ACAN's) and, publication in the "Government Business Opportunities" (GBO). When a combination of solicitation processes is used together, it is essential that they:

- (a) commence and close on the same dates;
- (b) provide potential suppliers with the same information; and
- (c) impose identical obligations on these suppliers.

### **10.2 Advance Contract Award Notice (ACAN)**

This electronic bidding procedure can be advantageously used to fulfil the requirement of the Government Contracts Regulations to solicit bids and is appropriate:

- (a) when the contracting situation results from one of the four following exceptions identified in Section 10.3, which permit the setting aside of the requirement to solicit bids:
  - (1) the need is of pressing emergency in which delay would be injurious to the public interest;
  - (2) the total estimated expenditure does not exceed \$10,000;
  - (3) the nature of the project is such that it would not be in the public interest to solicit bids; or
  - (4) only one person (firm) is capable of performing the contract.

and,

- (b) to inform the public that the contracting authority is proposing to award a justified directed contract *especially in situations involving the services of former public servants.*

An ACAN is always published using an approved electronic procurement information service and may be supplemented in order to inform the public by the traditional approaches, such as mailing lists, notification in trade publications and the public press, etc. Information to be included in the ACAN is required to:

- (a) define the requirements or the expected results of the contract (statement of work), so that other potential suppliers can determine if they possess the capability to satisfy them;
- (b) identify the proposed contractor;
- (c) provide the reason for the proposed directed award; and
- (d) if possible, provide an estimate of the cost of the proposed contract, where this will not prejudice negotiations with the proposed contractor.

If no other firm or person indicates a valid interest or submits a Statement of Capabilities the proposed award as announced in the ACAN within fifteen calendar days, the contract is deemed to be competitive and may be awarded using the electronic bidding contracting authority.

If there is a valid Statement of Capabilities to the proposed contract award, it may not be ignored and the requirements must be re-advertised as a competitive solicitation using electronic bidding or using traditional methods.

### **10.3 Directed (Non-Competitive) Contracts**

Traditional or electronic bidding must be used except in those situations where one of the following conditions prevails:

- (a) the need is of pressing emergency in which delay would be injurious to the public interest;
- (b) the total estimated expenditure does not exceed \$10,000;
- (c) the nature of the project is such that it would not be in the public interest to solicit bids; or
- (d) only one person (firm) is capable of performing the contract.

Justification for a non-competitive contract exceeding \$10,000 must be documented on the contract file and clearly identify and support the condition selected (a, c or d), to permit the setting aside of the requirement to solicit bids.

### **10.4 Directed (Non-Competitive) Contract Approval**

When it is decided to approach only one contractor instead of tendering or requesting proposals, the decision should be duly recorded with the justification for selection. Furthermore, it must always be understood that non-competitive contracting is acceptable only as an exception and that it must be fully documented substantiated in all situations, including contracts where the value is less than \$10,000.

To ensure non-competitive contracts with values exceeding \$10,000 are thoroughly analysed, the Deputy Commissioner must approve all requests for these contracts. A copy of the document indicating this approval must be submitted with the contract request form.

## **11.0 Former Parliamentarians in Receipt of a Pension**

Effective July 13, 1995, legislative restrictions came into force on “double-dipping” by former Senators and MPs in

receipt of a pension pursuant to the *Members of Parliament Retiring Allowances Act* (MPRAA). If these individuals accept a contract, are appointed or employed in the federal public sector, including Crown Corporations, federal agencies, the judiciary, the diplomatic corps and the Public Service, where the remuneration equals \$5,000 or more per year, their MPRAA pension will be reduced by one dollar for each dollar of remuneration received in that year. The legislation places the onus on the former Senator or MP to advise their pension office of their employment, appointment or contract with any portion of the public service and related remuneration. The onus is also on the former Senator or MP to advise the pension office when they cease receiving remuneration. (Reference: Bill C-85).

## **12.0 Former Public Servants**

Contracts for the services of former public servants and other officials must bear the closest public scrutiny and reflect fairness in the spending of public funds. Contracting authorities should exercise extreme discretion when contracting with former employees. No contract for the services of such officials shall be entered into unless it would be in the public interest to do so and it has received the prior approval of the Deputy Commissioner. There must be no suggestion of special favouritism or privilege.

### **12.1 Former Public Servants in Receipt of a Pension Paid Pursuant to the Public Service Superannuation Act**

Contracts with a former employee receiving a government pension may prompt accusations that public funds are being abused or that influence was improperly exerted in the contract award, particularly if those involved, occupied more senior positions or took early retirement. Managers should therefore recognize the delicate balance between the desire to respect individuals' rights to use their knowledge and abilities for economic gain and personal development on the one hand, and, on the other, to protect the public's right to reasonable assurance that the public interest will not suffer in the process. All contracts with former government employees must be fully documented to justify the choice of such individuals thereby assuring that the contract meets all the above-mentioned requirements.

Special contracting procedures and limits (refer to Section 16.2) apply to service contracts with former officials in receipt of a government pension. The Administrative Services should be consulted to obtain details on the procedures.

### **12.2 Former Public Servants in Receipt of a Lump Sum Payment Or Retirement Incentive Payment**

Special measures and limits (refer to Section 16.3) apply to service contracts with former public servants who have received a lump sum payment. The limits normally applicable under the Government Contracts Regulations are not applicable in these instances and, because of the sensitivity of these contracts, costs should be strictly controlled. The contracting restrictions apply to sole proprietorships or where the affected individual has a controlling or major interest in the contracting entity.

### **12.3 Fee Abatement**

The following procedure applies in the determination of the maximum fee for the services of a former public servant who has been retired for less than one year and is in receipt of a pension. The former maximum salary is updated to the current level, or the estimated salary for having the work done by a public servant (if a qualified public servant were available), whichever is less, plus 30 per cent (representing a fringe benefit factor), minus the total annual (gross) pension in pay, yields a figure that is divided by 260 (representing the number of working days in a year), equals the maximum daily rate that can be negotiated.

If a rate lower than the above formula yields is negotiated and agreed to, the negotiated rate should be used. The contract amount should be adjusted appropriately where the fee is a fixed price based on a number of days of work or where the fee is paid on the basis of hourly, weekly, monthly or annual rates. The number of hours that will constitute

a workday should be based on the usually accepted norm for the profession, trade or function being contracted and should be specified in the contract document.

A “pension” in the context of the formula is a pension or annual allowance paid under the *Public Service Superannuation Act* (PSSA) and any increases paid pursuant to the *Supplementary Retirement Benefits Act* as it affects the PSSA. It does not include pensions payable pursuant to the *Canadian Forces Superannuation Act*, the *Defence Services Pension Continuation Act*, the *Royal Canadian Mounted Police Pension Continuation Act* and the *Royal Canadian Mounted Police Superannuation Act*, the *Members of Parliament Retiring Allowances Act* and that portion of pension paid pursuant to the *Canada Pension Plan Act*.

### **13.0 Legal Services**

Contracts for the performance of legal services may be entered into only by, or under the authority of the Minister of Justice. Accordingly, while it is recognized that lawyers may be engaged for purposes other than performance of legal services, the Department of Justice must be consulted in every case where a contract for services is entered into with a practising member of the bar, to determine whether the contract is for legal services and thus whether the approval of the Department of Justice is required. Departments may not enter into a contract for services with a practising member of the bar without first having obtained the approval of the Department of Justice, or having been advised by the Department of Justice that the contract does not involve legal services.

### **14.0 Public Opinion Research and Advertising Services**

All contracts for Public Opinion Research and Advertising Services can only be awarded by the Public Opinion Research and Advertising Coordination Directorate of Public Works and Government Services Canada. Departments must ensure that the Public Opinion Research and Advertising Coordination Directorate has assigned a project authorization number to the statement of requirements before initiating any procurement or contracting procedure. This number is required when the statement of requirements (or scope of work) refers to services required for government information collection, which qualifies as or contains a component of, public opinion research, as defined in the Policy on the Management of Government Information Holdings.

Under no circumstances are managers to give verbal or written authorization to public opinion research or advertising firms to provide any service prior to the issuance of a formal contract authorized by the Public Opinion Research and Advertising Coordination Directorate of Public Works and Government Services Canada

#### **14.1 Definitions**

*Advertising* - All activities, including research, involved in the purchase, by or on behalf of the government, of space or time in print or broadcast media, or in other mass media, such as outdoor and transit advertising. It includes any collateral materials such as posters, counter displays, and printed material such as inserts that are a direct extension of an advertising campaign. Public Service Announcements are also considered advertising.

Co-sponsorship initiatives, public relations, special events, direct marketing and promotion activities that are an extension or form part of an advertising campaign are included in the definition of advertising.

Paid announcements are not considered advertising in this context, unless an advertising agency is to be used.

*Public Opinion Research* - The planned gathering, by or for a government institution, of opinions, attitudes, perceptions, judgments, feelings, ideas, reactions, or views that are intended to be used for any government purpose, whether that information is collected from persons (including employees of government institutions), businesses, institutions or other entities, through quantitative or qualitative methods, irrespective of size or cost.

The definition includes, but is not restricted to:

- policy research;
- market research;
- communications research, including advertising research;
- program evaluation;
- quality of service/customer satisfaction studies;
- omnibus surveys (placement of one or more questions); and
- syndicated studies.

As well, the definition applies to components of other initiatives, such as communication strategies, product development, program evaluation, etc.

The following research and/or methods for obtaining opinions and/or information and/or advice are not considered to be opinion research:

- literature reviews or reviews of secondary sources, including reviews of already conducted public opinion research;
- secondary analysis of previously collected public opinion research data; and
- verification of performance of services or delivery of goods in contract situations.

Additional information concerning this subject can be found in Appendix Q of the *Treasury Board Contracting Policy*.

#### **14.2 Contract Initiation and Procedures**

Restrictions have been placed on signing authority for public opinion research and advertising services. Managers who have a requirement for these services should ensure they have the appropriate level of financial signing authority. A contract request form should be submitted in accordance with Section 19.0 to Administrative Services who will make the necessary arrangements with PWGSC.

#### **15.0 Financial Signing and Approval Authorities**

Only managers occupying positions appearing in the FCAC Delegation of Financial Signing Authorities have authority to initiate and sign contracts and this authority is limited to the amount of authority so delegated under expenditure initiation.

In addition to the FCAC signing authority limitations and the dollar limits referred to in Section 16.0, additional restrictions with regard to approval authority have been placed on the following contracting situations:

- (a) directed (non-competitive) contracts (Section 10.4);
- (b) ratification of contracts (Section 18.0); and

- (c) public opinion research and advertising services contracts (Section 14.0).

In the event that one of the situations listed above apply, managers should refer to the applicable section of the policy to ensure they have obtained the appropriate level of approval, and, with respect to (c), public opinion research, managers should also consult with Administrative Services regarding other approval requirements that may exist for this situation.

## **16.0 FCAC Contracting Limits**

### **16.1 Basic Authority**

The FCAC may, without the approval of the Treasury Board:

- (a) enter into a service contract if the amount payable under the contract does not exceed:
  - (i) \$100,000 (subject to Section 10.3 and 10.4);
  - (ii) \$400,000 in competitive contracts using traditional bidding methods;
  - (iii) \$2 million in competitive contracts using electronic bidding.
- (b) increase the amount payable under a service contract according to the Treasury Board contracting policy.

### **16.2 Service Contracts with Former Public Servants in Receipt of a Pension**

Non-competitive (directed) services contracts with former public servants in receipt of a pension:

- (a) contracting authorities may negotiate and award any contract where the total value, including any amendments, does not exceed \$10,000;
- (b) Treasury Board approval is required to enter into non-competitive contracts whose total value, including amendments, exceeds \$25,000;
- (c) the fee component in any contract must be abated if the individual has been retired for less than one year and is in receipt of a pension.

Competitive (traditional or electronic bidding) service contracts with former public servants in receipt of a pension:

- (a) contracting authorities may negotiate and award any contract whose total value, including amendments, is \$100,000 or less;
- (b) Treasury Board approval is required to enter into any contract whose total value, including amendments, exceeds \$100,000.

### **16.3 Contracting of former public servants in receipt of a lump sum payment**

There are very specific conditions placed on the contracting of former public servants in receipt of a lump sum payment under one of the departure incentives. These affect the limit of the contract to \$5,000.00 and are covered in Section 16.8 of the Treasury Board Contracting Policy.

### **17.0 Contract Amendments**

Even though the Treasury Board Contracts Directive allows for amendments, contracts should not be amended unless such amendments are in the best interest of the government, because they save dollars or time, or because they facilitate the attainment of the primary objective of the contract. Work definitions should be carefully developed. Contracts should then be properly administered to avoid unanticipated amendments except to change the scope of the work. Amendments to existing contracts often call for more administrative work and little can be done through competition to encourage the contractor to do additional work or respond to changes at the lowest possible cost.

Every effort should be made to avoid:

- (a) inadequate initial funding, resulting in amendments to increase the contract value;
- (b) inadequate pre-planning, resulting in amendments to change the design, specifications or quantity involved; and
- (c) improper administrative procedures, necessitating amendments to change the specifications and delivery or other requirement in order to protect the contractor or government agency involved.

Many contract amendments are, in fact, prudent. Often contract amendments or probable amendments can be foreseen when the initial contract is contemplated. In such cases, the proposal section of the approval document should indicate the likelihood of such amendments, including a maximum cost limit. Where Treasury Board or managerial approval is required and the original contract proposal to the Treasury Board or departmental management has been approved, subsequent amendments do not require the same level of approval as long as they are within the original intent of the proposal and applicable amendment authorities.

### **18.0 Ratification of Contracts**

There may be occasions where a manager, as a result of an administrative oversight or an exceptional situation, has entered into a verbal agreement and, therefore, a contract with a supplier without having observed the requirements of the departmental contracting policies and procedures. In these circumstances, the request for a contract must include, in addition to the standard supporting documentation, the following information:

- (a) an explanation of why this situation occurred; and
- (b) where applicable, an outline of the corrective measures that have been taken to ensure situations of this nature do not reoccur.

It should be noted that the contract request must be submitted as soon as possible following the work being authorized or initiated by the manager and that all other policies, procedures, restrictions and limits described in this policy remain in force.

## **19.0 Procedures for Requesting Contracts**

### **19.1 Documentation Requirements**

Managers who have a requirement for contracting services must complete and submit a *Contract Request Form* to Administrative Services. In addition to the details required on this form, the following information must be included:

Non-competitive contracts (under \$10,000):

- (a) statement of work;
- (b) company profile or CV of the person performing the work;
- (c) costed proposal from the individual/firm or certification that the contractor's proposed/actual rate is not in excess of the lowest rate charged anyone else;
- (d) justification for contractor selection; and
- (e) if applicable, a completed security clearance form or confirmation that a clearance has been obtained.

Competitive contracts:

- (a) statement of work;
- (b) evaluation criteria, weights and selection method;
- (c) if applicable, recommended bidder's list including addresses, telephone and fax numbers; and
- (d) security requirements.

Completion and approval of this form do not signify contract approval. Therefore, no commitment is to be made to proposed contractors before the contract document is issued by Administrative Services or Public Works and Government Services Canada.

### **19.2 Length of Time Required for Processing**

Provided that all required information and supporting documentation are received with the original Request for Contracting Services, the length of time required to process contracts from the date of receipt of the request by Administrative Services is listed below. Incomplete or missing information and/or documentation may cause delays in the processing period.



Non-competitive contracts can be prepared within 3 to 5 working days for contracts for which the FCAC has been delegated authority (refer to Section 16.0); or

Competitive contracts may take 1 to 6 months, depending on the complexity and dollar amount, for contracts processed under both departmental authority and by Public Works and Government Services Canada.