

New Buyers' Guide

“A practical guide for new buyers in federal departments and agencies”

Foreword

Buying in departments and agencies of the Government of Canada is more decentralized than ever. Departments buy most of their own services and low-dollar value goods. Many goods and services are bought by using standing offers, while we buy low dollar value goods (less than \$5,000) by using government acquisition (credit) cards.

As a new buyer, where do you fit in?

Because your clients generally do not have much contracting experience, contracting expertise is what you bring to them. Following their initial contact, you help your clients define their requirement. Then you initiate, prepare and manage a contract for the purchase.

To be good at your job, you must first learn the rules and regulations of buying. This guide will help you to learn the basics in buying goods and services and to understand the procedures. You will also learn about Public Works and Government Services Canada's (PWGSC) procurement services and where to find out more about them.

What makes a good buyer?

Good buyers are individuals who tend to be precise in their work, and who enjoy meeting challenges. Because buying for government is often complex, you must devote time and energy to become good at it. Your supervisor and your colleagues will help you to learn your job, but it is the experience you gain working that will make you more proficient.

Training in all aspects of contracting provided by PWGSC and your department will improve your skills.

While deferring to the broad view of the government's policies and contracting regulations, departments have developed their own contracting practices and administrative procedures, not all of which can be listed here. The guide outlines and explains only the most common rules and regulations. And the guide does not discuss the regional variations in buying and contracting practices that regional buyers must learn. Throughout the guide, various terms, such as to buy, buying, purchasing, acquiring, are used interchangeably, as are procurement, purchase and acquisition. Every effort has been made to keep the guide and its message simple and clear.

Contracts Canada (now called Business Access Canada) hopes that this guide will help you to understand the often complex business of buying and contracting.

The guide is divided into three parts:



New Buyers' Guide

- Part one outlines the basic rules in government procurement and the general practices in buying; it leads you through the process, from the beginning, when you help your client define the need, through the various steps in buying, all the way to close out of the contract.
- Part two briefly lists PWGSC's mandatory and optional procurement services.
- Part three consists of a selected reading list.

(Note: This Guide is available online at <http://contractscanada.gc.ca/en/buyerguide.htm>)

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Part one: You as buyer

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Introduction

Sound business practice and fairness control government buying. In a sense, rules make the process of buying simpler and more consistent throughout your department and the government.

As procurement officers or clerks in your department or agency, you are responsible for buying goods and services up to a dollar value delegated to you.

Rule of thumb

The rule of thumb in buying is to advertise opportunities, select a winning contractor fairly and obtain the best value for your client.

That means that you should buy:

- openly and competitively;
- by the book,
- while supporting government objectives respecting land claims and Aboriginal business development; and
- in compliance with Canada's trade agreements.

Why must you buy this way?

Your government doesn't buy erratically. Its buying practices are designed to make the process smoother and to ensure your clients enjoy best value for their money.

Who sets the rules?

The Treasury Board of Canada sets the rules. And various acts of Parliament set the procurement authority under which departments and agencies may buy goods and services. Treasury Board's rules are called the Government Contracts Regulations.

When you buy from contractors, the rules are that you:

- Solicit bids from them in open competition before you award a contract; and
- Advertise for bids publicly or solicit them from lists of suppliers.

Exceptions to competition (Sole source buying)

While you should strive to buy competitively, it doesn't make much sense to spend more money on a competition for the goods or services your clients need than they are worth. In fact, most of your buys will be low dollar value purchases where competition may be optional.

Keep in mind also that suppliers, vendors and contractors do not want to spend more money than absolutely necessary responding to competitive solicitations.

You may contract with a supplier without competition when:

- There is a pressing emergency such as natural disasters like earthquakes or floods;
- The estimated expenditure is less than;
 - \$25,000 for goods and services (buyers are still expected to solicit bids below this value whenever it is cost effective to do so); or
 - \$100,000 for architectural and engineering services and other services required in respect of the planning, design, preparation or supervision of the construction, repair, renovation of a work; or
 - \$100,000 for the Canadian International Development Agency (CIDA) service contracts related to international development programs or projects;
- A competition is not in the public interest; or
- Only one supplier is capable of performing the work, as in the case of a supplier who owns a copyright or software license.

What is a contract?

Very simply, a contract is an agreement between someone who buys and a person or company providing, for example, goods or services.

A contract, to be legally binding, must show that:

- The two parties clearly intend to contract;
- There is a clear offer and a clear acceptance of the offer;
- The two parties are legally capable of contracting;
- A price has been set that the buyer agrees to pay the supplier;
- There is a purpose for the purchase which is clearly legal; and
- There is a clear agreement between contracting parties about the terms and conditions of the contract.

What are the rules in government buying?

A number of acts, regulations and policies oversee buying in government of which the most important are:

- **Treasury Board Contracting Policy**

The policy of the government is to buy goods and services openly and fairly while working to obtain best value.

- **Financial Administration Act**

This act outlines the financial responsibilities and authorities for contracting. It is the basis for the Government Contracts Regulations which state that bids must be called in tendering government requirements. The regulations also allow you to buy without competition in certain unusual circumstances. And the act stresses that you may not contract for goods or services unless you have funds available for that purpose.

- **Department of Public Works and Government Services Act**

This act is important because it gives the Minister of Public Works and Government Services exclusive authority to buy goods and services for other departments and agencies, and to delegate this authority to other ministers. This provides the flow of authority by which you are allowed to buy.

- **Trade Agreements**

Canada has trade agreements which cover procurement. The North American Free Trade Agreement eliminates trade barriers between Canada, Mexico and the United States. Certain goods and services bought by governments are subject to this agreement: goods of a value of \$38,000 Cdn or more and some services worth \$89,000 Cdn or more.

The World Trade Organization - Agreement on Government Procurement encourages the elimination of trade barriers between signatory countries regarding procurement. Its threshold for both goods and services is \$261,300 Cdn.

The provinces and the Government of Canada also have an agreement to reduce trade barriers between the provinces: The Agreement on Internal Trade. Goods of \$25,000 and services of \$100,000 are subject to this agreement.

- **Agreements affecting Aboriginal business**

Land claim agreements affect government purchasing in cases where goods or services are to be delivered within a land claim area. Such purchases provide enhanced opportunities for Aboriginal businesses in the land claim areas.

- **Government Materiel Management Policies related to green procurement**

The Treasury Board Materiel Management Policy specifies that procurement activities must be carried out in a manner that respects government environmental objectives. Your departments or agency may have adopted green procurement policies. If in doubt, check with your Materiel Manager.

Principles that should guide you in your buying

Competition is important to the Canadian business community. And your dealings with them should be open, fair and honest. At the same time, remember that you are your clients' agent and you should strive for the best possible value on their behalf.

Buyers' Code of Conduct

- *Keep competition open and honest*
- *Respect your suppliers' confidence*
- *Don't take advantage of their errors*
- *Avoid personal obligations towards them*

Best practices in buying

A proper combination of good management and common sense will go a long way to help you buy effectively for your clients. Using good business practices to buy for your clients may sometimes seem to be time consuming, but is beneficial in the long run. The following are practices that will help you do your work efficiently:

- Maintain good records by keeping files up-to-date;
- Always obtain written or faxed confirmation of significant information;
- Consult your colleagues who often have sound advice to give;
- Use specialist help in dealing with complex requirements;
- Always treat information, especially bid information, in a confidential manner;
- Know your suppliers' performance history;
- Consider all options in buying, and the long-term implications;
- Always be clear in your communications;
- Ensure the honesty of every aspect of the buying process;
- Try to get involved early in the process with your client.

Practices to avoid

If you are honest and conscientious in your buying methods, you will soon learn that there are practices you must avoid:

- Retroactive contracting
The practice of contract development and approval after the work has been

- assigned, usually without competition. This practice contravenes Treasury Board policy.
- **Contract splitting**
Splitting a requirement into a number of contracts to avoid having to award the contract through competition. This practice contravenes Treasury Board policy.
 - **Sole sourcing without justification** (directing a purchase to a supplier without competition)
 - **Employer/employee relationship**
Treating a contract individual as if he were an employee. This practice contravenes Treasury Board policy.
 - **Awarding a contract to a company that has had previous contracts with your department or because a contractor has had work experience in your department, for those reasons only.**

When the requirement exceeds your department's or your authority to purchase

The Treasury Board has established contracting dollar limits within which departments may purchase goods and services. The Treasury Board contracting limits are outlined in the Treasury Board Contracts Directive (Appendix C of the Treasury Board Manual on contracting). Ask your manager for this.

If you are given the necessary authority, you or your department may enter into a contract without the approval of the Treasury Board, if the amount payable, including all applicable taxes such as the GST, does not exceed the limit set out in the Treasury Board limits.

Although it is highly unlikely that you, as a new buyer, will have to deal with requirements that exceed your authority or your department's, it is very important you should know that, in latter case, Treasury Board's approval must be obtained before the purchase can proceed.

Moreover, splitting a contract or contract amendment in order to avoid having to obtain the approval required by statute or from Treasury Board is not permissible.

Chapter 2 – How we buy

Phases of the buying process
Your role as buyer
Where does your authority to buy come from?
How much may you buy?
Buying and contracting procedures
Your client's role in buying

Phases of the buying process

It is easier to think of buying as having clearly defined stages of activity leading to the delivery of goods or services to meet your client needs.

Phases

- *Pre-contracting*
- *Contracting*
- *Managing and monitoring*
- *Post-contracting-It is easier to think of buying as having clearly defined stages of activity leading to the delivery of goods or services to meet your client needs.*

- **Pre-contract phase**
During this phase your client sends you a requisition for, or alerts you to a requirement for a good or a service. You help define the requirement clearly and develop a procurement plan. That means that you figure out the best way of buying what is needed, for example whether you need to hold a competition or maybe contract with a prequalified supplier without competition.
If required, you help develop a statement of work and ensure everything in it is clear.
Evaluation criteria and a contractor selection method are also developed during this phase.
- **Contract phase**
During this phase you solicit bids or proposals electronically or from lists of suppliers and award a contract on the basis of a preestablished selection method and bid evaluation criteria.
- **Contract management phase**
After you have awarded the contract, you monitor how it is progressing, and you ensure that the goods or services are delivered and that payment to the supplier is made.
- **Postcontract phase**
In the postcontract phase, you check on whether your client is satisfied with the goods or service delivered, and then close it out.

Your role as buyer

*You are the agent!
You act for your client*

Remember that you are your client's agent!

You act on behalf of your client on all matters connected to the acquisition of goods or services from a supplier or contractor. Your role is to ensure that every step in the buying process, from expressing the requirement clearly to developing a proper buying approach, to identifying sources of supply, to managing and closing out the contract, is completed to your client's satisfaction and in accordance with the established rules and regulations.

While your first role is that of an agent, you also have to ensure the integrity and openness of the buying process, while your client receives the best possible value and suppliers are treated fairly.

In purchases where standards exist, these should be applied.

Where does your authority to buy come from?

You are authorized to buy because you are delegated the authority to do so. This means that you may negotiate and establish contracts with suppliers for goods and services because you know how to do it. There is a difference between contracting authority and procurement authority. Your client may have the authority to purchase goods and services (procurement authority), but may not know how to contract. Knowing how is your responsibility. Learn the difference between procurement and contracting authority, and the difference between signing authority and contracting authority. The manager signing a requisition for the purchase of goods or services doesn't automatically assume the mantle of contracting authority. That is your area of expertise.

First in the chain of procurement delegation is your Minister. Your Minister receives authority to buy from the Minister of Public Works and Government Services, who has authority to buy goods and services for federal departments and agencies. Your Minister then delegates that authority down to senior officers who further delegate some of it to other appropriate personnel, like yourself.

Your delegated authority to buy is usually covered in a delegation document provided by your management.

How much may you buy?

The position you hold determines how much you are authorised to buy.

With your authority to buy, you may purchase goods up to a maximum delegated value; delegated values are available to all personnel authorised to buy. Goods above that value are usually bought by PWGSC. Recently, however, PWGSC has begun to offer authority to buy goods up to a value of \$25,000. Some departments will accept, while others won't. If your department accepts, this may change your delegated authority level. Your manager or supervisor will notify you if such a change occurs.

The quickest and easiest way to buy goods within \$5,000, and even services related to goods for that matter, is by using a government acquisition card, which is basically a credit card. Your department determines what may be purchased this way and who may use an acquisition card.

Services are treated very differently, with most departments and agencies buying their own, up to certain limits. In principal, you may buy services using an acquisition card, if it is practical to do so, and according to your authority. But, whether you are handling goods or services, the established thresholds may not be exceeded.

You may also be able to advise your client to buy without competition, but justification for this must be provided. The allowable justifications are reviewed later in the guide. Treasury Board policy stipulates that the competitive process must be used whenever possible.

Procurement specialists have proved to be imaginative in solving, for example, the problem of repetitive buying. Rather than issuing individual contracts each time a client buys an article or service purchased several times a month, PWGSC uses a system of standing offers, allowing suppliers to list goods or services at a certain price and for a specific time. A call-up by a department against this list becomes the contract. Thresholds in standing offers may exceed the standard threshold: the limit for goods normally being \$40,000 and for services \$50,000.

Electronic purchasing tools have been created to make the buying easier and quicker. For instance, PWGSC has developed on-line tools to speed up the purchase of informatics professional services and temporary help services in the National Capital area and translation services across Canada.

Buying and contracting procedures

This guide outlines and explains general practices that have been developed over many years.

Growing decentralisation of buying and contracting authority to departments has meant that they have developed minor differences in buying practices within the parameters for contracting set by Treasury Board. As a new buyer, you will have to familiarize yourself with your department's procedures.



Your clients' role in buying

Statement of Work

The Statement of Work sets out clearly and in detail the nature of the required good or service. Your clients' first step in buying something is to identify the need. The next step is to prepare with your help a statement of work using performance specifications as much as possible.

The most effective and fair way of evaluating proposals is to develop a set of technical evaluation criteria. In other words, the basis on which you will judge each proposal, such as the degree of knowledge and understanding of the requirement demonstrated in a proposal for services.

Your clients must also tell you whether the purchase has security requirements. They are also the technical authority in judging tenders or proposals.

Chapter 3 : How it starts

Defining the requirement
What is the statement of work?
Making your statement of work clear
Preparing the requisition
Common ways of buying (Methods of supply)

How it starts

It all starts when clients call you to tell you they need materiel or services. The precise nature of the goods or service is what you must help your clients decide. They may have an idea of what they want but some difficulties in buying goods or services can be traced to lack of clarity in defining the requirement.

Your client sends you a requisition

You acknowledge it and review it for

- *completeness*
- *accuracy*
- *proper authorization*
- *funding commitment*

You have received a requisition for goods or services. Most departments and agencies have their own forms, procedures or computer system for requesting procurement services. They range from actual forms to simple requests on-line in E-mail form. Whether they are called requisitions or something else, such as action requests, they are basically the same. And they all initiate buying action. Most of them contain approval signatures and indicate funding commitment.

So what do you do next?

You acknowledge it

First, you acknowledge that you have received the request. You should do that quickly, generally not later than five working days.

You review it

Then, you review it carefully to see whether it contains all of the information you need to start the buying process, such as:

- Proper authorization - Has the person who controls the budget in your client's group approved the purchase?

- Adequacy of estimated funding - Do you think there's enough money allocated for the requirement?
 - Accuracy of the financial codes
 - Shipping and invoicing instructions, and whether
- The Procurement Strategy for Aboriginal Businesses applies
 - A Security Requirements Check List has been included, if applicable
 - The trade agreements apply.
 - Sole source justification has been included, if that is the procurement approach requested
 - Delivery dates are stipulated and are reasonable
 - Dates and time tables proposed are realistic
 - The goods or services are adequately defined in the requisition or attached technical documentation
 - Appropriate standards, specifications or purchase descriptions are included, and,
 - Mandatory requirements are clear and not restrictive.

The details may seem complicated to you as you start your buying career, but you will soon get used to the language and the concepts in buying.

Defining the requirement

Whether your clients need equipment or the services of a consultant, a proper description of the requirement is crucial in the procurement process. Why? Because if your clients can't describe the requirement accurately, you won't be able to either in the solicitation you may have to prepare? Helping your client define the requirement is one of your key roles! This is important as it leads to the development of the statement of work which you will include in the solicitation and which will form the basis of the resulting contract.

At this stage in the buying process, the key factors that determine the requirement are questions of what is needed, what it should do, the delivery date and where it will be used. If you and your client can answer these questions clearly, then you have defined the requirement accurately. There may be other factors you may have to clarify, and experience on the job will teach you what you should watch for.

Now that you and your client are clear on the requirement, you must ensure that it is stated in terms that any qualified contractor can understand.

Remember your rule of thumb! One of your goals is to achieve best value for your clients. In fact, the objective of all government contracting is to acquire goods and services in a manner that:

- enhances access, competition and fairness;

- respects the national objectives such as industrial and regional development, aboriginal business development and the environmentally responsible purchasing; and,
- results in best value.

For many buys, best value may be achieved at the requirements definition stage. You may have to trade off certain factors, among such things as quality, service, cost, ease of acquisition, and linking the purchase to a particular industry or region of the country. For example, the most desirable technical quality may not necessarily add up to the most desirable procurement because it may be too expensive.

Following the definition of your client's requirement, and if the procurement approach involves a competition you should help develop the statement of work.

What is the statement of work?

The statement of work is a narrative description of the work required and stipulates the deliverables or services required to fulfill the contract. It defines the task to be accomplished or services to be delivered in clear, concise and meaningful terms.

To ensure that your client's statement of work contains complete information, you should check to ensure every aspect of the requirement has been verified, such as whether:

- The contract should be based on a fixed price or a per diem rate;
- The work will be completed on or off-site;
- You should make specific facilities, equipment, documentation and personnel available to the vendor;
- travel will be involved,
- The vendor is responsible for providing certain materials, equipment and documentation; and,
- If whether progress reports should be made, and when.

The statement of work is very important as it becomes part of the resulting contract. Nothing should be assumed or left unsaid in the statement of work. If a conflict arises about the work required, the statement of work is one part of the contract always referred to in resolving disputes.

Making your statement of work clear

As the key to all the other steps in the buying process and to the contract with a supplier, the statement of work must be:

- accurately worded
- carefully prepared, and
- clear

It is sometimes difficult to write so that everyone understands what you mean. The person writing the statement of work must be understood by everyone. The statement should define the contractor's obligations accurately. In other words, the contractor needs to be able to interpret the technical requirements clearly.

The statement should outline the scope of the project by providing an overall and nontechnical description of the work to be performed. The various phases of the project are identified and summarized.

Preparing the requisition

Unless you are requisitioning something for your own group, your involvement in preparing a requisition may only be to help your clients to prepare theirs. Once you receive it, the following checklist should help you review every aspect to ensure that it contains all essential information:

- Is the requisition authorized?
- Does the estimated funding seem adequate?
- Are invoicing instructions provided?
- Are the financial codes identified?
- If there are security requirements, has a Security Requirements Check List been attached?
- 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?
- Are the goods or services 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 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 government contracting policies and procedures?
- Are evaluation criteria specified and are the mandatory requirements clear?
- Is a contractor selection method outlined?
- Could repetitive items be bought by standing offer?
- Has the client included instructions concerning the treatment of any intellectual property that may result from the procurement?
- Are delivery requirements clearly outlined?

Note: Not every article in the check list shown above will apply in every purchase. Routine requisitions will be much simpler to check.

Common ways of buying (Methods of supply)

There are many ways of obtaining goods and services. Obviously, a low dollar requirement does not need complicated procedures or lots of forms. Depending on the estimated cost of a requirement, the most common method of obtaining goods or services is to contract for them on receipt of a requisition. The contract need not be complicated. Certain goods, for example office supplies, may be bought using petty cash.

And, more and more, however, small purchases are made using an acquisition card. You will learn about other methods as you gain experience. They are mentioned here briefly:

- **Local purchase orders**
Used to buy goods, also generally of low dollar value. Increasingly replaced by the use of acquisition cards.
- **Acquisition cards**
Credit cards allowing you to buy goods or services up to a value of \$5,000, depending on your level of delegated authority.
- **Standing offers**
Used when a number of clients order the same goods or services at uncertain times. Standing offers are administrative means to provide for the supply of goods or services at prearranged prices with set terms and conditions, for specific periods of time on an as requested basis. You may call up such offers and the moment you do a contract exists between you and the supplier.
- **Supply arrangements**
An administrative arrangement allowing you to solicit bids from a list of prescreened suppliers leading to binding contracts for goods or services.

Chapter 4 - Buying goods

Some thresholds to consider
Green Purchasing

Your department may buy goods up to \$5,000

Most goods above \$5,000, except for goods purchased through standing offers, are bought through PWGSC's active contracting. This ceiling is now being increased to \$25,000 with the offer by the Minister of PWGSC to departments willing to accept certain conditions.

Low dollar value goods are mainly bought by credit card; cards are gradually replacing the local purchase order as a method of purchase. The credit card is simple and leaves a sufficient audit trail for your client to be able to report such purchases.

A higher procurement ceiling for goods is available through the use of call-ups against standing offers where the ceiling for goods may be a maximum of \$40,000, unless otherwise specified in the offer.

International and domestic trade agreements, as well as Aboriginal land claim agreements have a considerable impact on buying goods. Certain goods exceeding the following values are subject to specific agreements:

- \$25,000 - Agreement on Internal Trade
- \$38,000 (Canada/US) - North American Free Trade Agreement
- \$89,000 (Canada/Mexico) - North American Free Trade Agreement
- \$261,300 - World Trade Organisation - Agreement on Government Procurement

These agreements are described in greater detail in Chapter 6 of this guide.

In certain cases, the agreements cover how bids for the purchase of goods are solicited. For example, goods that are subject to the Agreement on Internal Trade must be posted on the Government Electronic Tendering System, MERX™. MERX is operated under contract to the federal government by Mediagrif Interactive Technologies Inc (<http://www.merx.com>).

Considering Green Purchasing

The purchase of green goods and services is an objective for many Canadian government departments and agencies.

There are online resources available to identify green products and services including the following:

- The Green Procurement Network (<http://publiservice.gc.ca/partners/green/text/home-e.htm>) (*accessible to federal government employees only*) provides federal government employees with a single Web site where they can get information and guidance on how to green their purchases of goods and services.
- The Environmental Choice Program, (<http://www.environmentalchoice.com>) a database maintained by TerraChoice Inc. under contract with Environment Canada; and,
- The EnerGuide (<http://oee.nrcan.gc.ca/energuide/home.cfm>) published by the Office of Energy Efficiency (Natural Resources Canada).

Chapter 5 - Buying Services

Temporary Help Services
Green Contracting

Service purchases in departments have higher ceilings but are also subject to contracting rules and regulations.

Services have higher thresholds

For services, departments can generally do their own buying up to the following thresholds:

- \$400,000 for competitive procurements
- \$100,000 where there is no competition (sole sourcing)
- \$2 million by competing services requirements on MERX.

But Treasury Board approval must be sought when the purchase exceeds \$2 million. Directing services contracts of \$25,000 to \$100,000 to suppliers without competition (sole sourcing is the expression used in government) must be justified in accordance with the Government Contracts Regulations. Although you should strive as much as possible to buy in open competition, you may buy services valued up to \$25,000 from one supplier.

Contracting for services is more complex than buying goods. Where technical specifications or performance specifications are important in the purchase of goods, in contracting for services, you must ensure, as you saw earlier, that the statement of work clearly describes the work to be carried out, the objectives to be attained and the time frame during which the work must be carried out.

You should be wary of developing an employer-employee relationship when contracting for the services of individuals, remembering that your client is buying work to be accomplished, not hiring personnel.

You should ensure that the fees paid for consultants do not exceed the appropriate market rate for the service provided using price certification, and in buying temporary help services, confine them to situations that don't exceed 20 weeks and for which it is not feasible to assign public servants.

Because the government has lost personnel from downsizing in recent years, an increasing number of former public servants seek government consultant contracts. You must make certain that contracts for the services of former public servants reflect sound contracting practices, including fairness in selection and compensation.

Temporary help services

At this time, departments in the regions buy temporary help services through standing offers they solicit by means of Requests for Standing Offers. Such standing offers provide firm rates for a certain period of time. On expiry, the process of soliciting standing offers begins again.

If you operate in the National Capital area, have you logged onto THS yet?

But in the national capital area, a new electronic method, the Temporary Help Services (THS) on-line System on the Internet, provides access to temporary help services using a user name and a password. THS is a pilot project providing direct access to prequalified temporary help services suppliers who, once they are registered on the system, form the system's on-line data base. Suppliers post their rates and data, such as classifications, groups, subgroups, on-line in the system. This data is accessible to departments as well as all suppliers.

For more information about this system, access their web page at: THS On-Line

Green Contracting

Environmental considerations also apply to government contracts for services. Some directories such as those mentioned in Chapter 4 may be helpful in identifying "green" services.

Chapter 6 - Impact of the trade agreements on buying

North American Free Trade Agreement
World Trade Organisation-Agreement on Government Procurement
Agreement on Internal Trade

Canada's trade agreements with foreign countries call for the breakdown of trade barriers. Canada also has a trade agreement with the provinces with a similar objective.

What to do when more than one agreement applies.

When what you are buying is covered by more than one agreement, you should follow the procedures that are the most rigorous.

You must decide whether or not the requisition you have received is subject to a particular agreement, or a combination of agreements. To determine coverage under these agreements, you must review the requisition value, the client, the type of good or service, and any possible exemptions or exclusions. Some departments have more exemptions or exclusions than others.

North American Free Trade Agreement (NAFTA)

This agreement was set up between Canada, the USA and Mexico to achieve greater competition in government procurement and to eliminate preference given to domestic products or suppliers.

If all of the following four NAFTA factors are met, your client's requirement is subject to NAFTA; If any one of them is not met, it is not subject to NAFTA:

- The requirement has a value in Canadian dollars as follows:
 - goods \$38,000 or more (for Canada and US) and \$89,000 (for Canada and Mexico)
 - services \$89,000 or more
- Certain departments are not subject to the agreement. You must determine the coverage for your client by consulting the relevant annexes of the agreement itself. For example, the National Film Board and the Canadian Space Agency are exempt.

Is your requirement subject to NAFTA?

- *goods valued at \$38,000 or more are (Canada/US)*
- *goods valued at \$89,000 or more are (Canada/Mexico)*
- *services valued at \$89,000 or more are*
- *is your client exempt?*
- *Some goods and services are exempt*

- *Some requirements are exempt, e.g. purchases in accordance with land claims*

- Certain types of goods and services are not subject to NAFTA. The various goods and services that are subject to NAFTA are explained in the agreement.
- Certain requirements are exempt. You must determine whether your client's requirement is exempt. For example, procurements for the set aside program for Aboriginal businesses, and those subject to any of the Aboriginal land claim agreements, are exempt.

There are general exceptions like procurements related to national security, products made by disabled persons, philanthropic institutions or prison labour, and measures necessary to protect public morals, order or safety. There are also other, more specific exceptions which can be identified by consulting the agreement.

Canada-Korea Telecommunications Equipment Agreement (CKTEA)

The Canada-Korea Telecommunications Equipment Agreement has been terminated at the request of the Korean government. (see TB Policy Notice at http://publiservice.tbs-sct.gc.ca/pubs_pol/dcgpubs/ContPolNotices/2005/02_e.asp)

World Trade Organization - Agreement on Government Procurement (WTO-AGP)

Is the requirement subject to WTO-AGP or AIT?

This is a multi country agreement set up to foster greater international competition for government procurement. It covers both goods and services.

Coverage and exemptions are similar to NAFTA. To determine whether the WTO-AGP is applicable to your client's requirement, you must consult the agreement.

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

- The value of the requisition.
Goods and services worth \$261,300 or more. Obviously, if your client's requirement is estimated to cost less than \$261,300, it is not subject to the agreement, but may be subject to NAFTA or the Agreement on Internal Trade.
- Coverage by client department.
Most federal government departments and agencies are covered under WTO-AGP

- . Exceptions are, for example, the House of Commons, the Prime Minister's Office, the Canadian Space Agency, the National Film Board. Crown corporations are not covered by WTO-AGP.
- Coverage by type of requirement.
Like NAFTA, there are general exceptions like procurements related to national security, products made by disabled persons, philanthropic institutions or prison labour, and measures necessary to protect public morals, order or safety. There are also other, more specific exceptions which can be identified by consulting the agreement.
- Coverage by requirement itself
Certain requirements are exempt

Agreement on Internal Trade (AIT)

This is a comprehensive agreement on internal trade in Canada which aims to reduce barriers to trade among the provinces.

The agreement creates a framework that ensures equal access to procurement for all Canadian suppliers, resulting in a reduction in purchasing costs.

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.

- Value
A purchase is subject to AIT if the requisition value is:
 - \$25,000 or greater for goods;
 - \$100,000 or greater where the largest portion of the purchase is for services.
 - \$100,000 or greater for construction.
- Client
Most departments, agencies, commissions and many Crown corporations are subject to AIT. For government organizations that are not subject to AIT, consult Chapter 5 (Procurement) of the agreement.
(http://www.intrasec.mb.ca/index_en/ait.htm)
- Type of requirement
All requirements for the purchase, lease, rental or conditional sale of goods, services or construction are covered. There are certain exceptions for specified services or circumstances. Again, consult Chapter 5 of the agreement.
- Requirement
Determine that the requirement is not exempt by consulting Chapter 5 of the agreement.

Note: Canadian International Trade Tribunal

Under all three trade agreements, vendors have the right to challenge a procurement decision. They may do so by addressing a complaint to the Canadian International Trade Tribunal.

Chapter 7: Impact of Aboriginal agreements and programs on buying

- Obligations under Aboriginal land claim agreements
- Obligations under the Procurement Strategy for Aboriginal Businesses

The government wishes to help develop Aboriginal business. The government has signed land claim agreements with Aboriginal groups which contain specific procurement and contracting obligations. In addition, a Procurement Strategy for Aboriginal Businesses has been formulated to provide Aboriginal businesses with greater opportunities to sell their goods and services in the federal marketplace.

Commitments to Aboriginal development

- *Set-asides*
- *Voluntary quotas*

The government wishes to help develop Aboriginal business. The government has signed land claim agreements with Aboriginal groups which contain specific procurement and contracting obligations. In addition, a Procurement Strategy for Aboriginal Businesses has been formulated to provide Aboriginal businesses with greater opportunities to sell their goods and services in the federal marketplace.

Obligations under Aboriginal land claim agreements

The Comprehensive Land Claims Agreements your government has with Aboriginal groups contain contracting obligations. These obligations apply when you buy goods and services for delivery in areas of the country that are subject to the agreements.

The obligations take precedence over our international trade agreements as well as AIT.

Land claim agreements are designed to achieve the following objectives:

- Increase the participation by aboriginal groups in business opportunities in the settlement areas;
- Improve the capacity of aboriginal firms to compete for government contracts in the settlement areas; and
- Employ aboriginals at a representative level in the workforce of the settlement areas.

Your most important task regarding these agreements is to make certain that Aboriginal businesses receive proper notification of opportunities in the federal marketplace, as stipulated in the agreements. If you are uncertain as to what to do, consult your supervisor.

Obligations under the Procurement Strategy for Aboriginal Businesses

Aboriginal firms are encouraged to compete for most federal contracts over and above opportunities that are set aside for competition among qualified Aboriginal suppliers. Departments develop set aside quotas under which federal employees are encouraged, when practical, to voluntarily earmark opportunities for competition among Aboriginal businesses.

There are two types of set-asides. Mandatory set-asides apply to goods and services valued in excess of \$5,000 that are destined for Aboriginal populations. Voluntary set-asides are all other purchases reserved by departments for Aboriginal businesses. Procurement set-asides for Aboriginal businesses are not subject to NAFTA, WTO-AGP or AIT.

Because departments set quotas for set-asides, one of your important tasks is to inform management of contracts set aside to help measure the department's achievements against performance objectives.

Chapter 8 - Other issues affecting your buying

- Why security requirements?
- Assessing risk in a contract
- Official Languages
- Resolving complaints - the Canadian International Trade Tribunal

Why security requirements?

When you first start buying you will probably not have to process a requisition that has security requirements. However, this section on security is included for future reference when your purchasing responsibilities are expanded.

Normally, security requirements arise when contractors must access classified information or classified information must be stored or produced on contractors' premises.

Security requirements?

When in doubt check with your security group

Requisitions containing a requirement for physical security, information technology security or personnel security screening must include a Security Requirements Check List (SRCL), particularly if the contracting is being done by PWGSC.

You must send the following information to your security division for security arrangements:

- A copy of the requisition cover page
- A copy of those portions of the requisition documentation which contain statements
- about security
- An original or high quality, non-faxed copy of the SRCL
- A list of the relevant security clauses from the Standard Acquisition Clauses and Conditions manual
- A short list of any identified, potential suppliers, if applicable.

The Security Requirements Check List form can be found in the SACC Manual, Section 2.

Many departments require that prospective contractors and individuals hired under contract undergo a security screening. These screenings may take up to a year depending on the level of security clearance required or the complexity of the requirement.

Most information provided or produced under contract with contractors and individuals is considered to be designated Protected and/or Protected-Particularly Sensitive. For that

reason, you and the contractor are expected to ensure that an audit trail of access to any or all information produced under a contract is maintained, and provided when requested.

Security requirements have been developed to be implemented when processing, storing, and transmitting sensitive information provided and/or produced under a contract. Where applicable, the contractor must ensure, depending on the requirement, whether all or some of the following considerations regarding security apply:

- administrative security
- personnel security
- physical security
- communications security
- software security
- operations security

Security requirements related to a contract must be determined during the requirement definition phase early in the process. The resulting solicitation must clearly define the security requirement and appropriate security clauses must be included in the subsequent contract.

Assessing risk in a contract

What do you mean risks?

- risk of damage to property
- risk of injury to people

The government doesn't insure itself

The government's aim is to protect its property and interests, and the interests of its employees, by managing the risks to government property, interests and employees. Risks to government interests resulting from the procurement process are identified and analysed, following which contracts are structured to reduce or eliminate the costs and consequences of harmful or damaging incidents resulting from them.

The government underwrites its own risks when it alone is exposed and over which you and your clients generally have control. But it does not indemnify others for risks beyond its control. You should ensure instead that contractors themselves make prudent use of risk management and insurance policies.

For risks under the control of the contractor, such as the contractor's own risks or government property under the care, custody or control of the contractor, the government insists on being fully indemnified by the contractor. But it does not indemnify the contractor against the risks to which the contractor is exposed.

Contractors must provide you with evidence of insurance that you have determined to be required, after consideration of the risks in a contract. Contractors may carry, at their cost, any additional insurance protection they consider necessary.

Official languages

The rule is simple! When there is significant demand, you produce documents in both official languages

The policy about the use of the two official languages is that both official languages must be used when you buy goods and services for your clients. The rules are simple:

- When you open a competition nationally or you buy in a bilingual area, all regular or standard documents for the competition, as well as the contract document, must be prepared in both English and French; this rule applies equally to public notices, statements of terms and conditions, basic forms, bid solicitations, standards, and purchase descriptions.
- If specifications, for example, are part of your solicitation documents, you must find out if they should be in both official languages to ensure information to contractors is provided in the language of their choice.
- Such documents may be in only one official language when it is certain that they won't be requested in the other, but must be made available if they are requested in the other official language by a significant number of potential bidders.

Resolving complaints - The Canadian International Trade Tribunal

Vendors and contractors wishing to sell their goods or services to government departments and agencies have recourse to a challenge mechanism developed by the Canadian International Trade Tribunal (CITT) if they have a complaint.

The CITT conducts inquiries into complaints made by potential suppliers about procurement by the federal government that is covered by the North American Free Trade Agreement, the Agreement on Internal Trade and the World Trade Organization Agreement on Government Procurement.

Your manager will be in a position to give you more details on the CITT and its responsibilities.

Chapter 9 - How will you solicit bids?

Your client's requirement is more complex. What do you do?

Deciding on how you will solicit bids

Soliciting bids

Low dollar value requirements

Sole source

Types of bid solicitations

Procurement notices

Distribution of bid documents

Quality of bid solicitation documents

You have reviewed your client's requisition by going through the checklist shown to you earlier in Chapter 3. By now, with the value of the requirement in mind, you know fairly well how you will approach the buying process. If it's a simple requirement, you may buy the good or service by using a local purchase order, or by using an acquisition card.

There are two ways of soliciting bids

Publicly

Using supplier lists

On the other hand, because they have procurement authority for goods up to \$5,000, some of your clients may buy them directly when items are of low dollar value.

With more complex or more expensive requirements, however, your approach to buying may be dictated by different rules. If the requirement is costly but straightforward, and its technical specifications quite clearly outlined, buying it may be as simple as inviting suppliers to submit bids and selecting the least costly one.

But with requirements that are not easy to define precisely, for example when your client needs a solution to a complex problem, the approach is different.

Your client's requirement is more complex. What do you do?

In Chapter 3, you read about writing a clear statement of work. This task is very important because of the area of uncertainty about the requirement you are about to fill. When your client's requirement is complex, the following should be checked and all required information should appear in the bid solicitation document.

Make sure :

- That the work to be done or products to be bought are clearly defined. If a requirement cannot be clearly defined, you should state the objectives and

- performance criteria to be met, and outline clearly how you and your client will evaluate any proposals submitted;
- That adequate technical/performance specifications (or purchase description) are included;
 - That mandatory requirements are clearly stated. These requirements are absolutely necessary and proposals from suppliers who cannot meet them are rejected;
 - That brand names are not used to describe items, unless no other description exists;
 - That you have verified whether you can fill the requirement more easily through a Standing Offer or Supply Arrangement. If the requirement is available through one of those methods, and demonstrates good value, you should advise your client of the option;
 - That you know without any doubt how you evaluate proposals may make the difference between fair assessment and doubtful selection;
 - Once you and your client have picked the qualities you want most in the proposals you will eventually receive, in other words once you have decided on the evaluation criteria you will be measuring, you must then decide the basis on which you will select the winning contractor;
 - If a number of proposals all meet the mandatory requirements, how will you award the contract? On the basis of best value? If so, the criteria and the methods that will be used to determine the best value should be stated; remember that the least expensive proposal is not necessarily your best choice in this case. You and your client may be more interested in the quality of a proposal and may be willing to sacrifice economy for quality;
 - Be careful about the application of trade agreements. Make certain that they do or do not apply before deciding on your final approach;
 - Have government rules and regulations and your department's policies been fully reviewed, and are you sure you are buying according to the rules?;
 - Are there security requirements connected to this purchase? Ensure that they have been defined adequately and reviewed by your security group;
 - If the requirement is valued at more than \$200,000, you must remind bidders that the Federal Contractors Program for Employment Equity may apply;

- Have all pricing factors been reviewed? Duties, taxes, transportation and installation costs.

Deciding on how you will solicit bids

There are only two methods for soliciting bids:

- By giving public notice of your requirement, either electronically, meaning advertising the requirement on the Government Electronic Tendering Service, which is described a little later in this chapter; or
- By soliciting bids or proposals directly from suppliers on a list of registered or qualified suppliers, or by advertising in trade and professional journals.

Certain requirements that are subject to trade agreements have specific advertising conditions:

- All requirements subject to the North American Free Trade Agreement and the World Trade Organisation Agreement on Government Procurement must be posted on the Government Electronic Tendering Service, MERX.
- Departments have authority to buy services valued at up to \$2 million if they are advertised competitively on MERX.
- All goods requirements subject to the Agreement on Internal Trade must be posted on MERX.
- With certain exceptions, services requirements of \$100,000 or more that are subject to AIT must be advertised on MERX.

Soliciting bids

The two methods for inviting tenders or proposals, public notice, or source lists, are described in the following sections:

- **Electronic tendering**

Computers have speeded up all processes in government. The Government Electronic Tendering Service is a PWGSC on-line business opportunity identification and bid document distribution service. The service is delivered under contract to the federal government by Mediagrif Interactive Technologies, which calls the on-line service MERX.

Suppliers wishing to order bid solicitation documents may do so electronically and the document will be sent by facsimile, mail or courier, according to the supplier's preference. In a few cases, the document can be down loaded electronically. The cost

of each document is based on the delivery method chosen by the supplier and on the number of pages.

For additional information on MERX, suppliers should be referred to the MERX Internet site at www.merx.com.

- **Source lists**

Your department or division may have created its own official supplier lists that are used to request firms to bid on competitive purchases not publicly advertised. You should use these lists, if available, as a basis for preparing a list of suppliers to be solicited for bids. To supplement these lists, you may also want to use the Contracts Canada online electronic directory, the Supplier Information (SI) service. If your department does not have official lists, SI is a good source to find suppliers. You may also include suppliers suggested by the client in this list.

When a supplier asks to bid on a requirement, you should provide that opportunity, as long as you don't have to cancel the existing bid solicitation and issue a new one.

Low dollar value requirements

Low dollar requirements may be fulfilled by competition or by means of orders placed with responsive suppliers without competition, using source lists and paid for through purchase orders or acquisition cards.

Sole source

As we saw in Chapter one (1), in sole source buying you solicit goods or services from a single supplier without competition.

Types of bid solicitations

Departments use various types of bid solicitations which are the same or similar to the following:

- **Telephone-Buy (T-buy)**
A T-buy is a form of Request for Quotation (RFQ) in which you ask for price quotations over the telephone for requirements of up to \$5,000. Your bidder doesn't have to confirm the bid in writing, but you should record the details of the telephone bid on the procurement file. If you accept a bid over the phone, you must confirm the contract in writing.
- **Request for Quotation (RFQ)**
When handling requirements estimated at \$25,000 or less, including telephone bids, you should normally use the Request for Quotation (RFQ) method.

Quotations are not technically offers to supply. To form a contract, there must be an offer and an acceptance of the offer.

- But even for requirements of \$25,000 or less, there may be times when it will be better to solicit bids using an Invitation to Tender (ITT) or a Request for Proposal.
- **Invitation to Tender (ITT)**
You should use the Invitation to Tender (ITT) approach when all of the following applies:
 - Two or more suppliers are capable of filling the requirement;
 - The evaluation of tenders can be done against very clearly stated criteria;
 - Tenders are likely to all have a common pricing basis; and
 - The lowest-priced responsive tender is to be accepted without negotiations.

Of the solicitation methods you will use in buying goods and services, tenders are unique because they can be opened publicly. You should probably open publicly all ITTs of more than \$25,000, except for those that are classified. ITTs for requirements of less than \$25,000 may sometimes be opened publicly.

You should consider having a public opening for any tender where the contract award will attract publicity.

Request for Proposal (RFP)

A Request for Proposal (RFP) is the method you should use when:

- Only one source is being solicited (remember that you send an Invitation to tender to more than one supplier); or
- You expect to have to negotiate with one or more bidders about certain aspects of the requirement; or
- The requirement is not clear-cut; suppliers are invited to propose a solution to a problem, requirement or objective and contractor selection is based on the effectiveness of the proposed solution rather than on price alone.

Proposals should be evaluated in accordance with specific criteria set out in the RFP.

Letter of interest

Preparing proposals is often costly to business. To keep the total cost to business down and still ensure that all potential suppliers at least get to know about the requirement, and have a chance to compete, you could solicit proposals in two steps.

- Before issuing an RFP, you ask suppliers to provide letters of interest and qualifications, from which a short list is developed. This process might be appropriate where many potential suppliers are known; suppliers not submitting letters of interest are perhaps not interested;

- During the second step, you issue an RFP asking suppliers on the short list to submit detailed proposals;
- As stated earlier in this chapter, suppliers not included on the short list, for example those who were sent letters of interest and who later changed their minds about competing, may request the RFP and submit proposals;
- Keep in mind, though, that there are special procedures required under NAFTA and WTO-AGP for selective tendering. Consult your manager or the PWGSC supply manual for guidance.

Request for Standing Offer (RFSO)

Standing offers are also subject to competition. Your request for standing offers should result in bids that you will evaluate.

The resulting Standing Offer is usually employed when:

- Clients repetitively order the same goods or services, and the actual demand is not known in advance; or
- When a need is anticipated for a range of goods or services for a specific purpose, but the actual demand is not known yet, and delivery is to be made when a requirement arises.
- A Standing Offer should not be used when:
- Prices or terms are not stated by the supplier or the supplier may change price or terms at any time; or
- Your client may negotiate prices or terms already established.

Procurement notices

You are responsible for preparing all public notices:

- **Notices of Proposed Procurement (NPP)**

NPPs are notices posted on MERX advising suppliers of an upcoming requirement. The text of a Notice of Proposed Procurement should contain sufficient information to allow a supplier to decide whether to order a bid document.

- **Advance Contract Award Notices (ACAN)**

An ACAN is a notice advising suppliers of the government's intention to contract with a preselected supplier without competition. Suppliers wishing to bid on the procurement opportunity may challenge the proposed sole sourcing; if the challenge is successful, the requirement must be tendered.

Distribution of bid documents

- You must forward bid solicitation documents to MERX for each publicly advertised competitive solicitation. All solicitation documents must be received for distribution by MERX no later than the NPP is received.

- The distribution of bid solicitation documents and updates is arranged between suppliers and MERX, which is the sole distributor of documents. You should not send bid solicitation documents directly to suppliers.

Quality of bid solicitation documents

You should pay special attention to the quality of your bid solicitation document sent to MERX. It will be rejected if it does not meet expected standards.

Chapter 10 - Evaluating tenders and proposals

Evaluating Tenders

Evaluating proposals – general

Which criteria will you use to evaluate proposals

What is a contractor selection method

Evaluating the proposals and selecting the contractor

Evaluation

- *Decide on the evaluation criteria*
- *Choose a contractor selection method*

Proper contractor selection and bid evaluation methods ensure that all contractors are treated fairly and justly in the procurement process, by facilitating the objective evaluation of proposals and selection of contractors. Initially you may not get involved in some of the more complex bid evaluations which are described below, but you should be aware of them.

It is important to distinguish between tenders and proposals.

Evaluating tenders

With tenders, the choice of the winning bid is simple: the lowest priced offer that is responsive is awarded the contract.

Evaluating proposals - general

Proposals are submitted generally as the result of an invitation to propose a solution to a problem. The choice of which solution is the best isn't based on just price and delivery, but upon a technical solution. Technical evaluation criteria are therefore more important.

Which criteria will you use to evaluate proposals?

The criteria you select to assess the proposals you receive in response to a bid solicitation generally reflect the mandatory requirements of a project. The mandatory requirements are those that **must** all be met if a proposal is to be allowed to compete with the others. If the mandatory requirements are not met, the proposal is rejected.

Evaluation criteria must identify all of the performance elements that ensure the success of the project. In turn this helps determine, for example, the scope of proposals and the task to be accomplished by the evaluators of the proposals.

You must work closely with your client to establish proper proposal evaluation criteria and contractor selection methods.

What is a contractor selection method?

There are buys in which the requirements and specifications are clear, the records of likely suppliers are relatively uniform and having to use your judgement is at a minimum; price or cost is therefore the primary consideration. These are the requirements you are likely to be handling initially.

Other procurements call for greater judgement, and you shouldn't focus simply on price or lowest initial cost. Often, the goods or services offered by different suppliers are not identical. Assessments and tradeoff should be made between different performance characteristics, costs, dates of delivery, service, follow-on procurement and logistic support.

Equally important are cases in which a product or facility has been designed to meet specific government requirements. In such cases, detailed analysis of materials and components in terms of their function and price may be needed before contracting. This should clarify the requirement which should, in turn, result in best value.

In assessing proposals for professional services, for example, the following selection methods are often used:

- **Best value**
This is where a premium is paid for higher technical qualifications: - a point rating scale is developed by assigning values out of 100 to the qualifications required, whether mandatory or desirable. The cost of the proposal is then divided by the total points accumulated by the contractor's proposal to arrive at the lowest cost per point; the winning proposal is the one with the lowest responsive cost per point.
- **Lowest bidder**
This is simple, the lowest price of compliant bidders is selected.
- **Highest technical score**
The highest evaluated proposal wins, regardless of cost.

Evaluating the proposals and selecting the contractor

The analysis necessary to achieve best value should not be restricted to the actual procurement process. It should begin in the planning and appraisal of alternatives and continue through the definition of requirements.

A proposal must respond to what the solicitation documentation asks for. If it doesn't, it is not compliant and should be rejected.

If a proposal is abnormally lower in price than others, the contractor may be requested to confirm that it will be capable of fulfilling the terms of the contract.

The contract is given to the contractor who has been judged to be fully capable of undertaking the contract, and whose proposal is judged to be the best in accordance with the selection method chosen before the solicitation documents are sent out and based on the evaluation criteria selected.

Chapter 11 - What are the forms of contract award?

Government acquisition cards
Purchase orders
Your tender/proposal is accepted
You are requested
Standing offers
Supply arrangements

Contract forms

- *Acquisition cards*
- *Purchase orders*
- *Your tender/proposal is accepted*
- *You are requested*
- *Standing offers*
- *Supply arrangements*

You may award a contract at any time following bid closing. The contract document you select depends on the type of tender or proposal you originally requested and that you received.

Government contracts have general and standard terms and conditions that describe the government's and contractors' rights and obligations in various contractual situations.

Government acquisition cards

Government acquisition cards are issued to eligible procurement officers and clerks to permit them to buy goods or services up to a value of \$5,000. The least complex method of contracting, acquisition cards are basically credit cards and buying with them is as simple as buying goods in a department store using your own personal credit card. Your manager or supervisor will tell you whether you are eligible to use one.

Purchase orders

A purchase order is issued when quotations are requested. Quotations are normally placed by telephone and confirmed in writing.

Your tender/proposal is accepted

A *Your Tender/Proposal is Accepted* document is issued when tenders/proposals are requested and the accepted tender/proposal is received in writing. This type of document is 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.

You are requested

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 selected contractor. This type of document constitutes a counteroffer which must be accepted by the selected supplier.

You are Requested documents, and in some cases purchase orders, are not contracts but only offers to potential contractors. Although a legal contract does not exist, such offers usually reflect your understanding of the terms and conditions which are agreeable to the proposed contractor. If the proposed contractor does not accept your offer, or proposes modifications to the contract, you should probably refer the matter to your legal services.

Standing offers

As you saw earlier in this guide, a standing offer allows you to buy frequently ordered commercially and non-commercially available goods or services directly from suppliers at prearranged prices.

A standing offer is not a form of contract award. But, a call-up against a standing offer made by you becomes a contract. There may be forms in your department used for this purpose, or you may use the PWGSC call-up form (PWGSC 942).

An acquisition card may be used in a call-up against a Standing Offer as an alternative payment method. Remember that the limit for acquisitions cards is still fixed at \$5,000. If you are given authority to use a card, your authority may be fixed at a lower ceiling than \$5,000. Consult your manager if you are in doubt.

Supply arrangements

A Supply arrangement is a method of supply which allows you to solicit bids from a pool of vendors whose technical capabilities are prescreened and established. A Supply Arrangement is not a contract and neither party is legally bound as a result of the signing of this document alone. But it establishes a framework to permit quicker processing of legally binding contracts. Supply Arrangements include a minimum set of terms and conditions which apply to each contract.

Depending on the circumstances, the bids you ask for under a Supply Arrangement may be subject to the North American Free Trade Agreement (NAFTA), the World Trade Organization - Agreement on Government Procurement (WTO-AGP) and the Agreement on Internal Trade (AIT).

Bids under a supply arrangement that are subject to the NAFTA and/or WTO-AGP requirements are a form of selective tendering, meaning that a permanent list of qualified suppliers is not used. Bids subject to AIT are considered as using a source list. If you buy goods or services covered under NAFTA, WTO-AGP and AIT, the following procedures should be modified, if necessary, to take into account the obligations of the Agreements:

Remember that a legal contract does not exist between you and the supplier until the supply arrangement has been fully completed as an offer by the supplier and accepted by the client.

Chapter 12 - Preparing the contract

Basis of payment
Methods of payment
Final check before issuing the contract

How will you base the payment of the contract?

Contract award may take place at any time following bid closing. The type of contract document you prepare will depend on the type of bid requested and received. For example, a purchase order is issued when quotations are requested; such an order is normally placed by telephone and confirmed in writing.

Basis of payment

The basis of payment in a contract defines what a contractor will be paid for the service or good bought, and the duration of the contract. The method of payment stipulates how payment is to be made.

- **Firm or fixed price contract**

Under this arrangement a price is arrived at, which is not subject to adjustment, to reflect actual costs incurred by the contractor in performance of the contract. It gives maximum profit incentive to the contractor for cost control because 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.

- **Fixed time rate**

A fixed time rate pays the contractor for the actual amount of time spent performing the work. The fixed time rate usually includes a direct labour rate, overhead rate(s) and profit.

- **Cost reimbursable**

Where there is uncertainty about the cost or the outcome of the work, you should base your contract on reimbursing cost for the contractor's best effort.

- **Per diem**

Per diem contracts, which may be issued in both sole source and competitive situations, may be useful in cases where it is not possible to fully define a project in terms of precise objectives and its duration.

- **Ceiling price**

Such contracts are used to limit the expenditures, whether for budgetary or other reasons. The price is subject to downward adjustment so as not to exceed the actual costs and charges (profits) incurred in the performance of the work.

Methods of payment

There are a number of methods of payment. They are based on the value and term of a contract and could provide interim payments during the course of the contract.

- **Advance payments**

Advance payments are not permitted, except under unusual circumstances. Consult your manager for detailed information on this matter.

- **Payment on delivery and acceptance**

This is the most common form of payment. It is self-explanatory.

- **Progress payments**

A series of payments allowing payment for work performed before completion of the whole project. You won't get involved in progress payments until you begin to get involved in more complex buys.

Final check before issuing the contract

Before issuing the contract you should check on whether the following has been done:

- A clear statement of work has been prepared
- Technical requirements have been included
- Security requirements have been defined
- Prices are clearly stated
- Terms and conditions have been added, including applicable general conditions
- The basis of payment has been identified
- If the amount quoted is greater than what was signed for on the requisition, ensure that adequate funding is available. If there is not enough funding you will have to go back to your client.

Chapter 13 - Contract management and administration

Contract delivery follow-up
Contract amendments
Payment
Progress payments

What do you do about

- *Contract amendments?*
- *Payment?*
- *Progress payments?*

After you have awarded a contract, you must make certain that what you have bought is delivered or the work is completed in accordance with the contract. Good contract management helps avoid additional costs and delays for your client and difficulties for contractors

There are three aspects to a contract that you must manage while the work is being carried out: time, cost and performance. You must measure time and cost against the budget and projected time required to complete the contract to detect deviations from the plan. The performance of the work must be checked to ensure that the targets are being met.

Sound record keeping makes the management of the contract easier and more effective. Without complete records any possible disputes or claims may be difficult and very time consuming to sort out.

Contract delivery follow-up

You must follow up on the state of what you have bought after it has been delivered, to ensure that your client is satisfied. The extent of your follow-up may vary depending on the contract value or the commodity involved. In many cases, you will only follow-up if requested to do so. You should discuss any expected delivery follow-up requirements with your client at the time the contract is being set up.

You must deal with reports of unsatisfactory delivery immediately. You may have to decide if a contractor who has not delivered goods of the expected quality or who has not delivered on time should be considered as in contract default.

You are also responsible for dealing with contractors whose goods, during the warranty period, become defective or fail to meet contract requirements as a result of faulty manufacture, material or workmanship.

Contract amendments

Contract amendments are used to change the original contract. The need for an amendment may be the result of more negotiations, changes in the original requirement, or the need to deal with something unforeseen. The contractor must agree with the amendment.

When you must amend a contract because the quantity, time, cost or quality is different from the original requirement, you must ask for your client's agreement before asking the contractor to agree. If the original requisition needs to be changed, your client should issue an amendment to the requisition.

The format for an amendment follows 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.

A single amendment may contain many individual changes.

The cost of producing amendments can be high. So wherever practical, you should combine many individual changes into the smallest number of amendments possible, e.g., multiple changes in a technical requirement due to design change or deviation.

Amendments must receive the same distribution as the original contract.

Payment

No payment, other than a progress payment, may be made to a contractor under a contract unless you have certification that:

- the work has been performed;
- the goods were supplied or the service rendered, and
- the price charged is according to the contract or, if not specified by the contract, is reasonable.

When 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.

Progress payments

Progress payments should be measured against milestones

When progress payments are to be included in the contract, milestones, when possible, should be stated clearly to relate payments, measured as a percentage completion of a milestone, to what has been accomplished so far 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.

Progress claims are normally routed through you to your client for verification and authorization of payment. In processing payment claims you must act promptly. The standard due date for payment is 30 days after invoicing or receipt of goods, whichever is later.

Progress payment claims must include appropriate documentation done by you or the client in accordance with the contract.

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.

Clients are required to notify suppliers of any error or missing information in an invoice or supporting documentation, within 15 days of receipt. Clients should return any invoice not in accordance with the terms of the contract to the contractor for resubmission, within 15 days.

What if there are no milestones?

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, or based upon the actual costs incurred for material purchases and the partial completion of work as certified by company and government inspectors.

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 purchase, 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.

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 you with reliable indicators of the actual value of work accomplished when a payment is due.

Chapter 14 - What if something goes wrong?

What if the goods or services are unsatisfactory?
Solving disputes

What if the goods or services are unsatisfactory?

Unsatisfactory goods or performance? What do you do?

If the goods or services delivered are not those that were expected under the terms of the contract, your client should tell you within 15 days of receipt, or as specified in the contract, that the goods or services are not in accordance with the contract. You must immediately inform the company.

If you or your client don't do this, any subsequent claims by your department may be compromised.

The general conditions in all government contracts state that time is of the essence; this means that a contractor must produce the good or service in good time. If a contractor fails to deliver the goods or perform the services on time, you must find out what the facts of the delay are, in consultation with your client and legal services.

If the delay was caused by factors beyond the control, and without the fault or negligence of the contractor, you should extend the time of performance of the contract by a period of time equal to the length of the delay. Delays that are excusable are explained in the general conditions of the contract.

In all other circumstances, the contractor is responsible for the delivery default. If the contractor is in default in failing to deliver according to the contract, you may, by giving notice in writing to the contractor, terminate the contract fully or partially.

Solving disputes

How do you solve disputes?

Any disputes must be handled quickly and efficiently. You must ensure that all parties meet their contractual obligations. Proper record keeping during disputes is vital for clarification, audit or termination purposes.

If your client has a valid complaint, you should formally advise the contractor in writing, with a reminder of the default provisions in the general conditions in the contract. If during a reasonable period of time, corrective action has not been undertaken, you should consult with your legal services to ensure the interests of your department are protected.

If you are unable to resolve a contract dispute, you should bring the matter to your supervisor's attention.

On the other hand, you will almost certainly have to deal with unhappy suppliers or bidders whose bids have been turned down. Debriefings should be made available to them on request, but normally only after a contract has been awarded.

Unsuccessful bidders must be informed of whatever recourse is available to them. For procurements that are subject to the trade agreements, bidders have the right to file a complaint with the Canadian International Trade Tribunal (CITT).

Chapter 15 - Terminations

Termination for convenience
Termination for default
Termination by mutual consent
Contractor's request for termination
Financial security issues
Resolution of contract disputes

If you're thinking of terminating a contract, first see your legal services!

If for any reason you must terminate a contract, the following explains how to go about it. The rule of thumb regarding terminations, however, is to always consult with legal services.

Termination for convenience

Sometimes you may have to cancel a contract for convenience. This could be because funds have been cut, or a government program has been cancelled, or other reasons which make the product or service unnecessary. A notice or letter of termination should be sent to the contractor.

Termination for convenience may be used where:

- Your client has requested termination;
- Termination for default cannot be considered because the contractor is not in default; and,
- Termination by mutual consent would not be more advantageous to the government.

Termination for default

Termination for default applies when the contractor breaches the contract, usually through nonperformance or delayed delivery.

There would be grounds for Termination for default if:

- The contractor had breached the contract; and
- In your department's opinion, the contractor would have no valid defence if it claimed loss or damages. A contractor's valid defence is a matter for your legal services to evaluate.
- A defence would be considered to be valid 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 your department;

- government-supplied materiel was faulty or substandard, or supplied after the
- time agreed to in the contract;
- no action was taken by your department after the first default by the contractor.

Termination by mutual consent

On rare occasions both the contractor and your client may agree to termination without claims or penalties, usually where your client has requested full or partial termination of a contract, the contractor has incurred minimal or no expenses and is willing to forego a claim, and the matter may be settled at no cost to the government

Known as termination by mutual consent, this type of termination cannot be used when it is in the best interest of the government to declare 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

A contractor may not be granted termination because of expected losses in performing the contract, but should be told instead that all contractual obligations must be fulfilled. The contractor may, on completion of the contract, request an "extra payment" for additional costs incurred or losses suffered, if some of the loss or additional cost is the fault of government.

If the contractor refuses to carry out the contractual obligations, termination for default should be instituted.

Financial security issues

If a contract is secured by a security deposit it should not be terminated without the prior advice of your legal services. If a contract is secured by surety bonds, it should not be terminated as this would also terminate the existing contractual relationship with the bonding company.

Resolution of contract disputes

While PWGSC has its Contract Claims Resolution Board, which deals exclusively with PWGSC contract claims, other departments have different ways of handling disputes. Most of them handle problems with contractors through their legal services.

Chapter 16 - Contract close out

Closing out the contract involves the following activities:

- Your client verifies that the final product or work is satisfactory;
- You ensure the contractor has been paid;
- You begin administrative closure of the contract, which includes verifying the cost making a final amendment to the contract; and,
- Closing the project.

On completion of the contractor's obligations the contractor should prepare and submit a cost submission to you; this should consist of a statement of the costs incurred in accordance with the Basis of Payment in the contract.

When the work required is completed, and the cost threshold has been met, you should place a certification on the file that the final amount paid represents a reasonable price. The certification should normally be based on the findings of either a formal or an informal audit.

You may if you wish request a formal audit but such audits are generally expensive and time consuming.

Part 2 - PWGSC as buyer

Introduction
PWGSC acquisitions services
Other PWGSC services

Introduction

Most of the buying you do for your clients can also be done through Public Works and Government Services Canada (PWGSC) which does not charge for its buying services. PWGSC has exclusive authority and responsibility for buying certain services. For example, advertising and public opinion research services must be bought through PWGSC.

Buying goods costing more than \$5,000 is PWGSC's responsibility. But, standing offers allow departments to buy goods costing more than \$5,000, up to certain limits that are stipulated in each offer.

Recently, PWGSC has offered to departments the authority to buy goods of up to \$25,000, depending on acceptance of certain conditions. Several departments have accepted. Consult your manager to find out if your department has accepted, or will be accepting this offer.

All PWGSC services are described in detail in PWGSC's Customer Manual.

PWGSC acquisitions services

The following categories of goods and services are those that PWGSC may buy for your department:

- Commercially available products;
- Business and professional services;
- Informatics Professional Services;
- Printing and publishing services;
- Science and engineering products and services;
- Research and development;
- Maintenance and repair;
- Traffic management (travel/moving arrangements);
- Exhibitions and audiovisual services;
- Advertising management and public opinion research services (mandatory services);
- Disposal (goods); and
- Real property services.

Other PWGSC services

In addition to acquisition services, PWGSC provides services related to:

- The planning and organizing of the provision of materiel and services required by departments;
- The construction, maintenance and repair of public works and federal real property;
- The provision of accommodation and other facilities for departments;
- The planning and coordination of telecommunications services for departments, boards and agencies of the Government of Canada;
- The provision to departments of advice on or services related to architectural or engineering matters affecting any public work or federal real property; and
- The provision to departments, boards and agencies of the Government of Canada of translation and related services.

Part 3 - Selected Reading

PWGSC procurement manuals
Other Resources
Miscellaneous reading

PWGSC procurement manuals

PWGSC procurement manuals are posted under the Info-Plus button on the Business Access Canada web site (<http://contractscanada.gc.ca/en/infoplus-e.htm>).

Customer Manual (<http://www.pwgsc.gc.ca/acquisitions/text/cm/cm-e.html>)

The Customer Manual provides federal government buyers and materiel managers with information about PWGSC's purchasing-related services and the department's requisition processing from receipt and tender preparation to contract administration. It also includes links to relevant government documents which are identified in the Manual.

Standard Acquisition Clauses and Conditions (SACC) Manual
(<http://sacc.pwgsc.gc.ca/sacc/index-e.jsp>)

The SACC Manual contains standard terms and conditions that departments can incorporate by reference into tender or contract documents. It also contains commonly used forms and standard procurement clauses. This manual is used by PWGSC buyers when they create bid solicitation, contract and other procurement documents. You can search or browse the Table of Contents.

Supply Manual (<http://www.pwgsc.gc.ca/acquisitions/text/sm/sm-e.html>)

The Supply Manual contains PWGSC's departmental purchasing policies and references to relevant government laws and conditions. It explains why and how PWGSC carries out its supply activities. It is used by PWGSC procurement officers and widely by other procurement personnel throughout government.

Other PWGSC resources

An Introduction to Procurement

This is a training course designed to acquaint the new buyer with the procurement process used in Public Works and Government Services Canada.

Miscellaneous reading

Agreement on Internal Trade - Industry Canada Web Site –
(<http://strategis.ic.gc.ca/epic/internet/inait-aci.nsf/en/il00021e.html>)

Benefits-Driven Procurement, Guide to (Draft Final Report-Version 1), Public Works and Government Services Canada, Prepared by Hickling Lewis Brod Inc.

Canada, *Financial Administration Act*, R.S.C. 1985. Chapter F-11

Procurement Review Process (A Descriptive Guide) March 2004, *Department of Public Works and Government Services Act*, P-38.2 (1996, c. 16) CITT Tribunal, (http://www.citt.gc.ca/publicat/guide2004_e.asp)

* Chapter 10-Government Procurement, *North American Free Trade Agreement - Between the Governments of Canada, the Federal Republic of Mexico and the United States of America*. 1992 (<http://www.dfait-maeci.gc.ca/nafta-alena/chap10-en.asp>)

Procurement Strategy for Aboriginal Business, Indian and Northern Affairs. (http://www.ainc-inac.gc.ca/saea-psab/index_e.html)

Shuck, Maurice. *How to Write, Analyse and Interpret the Statement of Work (SOW)* A Seminar for Engineers, Scientists, Systems Professionals, Project Management Personnel, RFP Writers, Proposal Writers, Contract Negotiators and Business Professionals. 1997. LGS, 50 O'Connor Street, Ottawa K1P 6L2, 234-9089.

Treasury Board. *Contracts Directives*.

Treasury Board. *Government Contracts Regulations*

Agreement on Government Procurement, World Trade Organization (http://www.wto.org/english/tratop_e/gproc_e/over_e.htm)