

Section 6B: Defining the Requirement

6B.090 (2005-12-16) A bid solicitation should not specify a product with no substitute. The salient physical, functional or other characteristics essential to the client's needs should be stated. Products known to be equivalent to a "brand name" can also be cited, but caution must be exercised to ensure that there is no conflict between the brand names specified and the description provided.

For procurement subject to either the North American Free Trade Agreement (NAFTA) or World Trade Organization Agreement on Government Procurement (WTO-AGP), technical specifications shall not require or refer to a particular trademark or name, patent, design or type, specific origin or producer or supplier, unless there is no sufficiently precise or intelligible way of otherwise describing the procurement requirements and provided that, in such cases, words such as "or equivalent" are included in the bid documentation.

Standards, Specifications and Purchase Descriptions

6B.096 (1994-06-23) Recognized Canadian standards or specifications should be used in the procurement of goods and services, except when not warranted by the volume or specific nature of the procurement.

6B.097 (1994-06-23) When Canadian national standards are not available, Canadian specifications produced by a recognized standards-writing organization should be used wherever possible. Where no such specification is available, directly relevant United States (U.S.)/foreign or international standards or specifications should be used when suitable.

6B.098 (1994-06-23) In judging the suitability of U.S./foreign or international standards or specifications, the contracting officer should consult with the client, and may call on the assistance of the Canadian General Standards Board (CGSB). The judgement should also reflect the extent to which:

- (a) Canadian views have been reflected in the standard or specification;
- (b) products available in Canada are likely to conform to the standard or specification;
- (c) the standard or specification is likely to discriminate against products.

6B.099 (1994-06-23) Contracting officers must assess the adequacy and applicability of any standards, specifications (including client-developed specifications), or purchase descriptions included by a client in the requisition.

6B.100 (1994-06-23) When a requisition does not include an existing standard, specification or purchase description which the contracting officer considers appropriate, the contracting officer should recommend to the client that the requisition be amended to include it.

6B.101 (1994-06-23) Contracting officers are also responsible for identifying the need for a new standard, specification or purchase description, if a suitable one is not available for a particular product or service.

Listing Programs

6B.105 (1996-01-01) Listing programs are designed to expedite procurement by establishing, in advance and independent of any specific purchase, a listing of those products or services which comply with recognized performance standards or specifications.

Listing/Qualification Programs are normally established in situations where:

- (a) test requirements would adversely affect delivery;
- (b) costs of acceptance inspection would be excessive;
- (c) prior assurance of product conformance and/or supplier capability is necessary;
- (d) complex test equipment and procedures are required; and,
- (e) for products purchased on a regular basis and in large quantities.

Prior to contracting, officers should verify with the standards (listing) organization, that the product or service offered has been approved. (See [6B.108.](#))

6B.106 (1996-01-01) The inclusion of a product or service on a list implies only that the product or service complies with recognized performance standards or specifications. Listing does not relieve the supplier of contractual obligations to deliver items or services meeting all specified requirements, nor does it guarantee acceptance under a contract.

6B.107 (1994-06-23) The CGSB and the Department of National Defence (DND) both develop and maintain lists. Those currently in effect are in [annexes 6.4](#) and [6.5](#).

Qualification may be discontinued and the product deleted from an existing listing by the responsible qualifying authority under the following conditions:

- (a) **Formula change.** A change in the supplier's formulation of the product which impairs product quality.
- (b) **Process change.** A change in the supplier's production process which impairs product quality.
- (c) **Field failure.** Authenticated failure in use which is attributable to non-conformance of the product to the relevant standard or specification. Authentication of field failure generally requires extensive investigation and supporting laboratory tests. Perceived field failures should be reported by users to the qualifying authority.
- (d) **Verification failure.** Failure to meet requirements in a verification test of the product and/or system, or failure to submit samples for testing where requested or to submit data for qualification maintenance when requested.
- (e) **Withdrawal for cause.** Supplier has ceased operation, changed location, or has consistently failed to respond to requests for quotation.
- (f) **Changes to standard or specification.** Listings may be cancelled by the responsible qualifying authority when the governing standards or specifications are cancelled, superseded or amended in such a manner as to affect existing qualification.
- (g) **Appeals.** Discontinuance may be appealed by the supplier in accordance with appeal procedures established by the qualifying authority.

When there are indications of non-conformance, and if Public Works and Government Services Canada (PWGSC) and a client determine that a qualified supplier does not conform to the applicable standard, the contracting officer must notify the qualifying authority.

6B.108 (1994-06-23) When a listing program is used for a procurement, contracting officers must state in the Notice of Proposed Procurement (NPP), bid solicitation and contract documents that the supplier and its product must be listed on the appropriate listing.

New Standards, Specifications or Listings

- 6B.112 (1994-06-23) When the need for a new standard, specification or listing program is identified, and no suitable document or listing is under development, the contracting officer should contact CGSB, or, since clients are responsible for defining technical requirements, suggest that the client do so.
- 6B.113 (1994-06-23) In cases of urgent need for a new standard or specification, CGSB may be requested to develop and publish a provisional CGSB standard to use while a formal consensus standard is being developed. Provisional standards must be withdrawn from use as soon as the formal standard becomes available.
- 6B.114 (1999-12-13) If the need for a standard is limited to a single client or sector/region, a client/sector/region qualification program may be instituted. Procedures which do not limit competition and equity of opportunity for all suppliers should be established by the client/sector/region concerned, and distribution of listings should be restricted if criteria other than technical performance are applied. Where client/sector/region lists are distributed, the qualification criteria should be stated.

Canadian General Standards Board

- 6B.118 (2002-05-24) Canadian General Standards Board (CGSB) is accredited by the Standards Council of Canada (SCC) as a standards-development, certification and quality and environmental management systems registration organization. It is PWGSC's independent, third party qualifying authority.

There are other accredited standards organizations in Canada, and contracting officers should contact CGSB for further information.

- 6B.119 (2002-05-24) CGSB administers the development of consensus standards and specifications and develops and maintains qualification, certification and quality and environmental management systems registration listing programs to support procurement, good business practice and trade. CGSB also provides expertise, liaison and information on standardization, both nationally and internationally; the assessment of the suitability of standards and specifications; quality and environmental management systems registration; and qualification/certification listing programs for products and services.

The CGSB Catalogue contains a listing of approximately 1,500 standards and specifications for products and services; listing programs for a selected number of these products and services; and other services offered by CGSB.

- 6B.120 (1998-06-15) Government organizations, suppliers and the general public can obtain CGSB publications, information on the listing program or documentation required to apply for a listing by contacting:

Canadian General Standards Board
Portage III, 6B111 Laurier Street
Gatineau, Quebec K1A 0S5
Phone: (819) 956-0425 or
1-800-665-2472

Department of National Defence

- 6B.124 (1999-12-13) The Department of National Defence (DND) acts as a qualifying authority for certain commodity groups and items having direct military application. The Technical Authority is the qualifying agent and may request assistance through the Directorate of Quality Assurance, who is the recognized military quality assurance authority.
- 6B.125 (1999-12-13) PWGSC and suppliers may obtain information on the DND Qualified Products or application forms from the applicable Technical Authority at:

National Defence Headquarters
 MGen George R. Pearkes Building
 101 Colonel By Drive
 Ottawa, Ontario
 K1A 0K2
 Attention: _____ [*Insert Name of Technical Authority*]

Technical Data

6B.130 (2002-12-13) If technical data are to be sent to potential bidders from a source other than PWGSC, the contracting officer must ensure that PWGSC has the right to use the data.

For DND requirements, form PWGSC-TPSGC 1065, Request for Distribution of Technical Data, is used. The contracting officer must send the form to National Defence headquarters, attention DTICS 5, in sufficient time to ensure that the data will be available when the bid solicitation is issued.

PWGSC will not provide data available to potential bidders through normal business channels.

Examples of such material are specifications of Canadian Standards Association (CSA), Society of Automotive Engineers (SAE), National Electrical Maintenance Association (NEMA), Underwriters' Laboratories of Canada (ULC) Standards and the Canadian General Standards Board (CGSB).

Canada/United States Joint Certification Program

6B.136 (2003-12-12) A Memorandum of Understanding (MOU) between the Minister of National Defence and the U.S. Secretary of Defense established a Joint Certification Program which allows certified contractors of each country access, on an equally favourable basis, to unclassified technical data of both countries. It also ensures that effective and appropriate controls and enforcement mechanisms are in place in each country to protect such technical data. The "Technical Data Control Regulations" are the authority for implementing this program.

The Joint Certification Program consists of a Joint Certification Office, jointly staffed by the U.S. Department of Defense and PWGSC, which manages and administers the certification process. The necessary facilities and administrative support are provided by the U.S. Defense Logistics Information Service. The address is as follows:

United States - Canada Joint Certification Office
 Defense Logistics Information Service
 Federal Center
 74 Washington Avenue N, STE 7
 Battle Creek, Michigan 49017-3084
 Phone: (616) 961-7431
 Fax: (616) 961-5303

Bid Evaluation Criteria

6B.142 (1994-06-23) Criteria to evaluate and differentiate between proposals must be developed, in order to ensure the complete and fair consideration of bids. The contracting officer and the client must establish the criteria before issuing the bid solicitation.

6B.143 (1994-06-23) The number of criteria must be adequate for comparative judgement. They should measure both the competence of the bidder and the worth of the bidder's particular technical approach.

Competence measures include such factors as managerial structure, key personnel, prior

industrial experience, facilities and financial strength. Technical factors include the proposed work breakdown structure, identification of key technical problems and outlines of solutions, proposed schedule of milestones, and quality and time control systems to be employed.

- 6B.144 (2005-12-16) Where there is no alternative to specifying a product with no substitute, the solicitation should whenever possible include provision for equivalent products, and the criteria that will be used to determine equivalency.

For procurements subject to NAFTA, WTO-AGP or AIT, provision for equivalent products must be made.

- 6B.145 (1994-06-23) A team may be established to evaluate proposals. The team should include the client and may involve third parties, as appropriate (e.g., when the technical authority is not provided by the client).

The evaluation team may develop the evaluation criteria and plan.

- 6B.146 (1994-06-23) The basis upon which a contractor will be selected from the firms that submit responsive proposals should be indicated in the Request for Proposal (RFP). If the intent is to award the contract on the basis of best value, the criteria and the methods that will be used to determine the best value must be developed.

If a service contract is to be awarded based on best value, in addition to assessing the technical aspects of a bid, a supplier's qualifications, over and above the mandatory qualifications, must be a factor in the bid evaluation and specified in the RFP.

Supplier qualification factors may include skills, capabilities, knowledge or previous experience.

- 6B.147 (2006-06-16) Where education, knowledge or previous experience are essential conditions in selecting a contractor (either as mandatory requirements or as criteria to be point-rated for evaluation purposes) include clause [A3010T](#) from the *Standard Acquisition Clauses and Conditions* (SACC) Manual, in the RFP.

- 6B.148 (1994-06-23) The relative importance of the criteria must be clearly identified. When assigning weights to each criterion, the contracting officer should ensure that a high aggregate of points for minor criteria does not overcompensate for a low aggregate of points for major criteria.

- 6B.149 (1995-07-01) Socio-economic factors may not be included in the evaluation criteria unless recommended by the Procurement Review Committee (PRC) or specifically required by government decisions and obligations (e.g. aboriginal land claim agreements). (See [5.090](#).)

- 6B.150 (1998-06-15) Several Comprehensive Land Claims Agreements (CLCAs) contain socio-economic evaluation criteria that must be included in the solicitation document, whenever it is practical and consistent with sound procurement management, to provide claimant groups with a fair opportunity for any spin-offs associated with socio-economic development.

The procurement requirements/obligations of the CLCAs must be included in sole source negotiations in order to maximize socio-economic opportunities for claimant group members.

These evaluation criteria can be used as part of the assessment along with price, best value, delivery etc. Several agreements include:

- (a) Increase level of participation by claimant groups for business opportunities within the economy of their Comprehensive Land Claims Settlement Area;
- (b) Increase employment opportunities for claimant group members;
- (c) Increase economic development opportunities through federal contracting processes.

In order to comply with the requirements of the Nunavut Land Claims Agreement (NLCA), contracting officers are to employ the following bid evaluation criteria whenever it is practicable and consistent with sound procurement management. Should contracting officers decide not to use the following criteria, they should be prepared to document the supporting factors leading to their decision.

In order to comply with the requirements of the NLCA, tenderers shall provide proof of effort and/or commitments made to:

- (a) having head offices, administrative offices or other facilities in the Nunavut Settlement Area;
- (b) employing Inuit labour, engagement of Inuit professional services, or use of suppliers that are Inuit or Inuit firms in carrying out the contracts; or
- (c) undertaking commitments, under the contract, with respect to on-the-job training or skills development for Inuit.

Proof of efforts and/or commitments made by tenderers shall include, but not be limited to, the names of persons or companies contacted and the nature of the undertakings as at the time of the tender submission and as applicable.

For those CLCAs that do not provide for mandatory inclusion of socio-economic evaluation criteria, it is recommended that these criteria be considered.

6B.151 (1996-01-01) For guidance in the development of socio-economic evaluation criteria, contracting officers should consult their manager in conjunction with their appropriate subject matter expert.

To ensure consistency in the departmental application of socio-economic evaluation criteria, contracting officers are requested to give a copy of the final release of their evaluation criteria to their subject matter expert so that a data bank of reference information may be established.

Life Cycle Costing

6B.153 (1994-06-23) The application of Total Life Cycle Costing means the sum of the Product, Resource, Operating, and Contingent (PROC) costs relating to a procurement. This can be a useful element in the evaluation of proposals. The PROC technique should be used for major Crown projects (MCPs) and in procurement in which operating costs are a major part of the total cost of the product, e.g. major construction projects or motor vehicle purchases.

Royalty Payments and License Agreements

6B.159 (1994-06-23) In order to carry out certain contracts, primarily for defence, contractors may have to obtain technical assistance and/or manufacturing licenses from third parties.

6B.160 (1994-06-23) The usual commercial practice is for the contractor to enter into a technical assistance and/or license agreement. However, there are cases where it may be more advantageous for the Crown, in its own name, to enter into the license agreement with respect to inventions, patents, copyrights, trade secrets, trademarks, technical data, know-how and industrial designs.

6B.161 (1994-06-23) In order to avoid paying for rights that the government already has, contracting officers should check that no license agreement in the name of the Crown exists which could remove the need for royalty payments.

6B.162 (2000-12-01) Contracting officers should minimize the use of patented products, by calling up performance specifications rather than product specifications. When there is no alternative, market-based processes for the supply of patented products through licensed production

arrangements, royalties, etc., must be exhausted before using section 19 of the [Patent Act](#) or section 22 of the [Defence Production Act](#).

These Acts provide that:

Patent Act:

“19.1:

- (4) Whereas the use of the patented invention is authorized, the authorized user shall pay to the patentee such amount as the Commissioner considers to be adequate remuneration in the circumstances, taking into account the economic value of the authorization.
- 19.2 Any decision made by the Commissioner under section 19 or 19.1 is subject to appeal to the Federal Court.

“Defence Production Act, section 22:

- (1) The Minister may, on behalf of Her Majesty, contract with any person that Her Majesty will relieve that person from any claims, actions or proceedings for the payment of royalties for the use or infringement of any patent, registered industrial design or registered topography by that person in, or for the furnishing of any engineering or technical assistance or services to that person for, the performance of a defence contract.
- (2) A person with whom the Minister has contracted under subsection (1) is not liable to pay royalties under any contract, statute or otherwise by reason of the use or infringement of a patent, registered industrial design or registered topography in, or in respect of engineering or technical assistance or services furnished for, the performance of a defence contract and to which the contract under subsection (1) applies.
- (3) A person who, but for subsection (2), would be entitled to a royalty from another person for the infringement or use of a patent, registered industrial design or registered topography or in respect of engineering or technical assistance or services is entitled to reasonable compensation from Her Majesty for the infringement, use or services and, if the Minister and that person cannot agree as to the amount of the compensation, it shall be fixed by the Commissioner of Patents.
- (4) Any decision of the Commissioner of Patents under subsection (3) is subject to appeal to the Federal Court under the *Patent Act*.”

6B.163 (1994-06-23) Royalty payments of 5 percent or less of the selling price of the patented item require director approval. A royalty that exceeds 5 percent requires Deputy Minister approval prior to entry into a contract.

If there is an increase in the amount of the royalty to be paid or if further items become subject to royalty payments during the life of a contract, the same guidelines for approval apply.

To obtain the approval of the Deputy Minister for royalties exceeding 5 percent, the following information is to be provided on Part 2 of the Contract Request:

- (a) details of the royalties;
- (b) a forecast of anticipated future purchases beyond the requirement in the present submission;
- (c) the comments of Legal Services.

6B.164 (1994-06-23) In consultation with Legal Services, the contracting officer shall consider the advantages and disadvantages before deciding that a license should be obtained in the name of the Crown or contractor.

These advantages and disadvantages are to be considered in relation to the nature of the supplies to be manufactured, the expenditure by the Crown, potential Crown purchases and the relationship of the perspective contractor to the licensor (e.g. the contractor may be a subsidiary of the licensor).

Advantages - if the license agreement is in the name of the Crown, the Crown can:

- (a) negotiate terms and ensure that no restrictions are placed on the use, sale, lease or exchange of supplies. Such restrictions, if imposed, might interfere with Canada's obligations under international defence arrangements;
- (b) have unfettered choice of contractors; and
- (c) control the manner in which required technical assistance is to be furnished and used.

Disadvantages - if the license agreement is in the name of the Crown, the Crown may:

- (a) become involved in contractual negotiations apart from the contract it is presently interested in;
- (b) have to assume onerous burdens dealing with secrecy, non-disclosure and informing the licensor of improvements and developments;
- (c) be bound by all terms of the agreement and be required to pay royalties at a set rate and assume other burdens for a long period.

6B.165 (1994-06-23) Royalties required to be paid by contractors and their subcontractors to third parties, in the performance of a defence contract, will be paid if they are valid and the amounts being charged are acceptable to the Crown.

6B.166 (1994-06-23) Where the license agreement is to be in the name of the contractor, approval to enter such an agreement may be obtained as part of the authority obtained for the purchase of the materiel and/or service.

6B.167 (1994-06-23) Where the license is to be in the name of the Crown, the contracting officer, when negotiating the license agreement and the amount of the royalty payment, should take into consideration the following:

- (a) manufacturing rights, including use of licensor's patents and designs;
- (b) technical assistance, including:
 - (i) supply of plans, drawings, specifications, etc.;
 - (ii) engineering person-days provided by the licensor both at its own plant and the plant of the manufacturer selected by the Crown;
 - (iii) travelling and living expenses of the licensor's representatives;
- (c) obtaining for the Crown the right to modify or have modified the plans, drawings, etc., and, if required, the right to build or have built or to repair or have repaired the articles in question by a party other than the licensor.

6B.168 (1994-06-23) Approval of the Deputy Minister is required before entry into any contractual agreement that exercises the rights of the Crown under section 22 of the [Defence Production Act](#) or section 19 of the [Patent Act](#). Exercising the rights granted the Crown under these Acts shall only be carried out in exceptional circumstances as warranted by consideration of the public interest, and after market-based processes have been exhausted.

Examples of these circumstances would include refusal by a patent holder to produce or license others to produce a product vital to the defence of Canada, or where monopoly power conferred by the patent is being abused to impose unconscionably high prices upon the Crown. It would be very unusual to find these rights exercised for other than defence supplies.

Intellectual Property

6B.174 (2003-05-30) “10. Like the 1991 policy, the revised policy aims to increase commercialization of IP. It recognizes that commercial exploitation of IP can contribute to economic growth and job creation by having contractors own the IP they create in the course of their work under Crown procurement contracts, and it also recognizes that there will be instances where the Crown will need to retain the IP in order to act in the broader public interest.

“11. It further recognizes that the objective of commercializing IP from government contracts takes place within the framework of the government’s *Contracting Policy* and its provisions with respect to socio-economic objectives.”

“12. Most importantly, the revised policy recognizes that the primary objective of Crown procurement contracts is for the Crown to receive the deliverables contracted for, and to be able to use those deliverables and any arising IP for Government of Canada activities.”

Excerpt from [TBS Contracting Policy Notice 2000-2](#)

Intellectual property (IP) is anything resulting from a contract which can be copyrighted, trademarked, patented, licensed, etc. Potentially, IP can result from any contract. The likelihood for IP is much greater where the goal of the contract is something new, or might incorporate new processes. IP considerations are most relevant to research and development contracts, software development, or where the production of new written material occurs.

The government policy of allowing the contractor to retain the rights to IP generated under a Crown contract is designed to promote the development of new ideas, under the belief that the private sector has a greater capacity to commercialize and benefit from the IP. The Crown will not arbitrarily refuse to allow a contractor to retain the rights to IP.

The client department must decide to what extent IP rights are to be retained by the Crown, and PWGSC plays no part in this determination. However, the contracting officer must consult with the client department in the case of research and development or software development procurements, to determine the client department’s position. Contracting officers may wish to discuss their needs with client departments to ensure that client departments are aware of the extent to which we can obtain for them the rights they need to use the IP created under their contract whether the Crown or Contractor owns the IP. Subject to market conditions (which will also affect the ownership terms that may be achieved) PWGSC contract terms are designed with the goal of ensuring that even where the contractor owns the IP this does not affect the client department’s ability to use the IP, with the exception of commercialization of the IP by the Crown.

Client department may deal with IP rights in several ways:

Research and Development (R&D) contracts

- Contractor to retain ownership of IP
- Crown to retain ownership of IP

Goods contract with associated R&D

- Contractor to retain ownership of IP
- Crown to retain ownership of IP

Goods contract with no R&D expected

- Crown to retain copyright
- Contractor to retain all IP, including copyright

Services contract with no R&D expected

- Crown to retain copyright
- Contractor to retain all IP, including copyright.

Electrical Equipment

6B.180 (1994-06-23) The client is responsible for determining whether or not a requirement is subject to the Canadian Electrical Code, Part I, and for identifying circumstances where certification or approval in accordance with the Code is required.

Suppliers are responsible for complying with applicable building codes and standards, including the Canadian Electrical Code, Part 1.

6B.181 (2002-05-24) If the required electrical equipment must be either certified or approved, bid solicitation documents must contain the appropriate clause specifying the applicable organization accredited by the Standards Council of Canada. The clauses are listed in the *Standard Acquisition Clauses and Conditions Manual*, [subsection 5-B](#).

The equipment may be specially inspected by an organization acceptable to Chief Electrical Inspector in the province, territory or city where the electrical equipment is to be installed and operated.

Special Production Tooling, Special Test Equipment and DND Materiel

6B.187 (2003-05-30) In order to carry out certain contracts, unique Special Production Tooling (SPT) and Special Test Equipment (STE) and/or Department of National Defence (DND) materiel are required by contractors in the manufacturing or in the repair and overhaul of defence supplies or other equipment. This does not apply when SPT/STE is the end product ordered under a contract, and is not for use by the contractor.

SPT/STE is normally acquired at the time of the initial manufacturing or the establishment of a repair and overhaul line or, occasionally, during the manufacturing or repair and overhaul process. SPT/STE is available for use in the manufacturing of additional units or parts or in their repair and overhaul.

6B.188 (2003-05-30) The management and control of all production assets, including SPT/STE generated under defence contracts, and DND-loaned materiel, is the responsibility of DND/Director Disposal, Sales, Artifacts and Loans (DDSAL). DND/DDSAL may be contacted at (819) 994-8692. DND/DDSAL responsibilities include the return and disposition of these production assets. (See [11.240](#) and [11.241](#).)

The management and control of production assets generated under contracts with the Canadian Commercial Corporation are the responsibility of PWGSC/Production and Assets Management Services (PAMS). PWGSC/PAMS may be reached at (819) 956-0057.

When there is a requirement for SPT/STE, contracting officers must first check with DND/DDSAL to determine if it is available from current inventories. When available, DND/DDSAL shall arrange for the loan of the SPT/STE to the contractor. When the SPT/STE is not available from the DND inventories, the PWGSC contracting officer shall ensure sufficient funding is available and shall authorize the purchase or manufacture of the required SPT/STE.

Since the cost of SPT/STE represents part of the cost of the end product being acquired by the client, payment is made out of the client's funds appropriated for the purchase of the end product. The cost of SPT/STE is to be included in the contract price for approval purposes.

6B.190 (1994-06-23) When planning for the use of SPT/STE, contracting officers should consider the degree of mobility of the equipment.

Contracting officers should also consider whether a separate contract should be entered into for such tooling.

Controlled Goods

6B.192 (2004-12-10) [Controlled goods](#) are listed in the Schedule to the *Defence Production Act* and are identified in the following groups on the Control Goods Program Website. The complete [Export Control List](#) is published on the International Trade Canada (ITCan) Website.

- Group 2: goods listed in item 2001 that are prohibited firearms, as defined in paragraph (c) of the definition of "prohibited firearms" in subsection 84(1) of the *Criminal Code*;
- Group 2: goods listed in item 2003 that are ammunition with a calibre greater than 12.7mm;
- Group 2: goods listed in items 2002, 2004 to 2022;
- Group 5: goods listed in item 5504; and
- Group 6: all goods listed.

It is the client department's responsibility to identify within any requisition that there are controlled goods aspects. For example, requisitions coming to Public Works and Government Services Canada from the Department of National Defence shall identify on the first line "this requisition involves controlled goods" or "this requisition does not involve controlled goods". In case of doubt, the ultimate authority for making this determination is the Export Controls Division of ITCan (613-996-2387).

U.S. Defense Priorities and Allocations System

6B.195 (1994-12-16) The United States (U.S.) Department of Defense allows Canadian inclusions to its Master Urgency List (MUL) which is a listing of programs designated as extremely important by the U.S. Armed Forces, the U.S. Joint Chiefs of Staff and the U.S. President. This ranking establishes where limited resources ought to be allocated. It is important that Canadian defence programs be included in the MUL to allow our NORAD (North American Air Defence) and NATO (North Atlantic Treaty Organization) commitments to be honoured, should any portion of the contract work require imports from the United States.

6B.196 (2004-05-14) The acquisition of defence material in the United States is controlled by the U.S. Defense Priorities and Allocations System (DPAS). In relation to Canadian defence requirements and also to U.S. defence requirements resulting in contracts placed with Canadian suppliers, Canada is given access to the system, equal to any other U.S. participant.

The Central Allocations and Defence Priorities Section Officer, Business Management Directorate (BMD), is responsible for coordinating Canada's participation in the U.S. DPAS. This includes coordinating the allocation of priority ratings, coordinating Public Works and Government Services Canada action regarding modifications to the U.S. Defense MUL, and notifying U.S. and Canadian suppliers of the priority rating.

The U.S. DPAS may be used whenever one of the following types of contracts is placed: (See [7A.140](#))

- (a) Canadian defence contracts placed by PWGSC with U.S. suppliers;
- (b) Canadian defence contracts placed by PWGSC with Canadian suppliers who may obtain material from U.S. suppliers;

- (c) U.S. defence contracts placed with Canadian suppliers through the Canadian Commercial Corporation (CCC);
- (d) U.S. defence contracts or subcontracts awarded to Canadian suppliers, who, in turn, are subcontracting for material to U.S. suppliers;
- (e) Canadian contracts with Canadian or U.S. suppliers for atomic energy needs; or,
- (f) Canadian contracts involving the acquisition of outer space requirements from U.S. sources, in joint Canada/U.S. undertakings.

Priority ratings received by a Canadian firm may not be extended to other firms in Canada unless authorization is sought and obtained from the U.S. Government, through the Central Allocations and Defence Priorities Section, BMD.

Minimum rated order dollar amount: The U.S. conducts their acquisitions under Federal Acquisition Regulations, including a Simplified Acquisition Threshold, which is currently set at US\$50,000. If the dollar value of the contract is for less than one half of this threshold, use of a priority rating is optional, provided that delivery of the needed items can be obtained in a timely fashion without the use of a priority rating. In the case of these low dollar value purchases, the procurement officer should ensure that there is an important reason to request the priority rating clause.

The contracting officer should ensure that there is at least ninety (90) days between the contract date and the delivery date to provide sufficient time to have the rating in place.

The DPAS is not to be used to support procurement of end item(s):

- commonly available in commercial markets for general consumption;
- not requiring major modification when purchased for approved program use;
- readily available in sufficient quantity so as to cause no delay in meeting approved program requirements.

The following forms, which are available from the Central Allocations and Defence Priorities Section Officer, BMD, are to be used in making application for U.S. priority ratings:

PWGSC-TPSGC 1451-1, Application for U.S. Priority Rating Covering Importation of Quarterly Requirements of Materials from the United States (english only) - Used by manufacturers to obtain, on a calendar quarterly basis, components to be incorporated in defence assemblies from U.S. suppliers for Canadian and U.S. defence purposes.

PWGSC-TPSGC 1451-2, Application for U.S. Priority Rating Covering Special Materials (english only) - Used by all distributors and some manufacturers to obtain specific items for Canadian and U.S. Defence purposes.

PWGSC-TPSGC 1451-4, Application for Special Priorities Assistance for Purchase Order Placed on a U.S. Supplier (english only). Used when the normal Priorities and Allocations System is insufficient to obtain required delivery promises.