

## Section 6C: Risk Management

### Protection of Government Property, Employees and Interests

6C.215 (2002-12-13) The objective of Treasury Board (TB) Risk Management Policy is to safeguard the government's property and interests, and the interests of its employees as they do government work, by effectively managing the risks to government property, interests and employees. (See TB [Risk Management Policy](#).) Public Works and Government Services Canada (PWGSC) manages the risks to government interests arising from the procurement process by identifying and analyzing these risks, and structuring contracts to reduce or eliminate the costs and consequences of harmful or damaging incidents resulting from them. The Crown self-underwrites only those risks to which the government alone is exposed and over which we and our clients generally have control. PWGSC does not indemnify other entities for risks not under government control, ensuring instead that our contractors make prudent use of risk management and insurance policies.

6C.216 (1994-06-23) There are four basic elements of a risk:

- (a) Threats: they are the sources of risk that may have an adverse result, e.g. acts of God, acts or omissions by a person.
- (b) Resources: these are the government's property or personnel which could be adversely affected by the threats.
- (c) Modifying factors: these are either internal or external to the above resources and tend to increase or decrease the probability or severity of any adverse and accidental events; e.g. installing sprinklers at government warehouses, storage of chemicals on premises.
- (d) Consequences: these are the adverse results of situations when the above three factors are combined.

6C.217 (2004-12-10) In order to effectively manage risks, the risk management process outlined in [Annex B.6](#) should be applied. Risk control and risk financing alternatives form the skeleton of risk management.

*Advice from the PWGSC Advisor, Acquisition Program Integrity Secretariat, telephone number (819) 956-0912, should be sought concerning exceptional and unusual risks which may require modifications, amendments and changes to risk management requirements, including insurance.*

#### Contractor's Risks

6C.221 (1994-06-23) For risks under the control of the contractor, e.g. the contractor's own risks or government property under the care, custody or control of the contractor, it is government policy to be indemnified by the contractor, and to not indemnify the contractor against the risks to which the contractor is exposed.

The contractor must provide the contracting officer with evidence of insurance that is determined to be required by the contracting officer, after consideration of the risks in a contract.

Contractors may carry, at their cost, any additional insurance protection they consider necessary.

#### Insurance

6C.225 (1994-06-23) Risk financing alternatives, especially insurance, should be considered after implementing all necessary risk control alternatives. Insurance is the most commonly used risk

financing technique. [Annex 6.7](#) identifies which insurance clauses are applicable to the identified risks (government risks or risks arising from the contractor's performance of the contract).

6C.226 (1994-06-23) The government normally self-underwrites those risks to which it alone is exposed and over which it generally has control, and, when relevant, establishes the appropriate method of underwriting these risks.

*Where the self-underwriting option is to be applied, clients are responsible for obtaining Treasury Board (TB) approval if they decide to purchase commercial insurance. Clients are required to explain why the purchase of commercial insurance is necessary (e.g. cost-effective or practical reasons).*

Commercial insurance may be purchased by any government department, as an alternative to the self-underwriting option, if there is an indistinguishable commingling among the liability risks of the contractor and the government.

6C.227 (1994-06-23) There are two main options available to the department or contractor when buying insurance:

- (a) in normal contracting situations, the contractor is responsible for the arrangement and control of the insurance. The role of the PWGSC contracting officer is to obtain, review and approve a certified copy of the insurance policy or certificate to ensure that the appropriate clauses are incorporated in the contractor's existing policies;
- (b) where risks involved are of a special or extra-hazardous nature, the types of insurance coverage required are to be specified by clients.

### Government Property

6C.231 (1994-06-23) The contracting officer must determine the extent of government property under the contractor's care, custody or control, relating to a specific contract. The contractor is to be held responsible for any loss or damage resulting from the contractor's failure to take reasonable and proper care of such property, excluding loss or damage resulting from ordinary wear and tear.

The contractor is responsible for monitoring, investigating and documenting any losses of or damage to government property, to ensure that claims are properly made and paid to the government.

6C.232 (1994-06-23) TB Risk Management Policy concerning insurance of government owned or leased vehicles and equipment is summarized in [annexes 6.8](#) and [6.9](#).

6C.233 (1994-06-23) Insurance requirements for ship building and repair generally follow the requirements below:

- (a) PWGSC requires the contractor, whenever feasible, to be responsible for managing the risks arising from the performance of the contract, including providing the contracting officer with a reasonably comprehensive and updated risk management program, including insurance.
- (b) An insurance program should be tailor-made to the specific risks of the ship building and repair contract, and should permit a cost-effective trade-off of the risks arising from the contractor's performance versus the potential insurance costs.

6C.234 (1994-06-23) To minimize risks to the government, all the risks associated with the delivery of goods (including the risk of loss or damage to the goods supplied, and any material supplied by

the government, or to third parties) should rest with the contractor until the supplies are delivered to the point specified in the contract.

### Claims

6C.238 (2002-12-13) Government departments are responsible for adequate and timely compensation, restoration, and recovery of losses in the event of harmful or damaging incidents arising from the risks involved in their departments.

Government departments must comply with the following Treasury Board policies: [Policy on the Indemnification of and Legal Assistance for Crown Servants](#); and [Policy on Claims and Ex Gratia Payments](#).

### Government Quality Assurance

6C.244 (1994-06-23) Clients are responsible for stating their requirement for Government Quality Assurance (GQA), which includes quality assurance, quality control and quality inspection, on their requisition or attached technical documentation.

The client statement should clearly and completely describe the technical requirements and the requirement for GQA, and must designate the inspection authority and the point of inspection.

The extent of GQA required will vary, depending on contract technical requirements and supplier performance history.

6C.245 (1994-06-23) The GQA requirement may be specified in terms of:

- (a) the degree of quality assurance expected and the quality standard against which verification will be conducted;
- (b) the requirement for the supplier to establish and maintain systems to assure quality;
- (c) the requirement for the supplier to demonstrate conformance;
- (d) what quality verification activity will be done by the government;
- (e) consignee inspection;
- (f) the requirement for the supplier to provide proof of compliance in accordance with an acceptable quality assurance standard or specification;
- (g) the requirement for the supplier to submit samples for approval, such as pre-award samples, first-off units, pre-production, qualification or sealed samples;
- (h) the requirement for the supplier to submit an inspection plan;
- (i) the requirement for the inspection authority to verify that the product supplied:
  - (i) is equal in all respects to the product qualified during the Qualified Products/Qualification Program List (QPL)/Certification Program List (CPL) process;
  - (ii) is manufactured under the same conditions as the product qualified during the QPL/CPL process;
- (j) the details of acceptance inspection, tests and trials.

*As an alternative to items (g) through (j) above, and where available, the supplier may be required to be listed in an acceptable qualifying program which provides for adequate audit and controls.*

*Contracting officers should inform clients of the availability of Canadian General Standards Board (CGSB) or other listing programs which, if used for a procurement, would reduce the need for GQA. For example, CGSB listing programs are operated on a cost recovery basis with no direct expense or use of resources to the client.*

6C.246 (1994-06-23) If a requisition does not specify a GQA requirement, or includes an insufficient level, given the nature of the procurement, the contracting officer must work with the client to develop an appropriate GQA framework. Contracting officers should also advise the client of the financial and operational implications of appropriate GQA, for the client, the supplier and PWGSC.

6C.247 (1994-06-23) If a requisition does not specify a supplier quality system, the client should be requested to consider specifying such a stipulation if:

- (a) non-conformance would produce significant effects relating to product safety, reliability or operational consequence, e.g., arctic clothing, fire extinguishers and security equipment or services;
- (b) the requirement is for a newly designed product being produced to government-generated specifications;
- (c) the requirement is for a product or service where current suppliers have a history of not conforming to specifications and/or previous similar requirements have resulted in chronic client complaints;
- (d) the requirement is for a product of high technical complexity; a product that has stringent interchangeability requirement; or a "critical" product whose non-conformance would result in the failure of a system of which that product is a component;
- (e) the requirement is for a product or service which is being purchased for the first time and no history of performance is available; or
- (f) at least one potential supplier has a weak quality system.

*This is required to provide adequate protection for both the client and PWGSC.*

*Contracting officers may also consider a supplier quality system if a requirement has significant dollar value. However, issues relating to the nature of the requirement are usually more important than the dollar value.*

### **Government Quality Assurance at Source**

6C.251 (1994-06-23) GQA at source should be used when any of the following conditions apply:

- (a) the requisitioning authority has designated an inspection authority other than the consignee;
- (b) the costs of performing inspection at source are justified by the benefits received;
- (c) conformance cannot be adequately determined on receipt because:
  - (i) the product contains critical characteristics not visible in the end item;
  - (ii) the product has special safety or security characteristics;

- (iii) special packing and packaging would be destroyed;
  - (iv) delivery is to multiple destinations; or
  - (v) conditions or capabilities are not adequate at destination;
- (d) the supplier has a record of marginal performance or unsatisfactory quality history and conditions preclude procurement from other sources.

6C.252 (1994-06-23) GQA at source may be performed by a client-designated inspection authority or by an inspection authority commissioned by PWGSC on behalf of the client. As part of the inspection, supplier performance data respecting quality must be documented and copies of all inspection reports provided to the sector/region.

6C.253 (1994-06-23) PWGSC has the authority to provide additional quality tasking for civilian marine services, e.g. inspection and arranging for technical support.

*This authority is provided through TB Document No. 749386, May 5, 1977, Section VI, Recommendation 2.*

### Facility and Systems Evaluations

6C.257 (1994-06-23) Facility and Systems Evaluations are conducted primarily to determine the suitability of sources of supply (facility evaluations) and the extent to which a supplier has established adequate product quality control (systems evaluations).

These evaluations may be carried out for any of the following reasons:

- (a) when assessing a new supplier;
- (b) when a supplier's compliance with a quality system standard or specification is considered a prerequisite to contract award;
- (c) when reliance on a supplier's quality system is used as a basis for determining what GQA is to be performed;
- (d) as a method of periodic GQA during a contract (sometimes referred to as quality audit or quality survey);
- (e) when it is impossible or uneconomical to verify or test the product (e.g. when internal components are inaccessible, inspection would be destructive or the cost of duplicating inspection would be prohibitive);
- (f) where the supplier's history or past performance indicates the need to determine if problems have been corrected;
- (g) when investigating the cause of recurrent product quality complaints, in order to determine the required corrective action;
- (h) to verify a supplier's quality control of a product qualified prior to and independent of contracting.

6C.258 (1994-06-23) Facility evaluations usually include an on-site investigation and a summary report of a supplier's suitability and potential to provide goods and services. They may involve a complete evaluation of a supplier's organization, management, production scope, facilities and capacity, and performance record, or a partial evaluation limited to the specific area of interest.

6C.259 (1994-06-23) Evaluations may also be performed by a review of:

- (a) a response to a questionnaire;
- (b) supplier quality history;
- (c) a report resulting from a plant visit;
- (d) a previous evaluation report.

6C.260 (1994-06-23) Contracting officers may conduct these evaluations, or request that they be carried out by CGSB on a cost-recovery basis. When it may be advantageous in terms of client service or expense to the Crown, contracting officers should consider requesting qualified personnel from other sectors/regions to conduct facility evaluations or other surveys on their behalf.

6C.261 (1994-06-23) Pre-award surveys/meetings are used to assist the contracting officer to confirm the capability of suppliers submitting bids and to determine whether the suppliers' systems will be suitable for the contractual requirements.

6C.262 (1994-06-23) Post-award surveys/meetings ensure that successful contractors clearly understand all contractual requirements and that their facilities and operating procedures are adequate to provide the specified goods and/or services.

6C.263 (1994-06-23) Special investigations may be conducted to address any problems which arise before, during or after production and which fall outside the scope of routine contract administration and production monitoring.

6C.264 (2004-12-10) A copy of all evaluations or surveys (form PWGSC-TPSGC 9041 - Facility Evaluation Survey Report) must be forwarded to the Acquisition Program Integrity Secretariat (APIS), for circulation and reference. Any other reports prepared, including a record of the action taken as a result of the evaluation, or a note indicating where such information can be obtained, must also be forwarded to APIS.

### Industrial Security Requirements (Personnel or Organization)

6C.270 (2004-12-10) When a requisition/amendment contains a requirement for security measures, planning of the procurement must take into account that the organization screening and personnel security screening process may take a considerable length of time.

The approximate time frames for completing personnel security screening are as follows:

- (a) Simple Reliability Status: 2 working days;
- (b) Complex Reliability Status: 52 days (100 days if out of country check is required);
- (c) Confidential/Secret Clearance: 62 days (an additional 100 days if out of country check is required);
- (d) Top Secret Clearance: 100 days (an additional 100 days if out of country check is required);
- (e) NATO Clearance: 100 - 200 days (non-Canadian citizen)

For international contracts, the contracting officer must verify with Canadian and International Industrial Security Directorate (CIISD), telephone number (819) 948-1661, that there is an Industrial Security Memorandum of Understanding (MOU) in place with the relevant foreign country.

The contracting officer must provide as much lead time as possible to CIISD to process organization and/or personnel security screenings, and to the prospective supplier(s) to implement security recommendations prior to contract award.

6C.271 (2004-12-10) Protected/Classified information or assets for transmittal outside of Canada must **only** be forwarded to the Document Control Section (DCS) of CIISD. Onward transmission and receipt through approved security channels will be undertaken by DCS.

6C.272 (2005-06-10) Upon receipt of the Security Requirements Check List (SRCL) form [TBS/SCT 350-103](#) (see [3.009](#) for step-by-step procedures on handling SRCLs), CIISD will:

- (a) review the SRCL and attachments for completeness and clarity;
- (b) obtain clarification from the client's Departmental security Officer, project officer or the Public Works and Government Services Canada (PWGSC) contracting officer, as applicable;
- (c) ensure that the participating countries have the appropriate Industrial Security MOU's/Arrangements/Agreements with Canada;
- (d) sign the SRCL form as the Contracting Security Authority and select the appropriate security requirements clause, with modifications as required, from the *Standard Acquisition Clauses and Conditions* (SACC) Manual;
- (e) provide information to the contracting officer on the organization's security status of identified potential suppliers;
- (f) provide information to Canadian suppliers on the preparation and transmission of Protected or Classified information/assets. Classified information/assets must be forwarded to DCS.

6C.273 (2004-12-10) Provided that it would not discriminate unfairly between potential suppliers, a solicitation may include an appropriate organization's security screening/clearance level as a mandatory technical requirement prior to bid evaluation. Alternatively, the required organization's security screening/clearance level may be obtained after selection of the potential contractor, **provided the solicitation does not contain Protected/Classified information.**

6C.274 (2004-12-10) Managing the risks associated with the destruction of Protected/Classified government waste requires additional measures. The Corporate Security Technical Standard ([Annex 6.14](#)) defines PWGSC Corporate policy and procedures relating to Classified waste destruction. Contracting officers should follow the Interim Standard and refer to [Annex 6.15](#) regarding Classification Levels of Shredders, and to [Annex 6.16](#) regarding Request for Non-Accessioned Disposal.

The Departmental threshold may be exceeded when administering destruction contracts on behalf of other government clients, based on the client's threat risk assessment. If such is the case, a Security Guide may be developed by the client as amplifying instructions, which are to be attached to the SRCL. (See SACC Manual clause [F2037D](#).)

*For foreign Classified information, consult with CIISD prior to undertaking destruction.*

### **Foreign Ownership, Control or Influence (FOCI)**

6C.275 (2003-05-30) Foreign Ownership, Control or Influence (FOCI) involves a situation whereby a third party individual, firm or government is assumed to possess dominance of, or authority over, a Canadian facility to such a degree that a third party individual, firm or government may gain unauthorized access to extremely sensitive INFOSEC information. A FOCI evaluation is an administrative determination of the nature and extent of foreign dominance over the contractor's management and/or operations.

6C.276 (2004-05-14) Procurement requirements involving the potential release of extremely sensitive INFOSEC, a special category of CLASSIFIED Communications Electronic Security (COMSEC) information, are subject to a FOCI review by the Policy Division, Canadian and International Industrial Security Directorate (CIISD). Recommendations regarding the use of FOCI will then

be submitted to the procurement directorate, and if appropriate, to the Procurement Review Committee Secretariat of the Acquisitions Branch.

6C.277 (2003-05-30) Suppliers must be informed of the requirement for a FOCI evaluation in the bid solicitation; however, completed packages should only be requested after the bid evaluation process has determined which bidder(s) will receive a contract award.

6C.278 (2003-05-30) Contracting officers are to provide two (2) copies of the FOCI Submission for the successful bidder(s) to the Policy Division, CIISD. Verification of the FOCI and the required Facility Security Clearance of the potential Canadian or U.S. supplier must be obtained from CIISD **prior to contract award**.

*Any irregularity known to PWGSC employees regarding compliance with the INFOSEC access approval of the firm under contract involving extremely sensitive INFOSEC **must be immediately reported** to the Director of CIISD.*

### **Bid/Contract Security (Financial)**

6C.279 (1997-09-15) Financial security can be required from a bidder/contractor to:

- (a) protect the Crown against loss should a winning bidder fail to enter into a contract (bid security);
- (b) ensure that a contractor's obligations under a contract are carried out (contract security); or
- (c) protect subcontractors and material suppliers (payment bond).

The financial security may be a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) or a surety bond. The bidder or contractor has the choice of which form of financial security will be used.

The decision to obtain financial security for competitive solicitations must be taken prior to issuing the bid solicitation.

*Bidders and contractors have the right to determine which form of financial security they will provide. See SACC Manual clauses [E0001T](#), [E0004T](#) and [E0007T](#).*

6C.280 (1994-06-23) Government bonds will be valued at face value.

6C.281 (2003-05-30) Treasury Board has an updated list of [insurance companies](#) whose bonds may be accepted as security by the government.

### **Bid Security**

6C.285 (1994-06-23) The decision to obtain bid security should take into account the following:

- (a) the extent of bidder prequalification possible;
- (b) the type of work and custom of the trade;
- (c) the likelihood of attempts to withdraw;
- (d) the consequences of the failure or inability of the bidder to enter into a contract.

6C.286 (1994-06-23) The amount of bid security is to be the minimum required to ensure that the bidder enters into the contract. See SACC Manual clauses [E0001T](#) and [E0004T](#).

If the estimated contract value is \$250,000 or under, the security should normally not exceed 10 percent of the bid price. In the case of larger acquisition values, the percentage will be



determined by the contracting officer.

- 6C.287 (2003-05-30) Any letter of credit received by Canada must have an appropriate expiry date. The letter of credit should not have its expiry date coincide with the projected cessation of the risk which it covers: for instance, the expiry date stated in the letter of credit should not be the same date as that which is projected for the award of the contract. The expiry date should allow for a comfortable turn-around time from the estimated date of award of contract, to ensure that the contracting officer is satisfied that the bidder has discharged its obligations for which the letter of credit was provided. If the bidder has not met its obligations, the contracting officer must have sufficient time to prepare and present the required demand for payment under the letter of credit.

### Contract Security

- 6C.290 (1997-09-15) For real property, goods and services contracts which have an anticipated value of over \$100,000, the decision to obtain contract security, and the amount of security required, should take into account the following:

- (a) the type of work and custom of the trade;
- (b) the consequences of the failure or inability of the supplier base to fulfil contractual obligations;
- (c) costs associated with the provision of security, compared with the degree of risk involved;

For real property, goods and services contracts which have an anticipated value of \$100,000 or less, contract security is to be sought on an exceptions basis and only in cases where there is readily identifiable or demonstrable risk to Canada. A justification should be prepared for each case where security is required.

*Decisions as to whether and how much financial security will be required should be based on the circumstances of the individual procurement. Some businesses may encounter difficulty in obtaining certain kinds of security, therefore, contracting officers should be sensitive to this and not require unreasonable contract security. In certain cases, perhaps an advance form of security may not be needed; holdbacks in contract payment may suffice. Treasury Board recommends that financial security not be considered until the anticipated cost of the contract exceeds \$100,000. However, issues relating to the nature of the requirement are usually more important than the dollar value.*

- 6C.291 (1997-09-15) When the decision to obtain contract financial security has been taken, contracting officers must stipulate in the bid solicitation documents that the provision of contract security will be required. SACC Manual clause [E0007T](#) shall be included.

- 6C.292 (2003-05-307) Any letter of credit received by the Crown must have an appropriate expiry date. The letter of credit should not have its expiry date coincide with the projected cessation of the risk which it covers: for instance, the expiry date stated in the letter of credit should not be the same date as that which is projected for the completion of the work. The expiry date should allow for a comfortable turn-around time from the estimated date of completion of work, to ensure that the contracting officer is satisfied that the contractor has discharged its obligations for which the letter of credit was provided. If the contractor has not met its obligations, the contracting officer must have sufficient time to prepare and present the required demand for payment under the letter of credit.

### Controlled Goods

- 6C.295 (2002-05-24) As of April 30, 2001, no new controlled goods can be provided unless persons are

registered, exempt or excluded under the Controlled Goods Program.

## Economic Price Adjustments in Firm Price Contracts

6C.297 (2004-12-10) Under unstable market conditions, one or more elements of the cost of a good or service may be subject to significant fluctuations in price so that neither the buyer nor the seller would have confidence in accepting a fixed or firm price over an extended period of time. Contracting officers should seek to reduce the risk of uncertainty.

Economic price adjustments should not normally be included in contracts with delivery schedules of less than twelve (12) months, or contracts valued under \$100,000.

*There are a number of possible actions:*

- *postponing the procurement;*
- *using available substitute materiel;*
- *providing advance information on requirements to potential contractors so as to benefit from their improved ability to control costs by forward planning and to make full use of the commodity futures market in appropriate circumstances;*
- *reducing the period of term contracts or the quantities ordered on production contracts;*
- *increasing production rates to compress the duration of contracts;*
- *reducing administrative time allowances in the procurement process (solicitation, award decision, issuance of contract and authority to commence work) - but taking into account required time frames under the North American Free Trade Agreement, the World Trade Organization Agreement on Government Procurement and the Canada-Korea Telecommunications Equipment Agreement;*
- *procuring the unstable element separately (in the construction industry, this technique is known as pretending);*
- *isolating the unstable element in pricing the work and providing for price adjustment, both upward and downward, on it alone, in accordance with a reliable predetermined formula such as an established economic index.*

6C.298 (1994-06-23) When a competitive bidding process is used, the proposed price adjustment provisions must be included in the evaluation of the bid. In all other situations, economic price adjustment provisions must be agreed upon during negotiation of the initial or base year contract price.

6C.299 (1994-06-23) When a provision for future wage or price adjustments, on one or more elements of the cost of a good or service, is necessary to protect the contractor and the government against significant economic fluctuations, economic price adjustment provisions may be used in firm price type contracts and in contracts which contain firm price elements within the basis of payment. Adjustments to firm prices in a contract will be allowed only if provided for in the contract.

## Types of Price Adjustment

6C.303 (1994-06-23) The price adjustment formula must provide for both upward and downward revision of the firm base price, and include a ceiling or limitation of expenditure. It must identify, if applicable, the economic wage or price index to be used, the firm base price element, and the base period for which adjustments are to be made.

6C.304 (1994-06-23) The calculation of any adjustment formula should remain consistent with the cost/price accounting treatment used to arrive at the firm base price. This will ensure accuracy in measuring the amount of variation from the firm base price.

6C.305 (1994-06-23) The various economic price adjustment clauses are in the SACC Manual, [subsection 5-C](#). The price adjustment method selected should be the simplest, most suitable adjustment formula to provide the protection necessary to both parties with the least administrative effort. The requirements of materiality and practicality must be met.

*The advice of a cost analyst is appropriate in the development of any significant or major economic price adjustment provisions or for the implementation of an economic price adjustment provision through the use of an accounting type formula.*

6C.306 (1994-06-23) Adjustment provisions to prices for commercial goods and services should be based on increases or decreases from an agreed on posted, reference or firm base price. If the original contract or firm base price includes a discount factor, from the initial or then current established catalogue price, the same discount factor should be applied to the adjusted price, unless otherwise stated in the contract.

*Statistics Canada publishes a variety of reports providing changes in price indices, material and labour costs. The Department of Labor performs this function in the United States. Private sector surveys may also be used.*

6C.307 (1994-06-23) Adjustments based on actual rates for labour or actual costs for material are based on increases or decreases in firm base price elements experienced by the contractor.

The use of this adjustment method is limited to contingencies beyond the contractor's control and where the contractor's accounting system permits timely compilation of all necessary cost data relative to the economic price adjustment during contract performance.

*A company's union agreement with its employees may be considered an acceptable economic labour rate index for that company provided that it reflects comparable labour rate movements within that industrial sector.*

## Exchange Rate Fluctuations

6C.313 (1994-06-23) The exchange rate risk on the purchase of materials, components or products from outside Canada is generally considered a normal business risk. However, PWGSC will not oblige suppliers to assume this risk when currency fluctuations are expected to be an issue. In such situations, the cost analyst should be consulted to determine which party should assume the currency risk in the contract.

*An example of an extreme risk posed by an exchange rate fluctuation, as opposed to a normal business risk, would be a situation where the exchange rate fluctuates by five percent over a two-month period, in an unpredictable manner.*

*Factors to be considered include:*

- duration of the contract or delivery lead times;
- experience and knowledge of similar buys; and
- value and type of commodity.

Exchange rate adjustment provisions may be applied to all procurements, except for:

- (a) those in the European and Washington regions;
- (b) Canadian Commercial Corporation contracts;

- (c) telephone buys; and
- (d) cost reimbursable contracts and cost reimbursable portions of a contract.

## Subcontracting

- 6C.320 (1994-06-23) Prior to contract award, a bidder may propose any subcontracting arrangements. The contracting officer will determine whether or not to accept these proposed arrangements. The provisions in the General Terms and Conditions do not restrict the contracting officer from considering the subcontracting options proposed.
- 6C.321 (2002-12-13) No subcontract containing security requirements may be approved or let without the prior approval of the Canadian and International Industrial Security Directorate, PWGSC.

## Warranty

- 6C.327 (2002-12-13) In a contract for the sale of goods, any affirmation of fact or any promise by the seller relating to the goods is an express warranty. The Warranty provisions in the General Conditions do not negate or limit in any way the operation of other relevant warranties that are, as a general rule, implied or imposed by law.

*Examples of relevant warranties that are implied by law are:*

- (a) *the fitness of the goods for the purpose intended, or*
- (b) *the merchantable quality of the goods.*

*These warranties are implied in most contracts for the sale of goods through the Sale of Goods Act, a version of which exists in all Canadian provinces and territories except Quebec. In Quebec, the warranty under the Civil Code is a warranty of ownership and of quality, which includes latent defects.*

- 6C.328 (1994-06-23) The contracting officer may negotiate an increase to the warranty time period in a contract, subject to client agreement to the proposed time period and related cost. This change in warranty time period should be addressed in the submission requesting approval.
- 6C.329 (1994-06-23) Any requests for lessening the Crown's full rights at law, a disclaimer, limitation of the contractor's liability, or decrease of the warranty time period, must be reviewed by Legal Services, be acceptable to the client, and form part of the submission requesting approval.
- 6C.330 (1994-06-23) It may be necessary to consider obtaining a broader warranty than that contemplated by the warranty provision appearing in the General Conditions to cover "symptomatic defects" or "epidemic failures."

*These are cases where the same or similar defects have developed in several identical items of finished work, or components, and it is reasonable to assume that the same defects will be found in the total quantity of such items which have already been delivered, or remain to be delivered.*

Where this type of warranty is requested by the client, or considered desirable by PWGSC, the contracting officer, in consultation with the client, must determine the extent and nature of the warranty required, and request Legal Services to prepare a suitable provision to cover the requirement. In the case of negotiated firm price contracts, the contracting officer must obtain the client's agreement to the estimated cost of this warranty.

- 6C.331 (2004-05-14) The general conditions provide that contractors must carry out warranty work at their own expense. The following interpretations apply:
- (a) In the case of firm price contracts awarded as a result of a competitive bid solicitation, where the procurement process precludes any adjustment to the price quoted, costs

incurred as a consequence of warranty consideration shall be the responsibility of the contractor.

- (b) In the case of negotiated firm price contracts where contingency for warranty work becomes a factor for consideration during the price negotiations, the amount included in the firm price is to be kept to reasonable levels, and must be specifically approved. Supporting details are to be part of the cost summary presented in the contract approval document.

In the case of negotiated firm price contracts governed by the *Defence Production Act*, the contractor must certify that the price is based on costs computed in accordance with Contract Cost Principles [1031-2](#) which do not permit any increase in reserves for guaranteed work. Therefore, costs for work and/or expenses to provide for product correction/adjustment/replacement under warranty requirements are not to be included in the contract price since provision for these expenses has already been included in the certified price.

- (c) In cost reimbursable contracts, the contractor is not allowed to charge any contingency for warranty as an element of cost. If the contractor is required to make good under the warranty provisions, the contracting officer may allow recovery of the reasonable cost incurred for direct labour and direct material only. There is to be no allowance for overhead or profit.

If the contracting officer is of the opinion that reasonable warranty costs may be allowed, then an appropriate clause approved by Legal Services must be inserted in the contract to authorize such costs. The contract should contain a line item providing for the allowance of costs, with or without a maximum estimated expenditure.

### Audit

6C.337 (1994-06-23) There are a number of circumstances where specific provision for audits must be made in contracts. This requirement is an integral part of the procurement planning process.

### Cost Reimbursable Contracts

6C.341 (1994-06-23) Under Section 34 of the [Financial Administration Act](#) (FAA), no payment (other than a progress payment) may be made under a contract unless the deputy of the appropriate Minister, or other person authorized by that Minister certifies that the work has been performed, the goods supplied or the service rendered, as the case may be, and that the price charged is according to the contract, or if not specified in the contract, is reasonable.

In the case of cost reimbursable contracts, a price is not specified in the contract but is left to be ascertained after completion of the work. Therefore, in accordance with the above section of the FAA, it is necessary for the appropriate authority to certify that the price, based on actual costs incurred when these are known on completion of the work, is reasonable. The purpose of the reference, in all cost reimbursable contracts of more than \$50,000, to the costs incurred being determined by audit of the Minister, is to provide a basis for such certification of the reasonableness of the price.

### Firm Price Contracts

6C.345 (1994-06-23) All non-competitive firm price contracts valued over \$50,000, whether for the acquisition of commercial or non-commercial products and services, require the submission of a price certification by the contractor. All such contracts shall also have a discretionary audit clause included in the contract.

*This applies to all such contracts issued by PWGSC and those issued by CCC on behalf of the*

*United States Department of Defense (DoD) and National Aeronautics and Space Administration (NASA), except for contracts for which the price is based on tariffs fixed by public regulatory bodies and not subject to negotiation by PWGSC.*

### **Fixed Time Rate Contracts**

6C.349 (1999-12-13) Time charged and the accuracy of the Contractor's time recording system may be verified by Canada's representatives before or after payment is made to the Contractor under the terms and conditions of the contract, whether competitive or non-competitive and regardless of value. The extent of the verification carried out should, however, reflect the value of the contract. (see [C0701D](#))

This applies to all such contracts except those for provision of temporary help services and rental of equipment.

### **Refunds of Excess Profits**

6C.353 (1994-06-23) As the result of an audit, or for various other reasons, it may be determined that a contractor has realized unreasonably high profits from a contract. On occasion, a contractor may desire to return excess profits to the department. The special procedures for dealing with these situations are in [Annex 11.2](#).

### **Differences of Opinion/Interpretation**

6C.357 (2005-06-10) On occasion, there may arise differences of opinion and interpretation between the contracting officer and the auditor regarding the legitimacy of audit findings. These differences of opinion/interpretation must be resolved by the Director of Procurement, in concurrence with the Director of Acquisition Program Integrity Secretariat, before close out action will be taken by Contract Audit Group.