

Section 6D: Rules and Constraints

Official Languages Act and Regulations

6D.378 (1997-03-31) "Contractors and prospective contractors must be dealt with in the official language of their choice as required by the Act and Regulations. From the beginning of the contracting process, contractors should have access to the information related to this process in the official language of their choice."

Official Languages Obligations

6D.379 (1997-03-31) "When bid solicitations are national in scope or originate from an office having the obligation to serve the public in both official languages pursuant to the Act and Regulations, **all regular or standardized documents** must be provided in both official languages (whether through the media or by electronic communications systems). This requirement also applies to public notices, statements of terms and conditions, basic forms, bid solicitations, standards, purchase descriptions and contracts.

Note: In this policy, standards are those produced by a federal institution, or by a private or public standards-writing organization, if they are available in both official languages at the time the contracting process begins."

While Treasury Board Secretariat requires that contracts be available in the two official languages, our legal services advise that only one version should be signed, i.e. that selected by the Contractor.

6D.380 (1997-03-31) "Where **non-standardized documents**, such as specifications, are used, it is up to the federal institution, i.e. the contracting authority (or the client department responsible for the preparation of the specifications when a common service organization handles the contracting process only) to determine if these documents must be available in both official languages to provide information to contractors in the language of their choice, in conformity with the *Official Languages Act* and Regulations. Thus, the non-standardized or specific documents may be provided in only one official language when the federal institution determines and can substantiate, based on relevant information regarding their public and the marketplace, that they will be requested in that language only. If it is determined later that a significant demand exists for such documents in the other official language, the federal institution must take the necessary measures to make the documents available in the other official language. In some cases, where the specifications do not originate in Canada, they are not translated."

6D.381 (1997-03-31) "When the bidding is not national in scope or when an office of a federal institution does not have obligations under the Act and Regulations, the contracting documents may be prepared only in the official language of the majority of the population concerned. This also applies to subsequent operations."

Responsibilities

6D.382 (1997-03-31) "The contracting authority (or the client department responsible for the preparation of the specifications when a common service organization handles the contracting process only) is responsible for setting out the requirements, including those on official languages, and for the quality of the language of their statements of terms and conditions, and specifications. The institution is also responsible for **actively** offering the related services to the public in Canada in the official language of its choice, as required by the Act and Regulations."

6D.383 (1997-03-31) "The federal institution must include the appropriate conditions in its bid solicitation documents and its contracts to ensure that, when the public comprises members of both official language communities, its contractors observe the requirements of the Act and Regulations on

service to the public and, where applicable, of Treasury Board policies. For example:

- Any contractor who carries out work on **behalf** of a federal institution (see section 25 of the Act) in a location where the federal institution would have to provide services or communications to the public, including supplemental background documentation such as brochures, operation and maintenance instructions, parts lists in both official languages, must also do so in both official languages.
- When the site of a project is in a location where a significant demand exists for services in English and French under the Act and Regulations, the signs must be erected in both official languages."

6D.384 (2002-12-13) "When a **common service organization** carries out procurement for goods or services, the client federal institution must submit, where necessary, contractual documents, including its requisition, specifications, standards and purchase descriptions in both official languages. If it does not do so, the federal institution must be prepared to show that its approach is consistent with the Act and Regulations."

*TB Contracting Policy
Appendix F - [Official Languages](#)*

International Sanctions

6D.390 (2004-12-10) The International Trade Canada Website lists the current [Canadian Economic Sanctions](#). PART A deals with Canadian Legislative Instruments: 1) the *United Nations Act*; 2) the *Special Economic Measures Act*; 3) some provisions of the *Export and Import Permits Act*. PART B deals with Countries or Groups Subject to Canadian Economic Sanctions. PART C deals with Procedures for Seeking Exemption Certificates and Permits.

To comply with the Canadian Economic Sanctions, *Standard Acquisitions Clauses and Conditions* (SACC) Manual clause [K2105D](#) or [M2100D](#) must be included in all contracts. Canada cannot procure any goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.

6D.391 (1996-06-03) When, in order to meet a client's operational requirements, it appears necessary to deviate from these sanctions, legal services must be consulted to determine the appropriate course of action, if any, for the particular situation.

The ability to deviate from sanctions is determined by the governing regulations. Clearly, however, Public Works and Government Services Canada (PWGSC) does not have the explicit authority to so decide.

Excise Taxes, Duties and GST/HST

6D.397 (2005-06-10) Federal government contract enquiries regarding excise taxes and duties, including those relating to rates, exemptions, refunds, other methods of valuation, prohibited items, and other applications of legislation concerning excise taxes and duties, must be referred to the nearest Canada Border Services Agency (CBSA) office.

The CBSA Business Enquiry and Registration toll free number is 1-800-461-9999.

Federal government contract enquiries related to the Goods and Services Tax (GST), Harmonized Sales Tax (HST), Defence Supplies Remission of Customs Duty and Federal/Provincial Reciprocal Tax Agreements must be referred to the Acquisition Policy and Process Directorate at (819) 956-5024.

Customs Duty

6D.401 (2004-05-14) Imported goods are charged with duties from the time of importation. The rates of duties on imported goods will be the rates applicable to the goods at the time when the documentation is presented to obtain release of the goods from CBSA.

6D.402 (2004-05-14) The primary basis for determining the value of duty on imported goods is the Transaction Value System of Valuation, which is generally the invoice price.

To determine whether an importation can be valued under this method, the following questions must be addressed:

- (a) Were the goods sold for export to Canada and can the price be established?
- (b) If there is a relationship between the purchaser and the vendor, can it be demonstrated that the price paid or payable for the goods was not influenced by that relationship?
- (c) Are there any limitations on the sale? These include: restrictions respecting disposition or use of the goods; conditions affecting the sale; or when a portion of the proceeds of a subsequent resale accrues to the vendor.
- (d) If the answer to questions (a) and (b) is "yes" and there are no limitations as outlined in (c), the transaction value method must be used, and is calculated in the following manner:
 - (i) Price paid or payable for the goods including all direct and indirect payments to the vendor or for the vendor's benefit.
 - (ii) Additions, if applicable (if not already included in (a) above):
 - selling commissions incurred by the purchaser;
 - packing costs (domestic and export packing);
 - the value of assist: i.e. goods or services supplied to the vendor free or at a reduced cost by the purchaser;
 - royalties and license fees directly related to the sale of the goods;
 - proceeds of any subsequent resale to be remitted to the vendor;
 - transportation, insurance and associated costs up to and at the point of direct shipment.
 - (iii) Deductions, if applicable (if included in (i) above):
 - transportation, insurance and associated costs from the point of direct shipment;
 - construction, erection, assembly, maintenance and technical assistance costs, after importation;
 - import duties and taxes.
- (e) If this method cannot be used, refer to the nearest CBSA office.

Drawbacks and Duties Relief

6D.406 (2003-12-12) Drawbacks and duties relief programs are intended to help exporters become and remain more competitive in foreign markets, by granting them relief from the duties and taxes paid

in respect of:

- (a) goods imported and then exported before any use is made of those goods;
- (b) goods imported and used in the manufacture in Canada of goods that are exported; or
- (c) materials imported and consumed or expended in the manufacture in Canada of goods that are exported.

The Duties Relief Program grants relief from duties on imported goods that are exported either in the same condition or after having been manufactured. Those goods qualify for relief from the customs duties, anti-dumping and countervailing duties, and excise duties and taxes other than the GST. Relief is granted at the time the goods are imported.

The Drawback Program has similar characteristics and advantages as the Duties Relief Program, with the exception that duties and taxes must be paid at the time of importation and are refunded after the goods have been exported.

Defence Supplies Remission of Customs Duty

6D.410 (2003-12-12) Remission of customs duty payable is granted under the Tariff Item No. 9982.00.00 when:

- (a) the total contract value of the defence supplies is \$250,000 or more. This reflects the import value of the goods plus the duty that would be applicable in the absence of the customs tariff; and
- (b) the goods are certified by Public Works and Government Services Canada (PWGSC) to be defence supplies.

6D.411 (1998-06-15) Since duty rates vary, depending on the type of product, country of origin and mix of imported components, it may be difficult to decide whether the defence supply is subject to the tariff. Where there is uncertainty as to whether the total estimated expenditure will exceed the \$250,000 threshold, contracting officers should request prices with customs duty identified as a separate item.

6D.412 (2004-05-14) When the party responsible for importation is other than the Department of National Defence (DND), a copy of the following certification must be attached to the contract.

“CERTIFICATE FOR DEFENCE SUPPLIES

I certify that the items purchased under contract number _____ are "defence supplies" as defined in the *Defence Production Act*, pursuant to Tariff Item No. 9982.00.00.”

Approved by Authorized Officer:

Signature

Date

Title

The only proof acceptable to the Canada Border Services Agency (CBSA) from the contractor that the import is a defence supply is a copy of the certification.

- 6D.413 (2005-12-16) A copy of the certification may be requested by the DND Director Supply Chain Operations / Customs, or by the investigating Regional Compliance Verification Division of the CBSA. These parties investigate claims for remission and may contact the contracting officer to verify the claim.
- 6D.414 (2004-05-14) When DND is the party responsible for importation, a copy of the contract for defence supplies is accepted by the CBSA as sufficient proof for remission. A copy of the certification for defence supplies does NOT need to be attached to the award document.
- 6D.416 (2003-12-12) When the total estimated value of a Standing Offer exceeds \$250,000, each call-up is subject to the Tariff Item No. 9982.00.00.

Duty and the GST/HST on Tools, Equipment or Spare Parts in Contracts for Services by Non-residents

- 6D.420 (2004-05-14) Customs duty and the Goods and Services Tax or the Harmonized Sales Tax (GST/HST), as applicable, may be imposed on any tools, equipment or spare parts that are brought into Canada by non-resident personnel performing certain services under a PWGSC contract. When assessed, such duties and the GST/HST are payable to the CBSA.

The following interpretation of applicable regulations is intended as background information only. If necessary, specific questions relating to actual cases should be directed to the nearest regional CBSA Office. The application or relief of customs duty and the GST/HST is stated in each item below in italics.

- “(A) A non-resident worker entering Canada with personal tools or other equipment to erect, install or repair machinery or other plant equipment, the said worker being sent here by the foreign manufacturer of the machinery or plant equipment, may import the tools or other equipment under authority of the Temporary Importation (Tariff Item no. 9993.00.00) Regulations. See the CBSA Memorandum [D8-1-1](#), Appendix C, for more information.

(Full relief of customs duty. The GST/HST is payable on 1/60th of the value of the tools and/or equipment for each month the goods remain in Canada.)

- (B) A non-resident worker entering Canada with tools or other equipment supplied by the manufacturer of the machine to be erected, installed or repaired may bring the tools or other equipment into Canada on a 1/60th basis under the Temporary Importation (Tariff Item No. 9993.00.00) Regulations. See the CBSA Memorandum [D8-1-1](#), Appendix C, for more information.

(Full relief of customs duty. The GST/HST is payable on 1/60th of the value of the tools and/or equipment for each month the goods remain in Canada.)

- (C) A non-resident worker entering Canada with tools or other equipment to repair, erect or install machinery or other equipment, when the contract is with a foreign firm which is not the manufacturer of the machinery or other equipment.

(Full customs duty will apply. The GST/HST is also payable on full value where there is no relief available under any other provision (e.g. Canadian Goods Returned.)

- (D) Duty and the GST/HST are levied on all spare parts at the time of entry. Following the export from Canada of the balance of the unused spare parts under CBSA supervision, a drawback claim may be filed for return of the customs duty applicable to the unused spare parts under authority of the Goods Imported and Exported Drawback Regulations.

(The GST is not refundable.)”

Duty and GST/HST on the Repair and Overhaul of Crown Property Abroad

6D.424 (2004-05-14) The treatment of Crown property (i.e. goods) returning to Canada having been repaired or overhauled abroad varies depending on the country where the repair or overhaul is done. Where the country is a free trade partner country, the goods return to Canada under the provisions of Tariff Item No. 9992.00.00 or in the case of vessels, Tariff Item No. 9971.00.00. The policy and procedures relating to the administration of these tariff items are outlined in CBSA [D8-2-26](#) and [D8-2-25](#) respectively. Where the country is not a free trade partner country, the goods may be entitled to the provisions of the Canadian Goods Abroad Program contained in sections 101-105 of the *Customs Tariff*. Under certain conditions, subsection 101(1) of the *Customs Tariff* provides full customs duties and GST/HST relief on the Canadian export value of goods when the goods are returned to Canada. The policy and procedures relating to the administration of this program are outlined in CBSA [D8-2-1](#).

Goods imported under Tariff Item Nos. 9992.00.00 and 9971.00.00 are customs duty free. Under the Canadian Goods Abroad Program customs duties are owed on the value of the repair or overhaul. Whichever provision is used to account for the customs duties, GST is owed on the value of the repair or overhaul unless it is done under a warranty arrangement.

The goods qualify for Tariff Item Nos. 9992.00.00 and 9971.00.00 if the following conditions are met:

- (a) The required documents are submitted according to the Tariff Item Nos. 9992.00.00 and 9971.00.00 Accounting Regulations (see CBSA memoranda [D8-2-25](#) and [D8-2-26](#)), including an invoice and proof of export.
- (b) The invoice or written statement from the foreign processor must include the value of the repair or alteration.
- (c) Proof of export can be a customs or transportation document, an exporter declaration, or other documents set out in the Regulations that describe the goods sufficiently to establish that the re-imported goods are the same goods that were exported. Records of the make, model, and serial numbers help identify the goods.

The goods qualify under the Canadian Goods Abroad Program where:

- (a) the goods are documented in a manner acceptable to the CBSA;
- (b) the CBSA is satisfied that the repair or overhaul could not have done in Canada, and
- (c) the goods are returned to Canada within twelve (12) months from the day on which they are exported.

Contracting officers should verify:

- (a) that no claim for drawback has been paid in respect of the goods temporarily exported, and
- (b) in the case of the Canadian Goods Abroad Program, that repair facilities are not available within a reasonable distance in Canada.

6D.425 (2004-05-14) The CBSA imposes different requirements depending upon the type of work carried out abroad, and may accept a verbal declaration from the consignee, or PWGSC, that proper facilities are not available to do the repairs or overhaul within a reasonable distance in Canada.

In addition, Canadian and U.S. government agencies establish lists of approved repair firms for certain articles for use at defence establishments that are manufactured to rigid specifications. In such cases, if no Canadian firm is approved to perform the repairs, this will be accepted as satisfactory evidence that the repairs could not be made in Canada.

6D.426 (2003-12-12) When calculating duty and the GST/HST on the service performed abroad, the

pricing factors to be taken into consideration are: the cost of the material used; the cost of labour; factory overhead; and a normal profit markup. The value for duty remains the same, even where the repair is done under a warranty arrangement and there is no charge made for the repair or overhaul.

6D.427 (2003-12-12) Where it is not possible to repair the goods and they are replaced under a warranty arrangement, the replacement goods are subject to full customs duties but under Section 5 of Schedule VII to the *Excise Tax Act* are non-taxable for GST purposes.

6D.428 (2003-12-12) There is no GST/HST payable on goods imported after having been exported for warranty repair work. This is provided for under paragraph 3.(j) of the *Non-Taxable Imported Goods (GST/HST) Regulations*.

Duty and GST/HST on Canadian Goods Returned

6D.429 (2004-05-14) The following paragraphs discuss the application of duty and GST/HST for goods that are re-imported into Canada after having been exported for reasons other than for repairs, equipment additions, or work done abroad.

- (a) Customs duty does not apply to Crown property returned from abroad without having been advanced in value or improved in condition by any process of manufacture or other means, or combined with any other article abroad. Refer to the CBSA Memorandum [D10-14-11](#) for more information.

For the application of the GST/HST, refer to CBSA Customs Notice [N-118](#) for more information.

- (b) Articles to be tested only and not adjusted, altered or enhanced in value in any way in conjunction with, or as a result of, a test regardless of whether a charge is made for the test; and
- (c) Customs duty and the GST/HST do not apply to Canadian government-owned munitions and supplies of war, on their return from abroad to a department or agency of the government. This is not intended for the remission of the duty and the GST/HST on goods which have been purchased by government departments and agencies specifically for import into Canada. It applies only to munitions and military stores being shipped to departments or agencies of the government from a Canadian Armed Forces establishment abroad, refer to Section 27 of the CBSA Memorandum [D10-14-11](#) for more information.

Withholding of 15 percent on Service Contracts with Non-residents

6D.430 (2005-06-10) The [Income Tax Act](#) and the [Income Tax Regulations](#) require clients, on whose behalf a contract for services rendered in Canada has been awarded by PWGSC to a non-resident contractor, to withhold 15 percent from the payment of fees, commissions or other amounts paid to non-resident individuals, partnerships or corporations other than in the course of regular and continuous employment. (See [7A.103](#) and [11.022](#).)

Withholding of the 15 percent of the payment does not represent a definite tax, but rather a payment on account of the non-resident contractor's overall tax liability to Canada.

6D.431 (1994-06-23) Payments for continuous employment in Canada, made to non-resident individuals, are not subject to the 15 percent withholding, but are subject to tax deductions on a basis similar to that applicable to residents.

Goods and Services Tax/Harmonized Sales Tax

6D.435 (2004-05-14) The GST/HST applies to supplies made in Canada of real property, tangible personal property (i.e. goods), intangible personal property (such as intellectual property) and services. Supply means provision of property or service in any manner.

A grant, contribution or subsidy is not a supply. However, it may be payment for a supply and subject to GST/HST if the property or service provided is taxable. It is only when a grant, contribution or subsidy is strictly a transfer of money for which no property or service is provided to either the government or a specified third party that it will not be payment for a supply and therefore not subject to GST/HST.

The GST/HST on a supply made in Canada is payable by the recipient of the supply to a supplier who is registered for GST/HST. It is the supplier who is responsible to remit the tax to CRA.

A supply is deemed to be made in Canada if:

- (a) for a supply of goods, the goods are made available or delivered in Canada to the recipient of the supply. This means the goods are in Canada when they are sold and transferred from the vendor to the purchaser or they are imported into Canada for the delivery to the purchaser;
- (b) for a supply of intangible personal property, the property may be used in Canada or relates to real property situated in Canada, to tangible personal property situated in Canada or to a service to be performed in Canada;
- (c) for a supply of real property or a service in respect of real property when the property is situated in Canada;
- (d) for a supply of other services, the service is performed in whole, or in part, in Canada;
- (e) for a supply of a telecommunications service consisting of making available telecommunication facilities, when the facilities, or any part thereof, are located in Canada.

6D.436 (2004-05-14) The GST/HST applies also to goods imported into Canada. The GST/HST on the importation of goods is payable on the duty paid value of the goods (determined under the *Customs Act*) and is payable by the importer of the goods directly to Canada Border Services Agency. It is payable at the time of importation or when the goods are taken out of bond for use.

Goods imported into Canada for supply are subject to GST at the time of importation and are subject to GST/HST when supplied in Canada by a supplier who is registered for GST/HST.

6D.437 (2004-05-14) The GST/HST also applies to supplies of services and intangible personal properties made outside Canada (generally by a non-resident supplier) to a person who is resident in Canada, if the person acquires the supply for use in Canada, but not exclusively in the course of commercial activities. These supplies are referred to as "imported taxable supplies". The GST/HST on imported taxable supplies is determined by the Canadian recipient of the supply (self-assessment) and remitted directly to Canada Revenue Agency.

6D.438 (2003-12-12) Lease payments on tangible goods under a lease entered into before August 8, 1989, are not subject to GST. If a lease for tangible goods is amended to alter its term, or the property is leased on or after August 8, 1989, then the payments become subject to GST/HST, as applicable.

6D.439 (2003-12-12) The trade-in of a used good on the purchase of a new good constitutes two separate transactions for the purposes of the GST/HST. The GST/HST applies to the full sale price of the new good, regardless of the allowance for the trade-in. Each party must collect GST/HST on the fair market value of the supply to the other, and both pay the GST/HST. This treatment applies where the person trading in the used goods on the purchase of new goods is a GST/HST registrant.

If the person trading in the used goods is not required to charge tax on the supply (e.g. non-registrant supplier, or goods not used in commercial activities), then the supplier of the new goods

deducts the value of the old goods accepted as a trade-in from the value of the new goods when determining the GST/HST on the supply.

- 6D.440 (2004-05-14) The GST/HST does not apply to: exempt supplies; zero-rated supplies; or certain imports. Also it generally does not apply to Indians, Indian Bands and Band-empowered Entities (BEEs). These areas are covered in [Annex 6.10](#).

The GST/HST does not apply to transactions between parts of the same organization. As the federal government has registered its departments (those entities listed in Schedule I, I.I and II of the *Financial Administration Act*), as a single person, the GST/HST does not apply to transactions between departments. However, the GST/HST will apply to taxable transactions between departments and Crown corporations.

Government-Supplied Materiel (GSM) is not subject to additional GST/HST charges as the owner/end-user has already paid it. Contractors should not charge GST/HST against the value of GSM used in the performance of a contract. Foreign contractors shall identify the GST separately on Canada Border Services Agency form C11, [Canada Customs Invoice](#), by describing them as Canadian Goods Returned and providing a value. Should GSM be provided from one foreign contractor directly to another, this value should be included in the value of the item for customs clearance purposes as this GSM would not have had GST paid yet.

Application of GST/HST to the federal government

- 6D.441 (2003-12-12) The federal government does not pay GST/HST on imported taxable supplies, as the federal government is not required to self-assess tax. Imported taxable supplies include services performed wholly outside Canada for use in Canada or services performed in Canada and supplied by a non-resident supplier who is not registered for GST/HST purposes. They also include intangible personal property supplied by a non-resident supplier who is not registered for GST/HST purposes.

- 6D.442 (2003-12-12) The federal government is required to pay tax on importation of goods if it is the importer of record, unless the goods qualify as non-taxable importations.

Excise Taxes

- 6D.444 (2003-12-12) Excise taxes are payable on certain goods (see [Annex 6.11](#)).

When goods are manufactured or produced and sold in Canada, the excise tax is payable by the manufacturer or producer, at the time of delivery of such goods.

When goods are imported, the excise tax is payable by the importer or transferee, who takes the goods out of bond, at the time of importation or when taken out of bond for consumption.

Reciprocal Taxation Agreements and Comprehensive Integrated Tax Coordination Agreements

- 6D.448 (2005-12-16) The federal government has agreed to pay, directly or indirectly, most provincial and territorial taxes on the goods and services it purchases as set out in the standard instructions and conditions [9403](#), [9403-5](#) and [9403-6](#) and in general conditions [2010](#) and [2029](#) of the *Standard Acquisition Clauses and Conditions* (SACC) Manual. The federal government does not pay the general Provincial Sales Tax (PST).

In addition, when the department or agency is a vendor, it must collect and remit PST to the province.

- 6D.449 (2003-05-30) The [Policy on the Collection and Remittance of Provincial Sales Taxes](#) includes all the information that may be required by contracting officers to comply with the Reciprocal Taxation Agreements (RTAs) and Comprehensive Integrated Tax Coordination Agreements (CITCAs).

[Appendix C](#), of the same policy, also provides details of the RTA and CITCA by province and territory. Contracting officers should also refer to the [Policy on the Application of the Goods and Services Tax and Harmonized Sales Tax in the Departments and Agencies of the Government of Canada](#).

Provinces and territories are grouped as follows:

- (a) The provinces that have not entered into a RTA are considered “non-partaking” and at the present time, the only non-partaking provinces are Alberta and New Brunswick.
- (b) A non-participating province is a province that did not enter into a CITCA and at the present time, the non-participating provinces include all provinces and territories except New Brunswick, Nova Scotia and Newfoundland and Labrador (the participating provinces).
- (c) The PST is paid in non-participating provinces by Crown corporations, except in Alberta, Northwest Territories, Yukon and Nunavut, where there is no PST.
- (d) Federal departments pay the Harmonized Sales Tax (HST), ancillary taxes and reimburse tax on third party purchases in the participating provinces.
- (e) When federal departments and Crown corporations are vendors, they shall charge, collect and remit HST when the goods or services are delivered or rendered in a participating province.

6D.450 (2003-05-30) Crown corporations are not covered by the RTAs, and are required to pay PST on their purchases, for delivery to or consumption in the partaking provinces, on the same basis as companies in the private sector. Crown corporations may not use the licence numbers or certificates in the RTAs. HST is paid in the participating provinces.

Some Crown corporations hold their own special PST licences, which enable them to purchase goods and services, for their own use, free of PST at the time of purchase.

6D.451 (2002-05-24) Persons selling to federal departments may not quote the federal government's licence numbers to their own suppliers.

6D.452 (2003-05-30) Contracting officers should take special care when dealing with the following:

- (a) **ancillary taxes:** the federal government has agreed to pay certain ancillary provincial taxes. These taxes apply to specific goods and services, and their applicability varies from province to province.

In addition, departments will reimburse third parties for PST paid for goods or services purchased on behalf of a department or during work-related travel (see [Annex 6.12](#) - Application of Provincial Taxes to the Government of Canada).

- (b) **fuel taxes:** liquid fuels may be taxed in certain provinces under the provincial fuel tax or under provincial retail sales tax depending on the end use. Under certain circumstances, liquid fuel may be exempt from provincial tax.
- (c) **construction contracts:** in all contracts for the construction or repair of a building or structure, the contractor is deemed to be the consumer of any materials used. The contractor usually is not registered as a vendor, and must pay tax on purchases of materials. PST is an element of cost to the contractor, and as such is included in the price to PWGSC. No further PST is imposed on the transaction between the contractor and PWGSC.

Construction contracts should not contain a mix of "real property" and "tangible personal property." If unavoidable, the use of the licence numbers applies only to the acquisition of

the "tangible personal property" component of the requirement.

In contracts for the supply and installation of equipment that remains free standing and is affixed to a building or structure for purposes other than providing a direct service to such building or structure, the PST is not to be included in the contract price and the licence number or certificate is to be quoted in the contract. In New Brunswick such contracts are treated as real property contracts and, therefore, are subject to the procedure outlined in the preceding paragraph.

State Sales, Use and Personal Property Taxes (United States)

6D.456 (1994-06-23) Items exported from the United States of America (U.S.A.) by the purchaser, are entitled to exemption from state Sales and Use Taxes. Care must be taken to ensure that such procurements are not taxed in error. (See [7E.617.](#))

6D.457 (1994-06-23) Particular care is required in dealing with the State of California, which has Sales, Use and Personal Property taxes that may affect PWGSC procurement. (See [7E.621.](#))

In these procedures, the State of California is highlighted because of its stringent tax requirements. Similar precautions should be taken to deal with requirements in the other states.

6D.458 (1994-06-23) California Sales and Use taxes (Cal Tax) are collected by the seller from the purchaser and, if applicable, will require the contract to provide for payment of the tax. The Use tax is not payable on items for which Sales tax is payable.

6D.459 (2003-12-12) Items exported outside the State by the purchaser are exempt from Cal Tax but, as California law is very precise about what constitutes an export, contracting officers should ensure that a procurement in California is considered an export by the state.

For example, goods may not be subject to Cal Tax if:

- (a) they are delivered California FCA Free Carrier (...named place) with title passing upon such delivery, and are shipped to a point outside California; or*
- (b) title passes at time of delivery and the goods are delivered by the seller to a conveyance furnished by the purchaser (e.g. where they are picked up by the Canadian Armed Forces) and are shipped to a point outside the U.S.A.*

6D.460 (1994-06-23) California Personal Property tax is assessed against work-in-process, finished work and baled items, title to which is vested in either PWGSC or the contractor, which are located in California at 12:00 o'clock noon on the first Monday in March each year. It is immaterial whether such items relate to a fixed price or cost reimbursable type of contract.

6D.461 (1994-06-23) Contracting officers shall confirm the manner in which California contractors charge the Personal Property Tax on PWGSC contracts. If the tax is charged as a direct charge to the PWGSC contract, there must not also be an indirect charge, and overhead must not be applied to the direct charge.

6D.462 (1994-06-23) Another area for particular attention is the use of advance or progress payments. California taxes may be payable when title transfers to the purchaser - and this title transfer may be deemed by the State to take place when the advance or progress payment is made. Contracts should provide, therefore, that title will not transfer until the goods are delivered.

Employer-Employee Relationships

6D.468 (2003-12-12) When contracting for the services of individuals, including temporary help, contracting officers should carefully review the circumstances in order to avoid establishing an employer-employee relationship which would be contrary to or in conflict with the *Public Service Employment Act* and common law principles dealing with master-servant relationships.

Contracting for the services of former public servants and for temporary help services is subject to special procedures. Refer to procedure [6D.477](#) for former public servants and [Section 9H](#) for temporary help.

6D.469 (2003-12-12) Contracting officers must ensure that service contracts and contracts with a service component will not result in the establishment of an employer-employee relationship between the contractor's personnel and the Crown. The conduct of the parties during contract performance must also be considered.

6D.470 (2004-05-14) Criteria for assessing an employer-employee relationship have been established by the Canada Revenue Agency (CRA) and pertinent court rulings. For guidance, either seek legal advice or consult the CRA publication RC 4110 [Employee or Self-Employed?](#). Should there be any uncertainty, the contract should be signed at a level more senior than the individual who would normally approve the initial entry into the contract.

Legal advice should be sought where it is not feasible for contracting officers to determine whether a contract is a contract for services or a contract of employment (i.e. employment status is not easily identifiable). It is ultimately the responsibility of the contracting authority to ensure that contracts do not create employer-employee relationships.

6D.471 (1994-06-23) The client is responsible for ensuring that an employer-employee relationship does not develop during the performance of the contract.

Former Public Servants

6D.477 (1996-01-01) Care must be taken to ensure that contracts with former public servants in receipt of a pension are able to bear the closest public scrutiny, and reflect fairness in the spending of public funds. (See [6D.482](#) and [7A.095](#).)

Former Public Servants is defined as:

- an individual;
- an individual who has incorporated;
- a partnership made of Former Public Servants; or
- a sole proprietorship or entity where the affected individual has a major interest in the entity.

Retirement Waiting Period

6D.478 (1996-01-01) When the provisions of the Conflict of Interest and Post Employment Code for Public Office Holders and/or the Conflict of Interest and Post Employment Code for the Public Service apply, there is normally a retirement waiting period of one year following the date of retirement before the services of a former public office holder can be used on a government contract.

The exception is former ministers, for whom the prescribed waiting period is two years.

The retirement waiting period does not apply to former members of the Canadian Forces or Royal Canadian Mounted Police (RCMP).

Treasury Board Approval

6D.479 (1996-06-03) **TB approval is required** if the total value of a contract with a former public servant in receipt of a pension (including amendments) exceeds:

- (a) \$100,000 if the contract is competitive; and

(b) \$25,000 if the contract is non-competitive.

Amendments to former public servant contracts where the total cumulative value of the contract (including all amendments) exceeds \$100,000 (competitive) or \$25,000 (non-competitive) are to be approved by Treasury Board.

6D.481 (1999-12-13) For non-competitive contracts with former public servants in receipt of a pension pursuant to the *Public Service Superannuation Act* who have been retired for less than one year, the following fee abatement formula shall be used in negotiations to determine the maximum fee payable, for the remaining days within the one year period.

$$D = ((M+F)/260) - (P/260)$$

D = maximum payable per diem rate;

M = maximum salary of the former public servant, updated to the current level, or the estimated salary cost of having the work done by a qualified public servant;

F = cost of usual fringe benefits, 30 percent;

P = total annual pension in pay.

Example: Maximum salary = \$60,000; benefits are 30 percent of salary;
Pension after 35 years' service = \$42,000 (\$60,000 x 0.7);

$$\text{per diem} = (60,000 + 18,000)/260 - 42,000/260 = \$138.46$$

No exceptions to the application of the formula or to the maximum rate allowed shall be permitted without prior TB approval.

Workforce Reduction Programs

6D.482 (1996-06-03) In addition to the requirements of the contract fee abatement policy for former public servants in receipt of a pension (see [6D.481](#)), the amount payable for professional fees when contracting with former public servants, whether they are in receipt of a pension or not, members of the Canadian Forces, and members of the RCMP, who have received a lump sum payment for employment termination under a workforce reduction program, has been limited during the period for which the lump sum payment applies.

This restriction on the amount payable for professional fees applies to service contracts awarded to former public servants in receipt of a lump sum payment for employment termination under a workforce reduction program, either competitively or non-competitively. It does not apply if the contract is not specifically for the services of the former public servant.

For the purpose of the policy relating to Workforce Reduction Programs, the definition of former public servants included in [6D.477](#) includes former members of the Canadian Forces and former members of the RCMP.

For purposes of this policy, the lump sum payment period is defined as the period measured in weeks of salary, for which payment has been made to facilitate the transition to retirement or to other employment for public servants whose employment has been terminated because of the down-sizing initiatives required to adjust government spending. The lump sum payment period does not include the period of severance pay, which is measured in a like manner.

SACC Manual clauses [A9103T](#) or [A9104T](#), and [A9105C](#) and [A9106T](#) must be included in all bid solicitations and contracts for services, which may involve Former Public Servants, to ensure compliance with the various public service workforce reduction programs (see [6D.482](#)). These clauses require the contractor to make available to the Crown, any details of the status of a particular individual with respect to cash out amounts and time equivalents, pension payment

details, and status of ownership, so that the contract fee abatement policies (see [6D.481](#) and [6D.483](#)) may be applied, if applicable. In other words, individual contractors or employees of firms bidding on contracts with the Crown must be prepared to sign a waiver of privacy with respect to this information.

- 6D.483 (1998-02-16) For contracts with former public servants in receipt of a lump sum payment, whether contracts are awarded competitively or non-competitively, the contractor cannot receive, in total, fees in excess of \$5,000 (including GST/HST), whether applicable to one or more contracts, **during the period of the lump sum payment**. The contract fee otherwise payable for any contract awarded to an affected former public servant must be abated in total, once the \$5,000 limit has been reached, during the contractor's lump sum payment period. Reasonable overhead expenses such as travel costs are excluded from the \$5,000 limit but, because of the sensitivity of these contracts, these costs should be strictly controlled. Departments and agencies **must obtain Treasury Board approval** for all contract situations where affected former public servants might receive fees totalling more than \$5,000 during their lump sum payment period.
- 6D.484 (1996-01-01) The abatement of the contract fee during the lump sum payment period applies to all contracts with former public servants who have received a lump sum departure or retirement incentive payment, including former members of the Armed Forces and the Royal Canadian Mounted Police.
- 6D.485 (1996-01-01) **For contracts awarded non-competitively**, the application of the current requirement for the one year contract fee abatement policy is postponed to have it begin **at the conclusion of the lump sum payment period**. (See [6D.481](#)) This requirement applies only to former public servants in receipt of a pension payable pursuant to the *Public Service Superannuation Act* as indexed by the *Supplementary Retirement Benefits Act*. The exemption to the current contract fee abatement policy for former members of the Armed Forces and the RCMP is continued. (See [6D.478](#))
- 6D.486 (1996-01-01) Where a Former Public Servant works as an employee of, or is a subcontractor to, an established firm contracting with the Government, the contract fee restrictions do not apply. (See [6D.482](#))