

Section 6E: Process

Legal Services

- 6E.506 (1994-06-23) Contracting officers must be aware that solicitor/client privilege exists for the legal opinions given by Legal Services, and that such opinions should not be disclosed without knowledge and recommendation of legal counsel.
- 6E.507 (2005-06-10) Contracting officers must seek advice from Legal Services in the following circumstances:
- (a) where Director General, Assistant Deputy Minister, Deputy Minister, Minister or Treasury Board approval is required to enter into or modify a contract (see [Annex 6.1\(c\)](#));
 - (b) all contracts containing special terms or deviations from Public Works and Government Services Canada (PWGSC) or Canadian Commercial Corporation (CCC) general and supplemental general terms and conditions;
 - (c) if a supplier proposes to prepare the contract or significantly amend a proposed contract;
 - (d) all situations in which work has been completed pursuant to a verbal request from a representative of a client and a confirming order is being sought (see [7F.692](#));
 - (e) all agency, licence and loan agreements (except standard Department of National Defense loan agreements PWGSC-TPSGC 7118, Loan Agreement - DND Equipment), and contracts where royalties are to be paid to a contractor or where licences are to be obtained from third parties (such as third party software licences);
 - (f) all contracts under which payment is secured by means of a letter of credit;
 - (g) all letters of intent, and go-ahead letters;
 - (h) all letters of comfort;
 - (i) all contracts with foreign corporations where the contract value exceeds \$1 million;
 - (j) all CCC domestic purchase contracts over \$1 million and all CCC representative agreements;
 - (k) all contracts where questions may arise regarding "conflict of interest" issues or the post-employment code for former public servants;
 - (l) all defence contracts where the provisions of [section 20](#) of the *Defence Production Act*, respecting title to any government issue or building, may be applicable;
 - (m) any proposed assignment of a contract to a third party;
 - (n) all Terminations for Default, Terminations by Mutual Consent, and confirming Notices of Terminations for Convenience.
- Note: The initial Notices of Termination for Convenience, (*see Standard Acquisition Clauses and Conditions* Manual clauses [J0200C](#) and [J0205C](#)), do not require a legal opinion and may be issued by the contracting officer in accordance with [11.140](#).
- (o) every case of receivership or impending or actual bankruptcy of a contractor;
 - (p) every situation where security is to be taken to ensure repayment of a debt or satisfaction

of an obligation to the Crown;

- (q) all memoranda of understanding;
- (r) all formal agreements;
- (s) when there is a request for information or documentation from, or contact is required with, outside lawyers.

Legal Services must be involved before any binding action that is included in these mandatory items (such as the entry into, the termination of, or a modification to, a contract) is taken by the contracting officer. Normally, consultation is most appropriate before issuing a bid solicitation.

6E.508 (1994-06-23) Contracting officers should also seek advice from Legal Services with respect to:

- (a) any proposed contract for services, where there is a question regarding the possible development of an employer-employee relationship;
- (b) any proposed contract, where a clause providing for liquidated damages is to be included to cover the late receipt of deliverables;
- (c) any proposed contract containing previously-approved deviations from standard terms and conditions, where such approval had been given by Legal Services more than two years before;
- (d) any proposed contract in which questions about liability or insurance are raised;
- (e) any arrangement to supply goods or services being entered into with a Special Operating Agency, when there are questions about the appropriate provisions or form of the documentation;
- (f) meetings in which the supplier or contractor was accompanied by a lawyer, or for which the supplier or contractor may or will be accompanied by one;
- (g) contracts requiring security for performance;
- (h) contracts to be placed with a supplier with whom disagreements are likely to be encountered or a supplier with marginal financial resources;
- (i) contracts placed in the United States where state taxes may be an issue;
- (j) disputes arising after the contract has been awarded.

6E.509 (1994-06-23) Legal services relating to contracting must only be sought from PWGSC Legal Services or from a regional office of Justice Canada, when the latter has agreed with PWGSC Legal Services to provide counsel to a region.

External Communications

6E.515 (2005-06-10) For media enquiries, the Minister and the Deputy Minister (DM) are the official spokespersons for PWGSC. Other PWGSC personnel may be authorized by the DM to perform this role.

The Corporate Services, Human Resources and Communications Branch, which has the operational responsibility for PWGSC's media relations, maintains a list of authorized spokespersons.

The Branch also has functional responsibility for coordinating relations between PWGSC and

Members of Parliament, including correspondence, verbal communications, and Question Period.

Bases of Payment

6E.521 (1994-06-23) There are seven bases of payment which may be used. In descending order of preference, these are:

- Firm Price;
- Firm Base Price subject to Economic Price Adjustment;
- Fixed Time Rate;
- Cost Reimbursable with Incentive Fee;
- Cost Reimbursable with Fixed Fee;
- Cost Reimbursable with Fee Based on Actual Costs;
- Cost Reimbursable with No Fee.

The Basis of Payment should reflect the commodity, the duration of the contract, and how well the requirement was able to be defined. Multiple bases of payment may be used in one contract.

Firm Price

6E.525 (1994-06-23) This provides for a price, which is not subject to adjustment, to reflect actual costs incurred by the contractor in performance of the contract or part thereof. It gives maximum profit incentive to the contractor for cost control, in that the contractor assumes full responsibility for all costs under or over the firm price. In addition, it places a minimum administrative burden on both contracting parties.

6E.526 (1994-06-23) Use this basis of payment when:

- (a) the contractor has previously manufactured the particular product or provided the particular service, or similar products or services, and has sufficient experience to permit a realistic statement of work based on firm specifications; and
- (b) the statement of work can be costed in terms of quantities of material and labour time required; and
- (c) a realistic estimate of the material prices and labour and overhead rates applicable during the contract period can be made.

6E.527 (1994-06-23) Subsequent to the negotiation of a firm price basis of payment, the contractor must resubmit the price proposal based on the agreement reached and include a price certification in accordance with clause [C0003T](#) of the *Standard Acquisition Clauses and Conditions* (SACC) Manual.

6E.528 (1994-06-23) Discretionary audit clauses may be included in the contract as appropriate.

Firm Base Price Subject to Economic Price Adjustment

6E.532 (1994-06-23) It may not be possible to obtain a realistic estimate of the material prices and/or labour and overhead rates required for the use of a firm price basis of payment and it may be necessary to negotiate provisions for price adjustments. These provisions provide for revisions to the firm base price upon the occurrence of certain contingencies.

6E.533 (1994-06-23) The economic price adjustments are determined as described in [6C.297](#).

Fixed Time Rate

6E.537 (1994-06-23) A fixed time rate provides for the payment to the contractor for the actual amount of time spent in performance of the work, as confirmed by government audit, on the basis of a

predetermined fixed time rate. The fixed time rate usually includes a direct labour rate, overhead rate(s) and profit.

6E.538 (1994-06-23) Use this basis of payment when:

- (a) it is not possible to estimate in advance the extent or duration of the work, but it is possible to determine within reasonable limits the applicable direct labour and overhead rates during the contract period; and
- (b) there is provision for adequate controls to ensure that inefficient or wasteful methods are not being used by the contractor.

6E.539 (1994-06-23) Contracts or parts of contracts with a fixed time rate basis of payment may also provide for a ceiling price, by which the contractor is bound to complete the prescribed work without additional payment whether or not the actual costs exceed the ceiling price. If a ceiling price is to be used, there must be full agreement between the parties as to what constitutes the prescribed work.

Before agreeing to the incorporation of a ceiling price in a fixed time rate contract, the contracting officer should consider whether a firm price contract would be more appropriate.

6E.540 (1999-12-13) When contracts, or parts of contracts, with a fixed time rate basis of payment do not include a ceiling price, a limitation of the Crown's liability must be made a term of the contract, unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause [C6000C](#) or [C6001C](#).

6E.541 (1994-06-23) Following the negotiation of fixed time rates, the contractor must resubmit the price proposal based on the agreement reached and include a rate certification.

6E.542 (1994-06-23) Time Verifications, Rate Certifications and Discretionary Audits must be provided for in contracts.

Cost Reimbursable with Incentive Fee

6E.546 (1994-06-23) A cost reimbursable with incentive fee basis of payment reimburses the contractor for costs incurred in performance of the work, as determined by government audit, and adds a fee which is adjusted by formula in accordance with the relationship which total allowable actual costs bear to a predetermined target.

6E.547 (1994-06-23) Use this basis of payment when the criteria required for a firm price basis of payment are lacking, and the products and services being acquired are of a nature that the assumption by the contractor of a degree of cost responsibility is likely to provide a positive incentive for effective cost control and contract performance.

6E.548 (2004-05-14) When a cost reimbursable with incentive fee basis of payment is used, it is necessary to negotiate in advance a target, a target fee, a maximum fee and a formula for fee adjustment.

The target should be the estimated costs of performing the work, computed in accordance with Contract Cost Principles [1031-2](#), assuming the contractor's current efficiency trend is maintained.

The target fee, based on the target costs, and the maximum fee should be an amount no greater than that calculated in accordance with the procedures for profit determination.

The formula provides for both an increase in fee above the target fee, up to the maximum fee, based on a sharing between the contractor and Canada of any decrease in actual acceptable costs below the target, and a decrease in the fee below the target fee based on a sharing between the Contractor and Canada of any increase in actual acceptable costs above target.

6E.549 (1999-12-13) Contracts or parts of contracts with a cost reimbursable or incentive fee basis of payment should not include a ceiling price, which requires agreement between the parties as to what constitutes the prescribed work, since this conflicts with the reason why this basis of payment is being used in the first place, i.e. the fact that a realistic statement of work cannot be submitted by the contractor.

In contracts or parts of contracts with this basis of payment, which do not include a ceiling price, it is mandatory that a limitation of the Crown's liability be made a term of the contract, unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause [C6000C](#) or [C6001C](#).

Cost Reimbursable with Fixed Fee

6E.553 (1994-06-23) This provides for the reimbursement to the contractor of the actual cost incurred in performance of the work, as determined by government audit, together with a predetermined fixed fee. Although the fixed fee does not vary with actual costs incurred, it may be renegotiated under certain circumstances.

6E.554 (1994-06-23) Use this basis of payment when circumstances do not permit the use of a firm price or fixed time rate, and the possible savings from the use of an incentive fee are likely to be more than offset by the complexities of contract administration resulting from its use.

6E.555 (1994-06-23) The amount of the fixed fee, based on an estimate of the costs to be incurred, should be no greater than the appropriate amount of profit. If it is not possible for both parties to reach agreement on an estimate of the costs to be incurred, as a basis for calculating the fixed fee, swing points are used. Swing points are the amounts of estimated costs, one higher and one lower than the amount used for the calculation of the fixed fee, at which the fixed fee will be renegotiated.

6E.556 (1999-12-13) Contracts or parts of contracts with this basis of payment may also include a ceiling price, through which the contractor is bound to complete the prescribed work without additional payment whether or not actual costs exceed the ceiling.

If it is possible to determine the prescribed work and for the parties to agree on an estimated amount to complete it as a basis for the ceiling price, it may be appropriate to use another basis of payment - i.e. one which provides for a more equitable sharing of responsibilities and risks between the contractor and the Crown.

In contracts or parts of contracts with this basis of payment, which do not include a ceiling price, it is mandatory that a limitation of the Crown's liability be made a term of the contract, unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause [C6000C](#) or [C6001C](#).

Cost Reimbursable with Fee Based on Actual Costs (Cost Plus)

6E.560 (1994-06-23) This basis of payment provides for the reimbursement to the contractor of costs incurred in performance of the work, as determined by government audit, together with a fee based on the actual costs incurred.

6E.561 (1994-06-23) Use this basis of payment only when circumstances permit the use of no other basis of payment.

6E.562 (1994-06-23) The amount of fee, based on the actual costs incurred, as determined by government audit, will be no greater than the appropriate level of profit.

6E.563 (1994-06-23) Ceiling prices are not applicable when this basis of payment is used.

6E.564 (1999-12-13) In contracts or parts of contracts with this basis of payment, which do not include a ceiling price, it is mandatory that a limitation of the Crown's liability be made a term of the contract,

unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause [C6000C](#) or [C6001C](#).

Cost Reimbursable with No Fee

- 6E.568 (1994-06-23) A cost reimbursable with no fee basis of payment provides only for the reimbursement to the contractor of actual costs incurred, as determined by government audit.
- 6E.569 (1994-06-23) Except for contracts covering the provision of assistance to a contractor, this basis of payment is rarely used. Contractors cannot normally be expected to accept a contract which provides for no profit for the manufacture of products or the provision of services.
- 6E.570 (1999-12-13) A ceiling amount to be paid by the Crown for completion of the prescribed work may be included if appropriate.

In contracts or parts of contracts with this basis of payment, which do not include a ceiling price, it is mandatory that a limitation of the Crown's liability be made a term of the contract, unless an exception is specifically authorized by the Minister, by including in the contract SACC Manual clause [C6000C](#) or [C6001C](#).

Cost Reimbursable Contracts – Audit

- 6E.576 (1994-06-23) Cost reimbursable contracts or contracts with cost reimbursable elements, require special attention because the price is not specified in the contract, but rather is determined after the completion of the work. All cost reimbursable contracts are to contain a reference that the costs being incurred must be determined by a PWGSC audit. (See [7A.045](#).)

This audit provides the basis for certification that the price is reasonable.

- 6E.577 (1994-06-23) For all cost reimbursable contracts valued over \$50,000 placed with Canadian suppliers, the contracting officer must, on completion of the work, place on file a certification that the final amount paid represents a reasonable price.

This certification may be based on the findings of a formal or an informal audit.

- 6E.578 (1994-06-23) All bid solicitation and contract documents containing cost reimbursable elements must incorporate an appropriate basis of payment clause (see SACC Manual, clauses [C0200D](#) to [C0205D](#)).
- 6E.579 (1999-12-13) All cost reimbursable contracts must also include SACC Manual clause [C0300D](#) or [C0301D](#) as appropriate, which call upon the contractor to provide a cost submission to the contracting officer upon completion of the contract, and annually for multi-year contracts.

The requirement for a cost submission will be listed as a mandatory deliverable item within the contract. However, for repair and overhaul (R&O) service contracts, the contracting officer or audit agency may determine whether a cost submission is needed as a deliverable item. The standard clause pertaining to R&O service contracts must be used.

Progress Payments and Advance Payments

- 6E.585 (1996-12-02) Progress payments or advance payments may be considered only if all of the following conditions are met:
- (a) adequate security for the payment is ensured;
 - (b) the Crown receives value commensurate with the amount of the payment during the fiscal year in which the payment is made;

- (c) the client has adequate funds to provide the financing; and
- (d) one of the following:
 - (i) there is economic advantage to the Crown that clearly outweighs the financing cost associated with the progress or advance payment (see [6E.587\(b\)](#));
 - (ii) the contractor could suffer hardship or provide financing only with difficulty or at rates considered to be uneconomical in relation to prevailing chartered bank prime lending rates;
 - (iii) the value of the contract is considered to be beyond the assessed financial capabilities of the contractor;
 - (iv) there is to be a long duration for contract performance; or
 - (v) there is an entrenched tradition or practice of receiving advance or progress payments from the purchaser in a particular industry or segment of industry. However, payments can only be made for goods or services received in the same fiscal year. Funds must be spent in the fiscal year for which they are appropriated and cannot be carried forward by means of advance payments.

Notes:

1. *TB guidelines specify that advance payments should be considered only in extraordinary circumstances. Even if the above conditions are met, advance payments are rarely justified. Progress payments are more frequent.*
2. *In the case of subscriptions or insurance premiums, which are often for a term of one full year and which may not start exactly on April 1, payments must be restricted to goods or services provided in no more than the current and next fiscal years. For instance, a publication subscription paid in February 2005 cannot cover a period beyond March 2006.*
3. *In the case of multi-year contracts requiring continuing advances, contracting authorities should negotiate the payment of a series of separate advances covering each fiscal year. Thus, a payment can be made for a maintenance contract, for the period of a contract, from February to March 2005 and then another payment covering the period April 2005 to March 2006.*
4. *In exceptional situations, such as armament purchases or extended warranty service, where up-front payments covering more than one fiscal year must be made to the supplier, contracting authorities must decide on a case by case basis if an advance payment is unavoidable and can be substantiated. This type of case should be extremely rare.*
5. *In all cases, a payment cannot be made in the current fiscal year for a contract which will not start until the next fiscal year.*
6. *The requirement that payment be made only for goods or services received in the same fiscal year may require modification of the Method of Payment for requirements whose period of delivery or service spans fiscal years. Specifically, it may be necessary to provide for multiple payments, at the appropriate point in the contract period.*

6E.586 (1996-12-02) Special considerations apply to foreign purchases.

- (a) In the case of United States purchases, progress or other payments on account have an effect on the application of taxes, relating to the time and place of title passing to the Crown. (See [6D.462](#).) Legal Services should be consulted to ensure that appropriate terms in the contract protect against unnecessary taxes.
- (b) For other foreign purchases, where progress or other payments on account are granted, a

check should be made to determine if the application of sales, use, or some other form of tax is related to the time and place of title passing to the Crown. If this is the case, contracting officers must consult Legal Services.

- (c) In the case of purchases from the United States Government, through the Foreign Military Sales (FMS) program, advance payments are required in accordance with United States law prior to commencement of delivery for any goods and services to a foreign customer. In this case, the standard terms and conditions for FMS sales from the U.S. Government have been approved by Treasury Board. Any change in the standard terms and conditions will require a submission for Treasury Board approval.

6E.587 (2005-06-10) The following factors must be evaluated to determine the method of payment (advance or progress payment) most appropriate to a particular procurement:

- (a) risk exposure for the Crown, if situations such as insolvency, work cancellation or work default occur;

Pertinent factors include:

- (i) *Can an advance payment be protected by securing unconditional guarantees or performance bonds from financial institutions or from associated or parent companies with good financial credentials?*
- (ii) *What is the likely marketability and resale value of work-in-process to which the Crown acquires title by virtue of making progress payments? The disparity between the amount of progress payments and the resale value of inventory is a measure of the risk exposure for the Crown.*

- (b) financing cost estimates;

Since provision for progress or advance payments involves a real or imputed cost to the Crown, this cost should be calculated for each of the available options. Apply the chartered bank prime lending rate, as advised periodically by the Director, Cost and Forensic Accounting Directorate, to the cumulative net financing (i.e. cumulative cash payout by the Crown minus cumulative value of deliveries under the contract), using reasonable assumptions regarding work progress and item deliveries.

- (c) the potential reduction in contract price resulting from the various methods of payment;

Since progress or advance payments reduce the need for borrowing by the contractor, or reduce the size of equity capital on which a return must be realized, lower prices should flow through to the Crown. The price reduction will vary with the different methods of payment and their relative attractiveness to the contractor.

- (d) financial circumstances which may affect the client's ability to finance the various options.

Progress Payments

6E.591 (1994-06-23) In the case of a progress payment, the general conditions provide that title to the materials or work-in-process will vest in the Crown upon making such payment.

6E.592 (1994-06-23) When a progress payment is to be used, milestones, when possible, should be specified to relate payments to measurable progress on the contract. Technical or other contractual achievement yardsticks may be used as milestones. The value of each milestone should be negotiated before contract award.

6E.593 (1994-06-23) When progress payments against milestones are not possible because of the nature of the contract, progress payments may be made at set periods of time on a calendar basis (time payment method), or based upon the actual costs incurred for material purchases and the

partial completion of work as certified by company and government inspectors.

6E.594 (1994-06-23) A combination of milestone and cost incurred progress payments is also possible for different phases of the contract.

The combination method can be used, for example, to pay incurred costs in the early stages of a major procurement when it would be difficult to define milestones, with payments for later and more definable stages of the production process made against specified milestone achievements.

6E.595 (1994-06-23) If milestone or cost incurred progress payments are not possible, the time payment method of making progress payments is to be used with caution. The overriding requirement for use of this method is the existence of a project progress monitoring and control system to provide the contracting officer with reliable indicators of the actual value of work accomplished when a payment is due. With the exception of rental and service contracts, the time payment method must be supported at the director level or above.

Holdbacks

6E.599 (1998-02-16) For all contracts where progress payments are provided, holdbacks must be used to avoid overpayment and to act as an incentive for the contractor to complete the job. However, for contracts using milestone payments, a requirement for a holdback may be included at the discretion of the contracting officer.

The following limits on payments, for contracts involving progress payments, apply:

(a) Firm Price, with Milestone Payments:

Total Allowable Costs: up to 100% of negotiated milestones
 Purchased Accountable Advance Materials: nil
 Goods and Services Tax/Harmonized Sales Tax: nil
 Profit: nil

(b) Firm Price, with Progress Payment on basis of Negotiated Cost ¹:

Total Allowable Costs: up to 90%
 Purchased Accountable Advance Materials: 100%
 Goods and Services Tax/Harmonized Sales Tax: if payable
 Profit: pro rata

(c) Cost Reimbursable ¹:

Total Allowable Costs: up to 90%
 Purchased Accountable Advance Materials: 100%
 Goods and Services Tax/Harmonized Sales tax: if payable
 Profit: pro rata

(d) Fixed Time Rate ¹:

Total Allowable Costs: up to 90%
 Purchased Accountable Advance Materials: 100%

Goods and Services Tax/Harmonized Sales Tax: if payable
 Profit: pro rata

(e) Price to be Negotiated

(i) Last year's negotiated rates/prices serve as interim rates for new year ²:

¹ The percentages shown apply to incurred costs (incurred hours for fixed time rate contracts).

Total Allowable Costs: up to 100%
 Purchased Accountable Advance Materials: 100%
 Goods and Services Tax/Harmonized Sales Tax: if payable
 Profit: pro rata

(ii) All Other Contracts ¹:

Total Allowable Costs: up to 75%
 Purchased Accountable Advance Materials: 100%
 Goods and Services Tax/Harmonized Sales Tax: if payable
 Profit: pro rata

6E.600 (1997-09-15) Exceptions to these payment ceilings may be considered:

- (a) where recognized trade practices supporting such exceptions can be demonstrated; or
- (b) in the case of organizations that do not receive a profit or fee; or
- (c) where alternative methods of financial protection are employed, e.g. security deposits (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) or surety bonds.

6E.601 (1999-12-13) The timing for making decisions relating to the method of payment to be used varies with the solicitation method employed.

- (a) For an Invitation to Tender (ITT), the method of payment must be selected prior to issuing, and included in, the tender documents. (Use SACC Manual clause [H1003D](#).) Financing costs will not constitute an evaluation factor.
- (b) For competitive Requests for Proposal (RFPs), the RFP will clearly specify that any requirement on the part of the bidder for receipt of progress or advance payments will constitute an evaluation criterion (this may require SACC Manual clause [H1003D](#)). When evaluating proposals, the cost to the Crown of providing the progress or advance payments will be taken into account, as will the risk of exposure from the method of payment, and the availability of funds.

This cost determination may be waived when all responsive bidders have requested the identical method and pattern of payment (e.g. progress payments on a cost-incurred basis with virtually identical payout schedules).

Advance Payments

6E.605 (1994-06-23) For contracts for services greater than \$25,000, any advance payment should be protected by some form of guarantee given by a financially strong third party. The guarantee usually takes the form of a surety bond from an associated or parent company or a financial institution, or an irrevocable Letter of Credit from a Canadian bank. It should provide for return to the Crown of the unliquidated balance of the advance, plus interest, in the event of work cancellation or other contract termination for the Crown's convenience. Other types of guarantees may be discussed with a cost analyst.

A decision to not insist on guarantees requires a strong business case.

For contracts for services of less than \$25,000, security may be dispensed with where the contracting officer certifies that the contractor has been actively engaged in the particular industry and enjoys a good reputation in that industry, and that PWGSC has no record of significant

² The percentages shown apply to the previous year's rates.

financial or performance problems encountered in past dealings, if any, with the firm.

Bidders' Conferences and Site Visits

Bidders' Conferences

6E.611 (2001-05-25) A Bidders' Conference is used to provide information to potential bidders, and to ensure that all potential bidders receive the same information. A conference is to be held only when such a meeting is required for potential bidders to fully understand the proposed procurement. Bidder attendance is optional. (See [7A.029](#) and [7C.260](#).)

Site Visits

6E.615 (2001-05-25) Bidder attendance at site visits may be optional or mandatory. Mandatory site visits apply to all potential bidders - even those who contend they are already familiar with the site in question. (See [7A.029](#) and [7C.261](#).)

The need for a mandatory site visit should be carefully examined and documented on the file as part of the procurement planning. Consideration should be given to the cost and relative hardship imposed on potential bidders not in the immediate vicinity of the site when deciding if a site visit will be mandatory.

Transportation Information

6E.621 (2005-12-16) All goods requirements with an estimated expenditure of \$25,000 (including GST/HST) or more, and with transportation charges exceeding \$1,500 are subject to a detailed analysis of such charges by the Traffic Management Directorate, with the following exceptions:

- (a) contracts for repair and overhaul, development, engineering services, technical studies and tooling;
- (b) capital assistance;
- (c) construction of complete ships or complete aircraft;
- (d) contracts in which clients retain control of all or part of delivery;
- (e) contracts for perishable foods;
- (f) purchases from Canadian suppliers on behalf of a foreign government or agency, unless assistance is requested by that government or agency;
- (g) standing offers, where order quantities and destination are unknown;
- (h) food and bulk fertilizer purchases under an external aid program;
- (i) requirements for multiple items which may result in more than one contract and for which identification of individual transportation costs is not practicable;
- (j) contracts for complete systems where multiple components may be shipped from multiple sources and locations and for which establishment of an FOB Origin cost is impractical;
- (k) service contracts; and
- (l) procurements covered by the North American Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement (WTO-AGP), unless a non-competitive process under one of the Limited Tendering reasons in the Agreement is

used.

6E.622 (2005-12-16) FCA Free Carrier (...named place) Incoterms 2000 is to be used for all Department of National Defence (DND) sole source contracts, and all Repair and Overhaul (R&O) contracts where transportation is not part of the competitive bid. DND will manage the inbound logistics (coordinate, arrange and pay for all inbound transportation) for these contracts. For United States (U.S.) Foreign Military Sales contracts only (not all U.S. contracts) FOB Plant will continue to be used and DND will manage the inbound logistic on those contracts as well. If the contractor is not located in Canada, include *Standard Acquisitions Clauses and Conditions* (SACC) Manual clause [C2608D](#) and when applicable, [C2610D](#).

The contractor is to deliver these goods FCA. For these contracts, the named place shall always be the contractor's facility, unless otherwise directed by DND. The contracting officer shall include in the solicitation document and the contract one of the following SACC Manual transportation clauses: [D0035D](#), [D0037D](#) or [D0038D](#). These clauses direct the contractor to obtain shipping instructions from DND and how to do so. Contractors may also contact DND Headquarters (Director Supply Chain Operations [2-5], Materiel Distribution Operations) at (819) 994-9288 or Inbound Logistics Headquarters at 1-877-447-7701, ext. 6101, should they have any transportation queries.

6E.623 (2004-12-10) To assist contracting officers in determining which shipping clause is applicable for use in their procurement, the following list of clauses and their application is provided for consideration:

(a) DND contracts:

- (i) for delivery at origin for international contracts - use clause [D0035D](#) (clauses [C2608D](#) and [C2610D](#) may apply);
- (ii) for delivery at origin for Canadian contracts - use clause [D0037D](#);
- (iii) for U.S. Foreign Military Sales contracts - use clause [D0038D](#) (clauses [C2608D](#) and [C2610D](#) may apply);
- (iv) for delivery at destination - use clause [D4001C](#) (clauses [C2600T](#) and [C2600C](#) may apply).

(b) All other government departments:

- (i) for delivery at origin - use clause [D4000C](#) (use clauses [C5200T](#) and [C5200C](#) or [C5201C](#) in procurement documents);
- (ii) for delivery at destination - use clause [D4001C](#) (use clauses [C5200T](#) and [C5200C](#) in procurement documents).

Design Change/Deviation Procedures

6E.627 (1994-06-23) If design changes or deviations are needed during the life of a contract, the interested parties must understand the extent and nature of the changes and the procedure to be followed.

6E.628 (1994-06-23) The Design Change/Deviation procedure applies when requested by the client, stipulated in the requisition, agreed to by PWGSC and incorporated into the contract. If not stipulated initially, the procedure may be introduced later through a contract amendment.

6E.629 (1994-06-23) When requesting authority to enter into a contract, the contracting officer should also request authority for an estimated amount to be set aside and designated for design change or deviations. This amount will not appear in the initial contract, but will be held in reserve as an

authorized fund to incorporate approved design changes or deviations into the contract by amendment. These amendments will be subject to the non-competitive contract approval levels.

The requirement to do this will depend on the nature of the contract.

6E.630 (1994-06-23) For DND requirements, the contracting officer is to use National Defence Standard D-02-006-008/SG-001, Design Change/Design Deviation and Waiver Procedure.

6E.631 (1994-06-23) In the case of high value or complex defence procurements, other procedures such as CFTO C-05-002-001/AG-000, Aerospace Engineering Change Proposal, may be used, or special procedures written to suit particular contracts.

Procurement Time Frames

6E.640 (1994-06-23) Sufficient time must be allowed for precontract analysis, recommendation, approval and carrying out the procurement. When establishing the timetable, in consultation with the client, the following factors should be taken into consideration:

- (a) the nature of the procurement;
- (b) the level of approval required, including the Deputy Minister (DM), the Minister or Treasury Board (TB);
- (c) translation requirements;
- (d) the period for the receipt of bids;
- (e) the evaluation process; and
- (f) the requirement for negotiation.

6E.641 (2001-05-25) Approximately five weeks are required for review by the Audit and Review Branch (ARB), the DM and the Minister. This includes the time required by sectors/regions to respond to any modifications recommended by ARB, as well as the time required for the presentation of submissions to the DM and the Minister.

In the normal course of events, submissions must be received by the TB Secretariat three weeks before being scheduled on a TB agenda. Consequently, TB submissions must be submitted to ARB at least eight weeks prior to the required decision date.

When it is reasonable to expect that TB approval will be required, the bid validity period must be sufficient to ensure that bids are still valid when the TB approval is received.

Departmental Plain Language Standard Procurement Documents

6E.643 (2006-06-16) Public Works and Government Services Canada (PWGSC) has implemented Departmental Plain Language Standard Procurement documents which include templates for Bid Solicitation and Resulting Contract for Low Dollar Value (LDV) and Medium Complexity requirements, new standard instructions and general conditions for use by its contracting officers for the procurement of goods, services or both (excluding Construction and Architectural and Engineering contracting requirements).

PWGSC contracting officers must use the Departmental Plain Language Standard Procurement documents for LDV and Medium Complexity competitive or non-competitive requirements for goods or services (refer to the [Departmental Plain Language Standard Procurement Documents](#) Website or to [2T-LDV1](#) and [2T-MED1](#) of the *Standard Acquisition Clauses and Conditions [SACC]* Manual.

Contracting officers are invited to consult the procedures [2T-PROC1](#) for the use of the LDV and Medium Complexity templates available on the Website identified above and in the SACC Manual.

In order to maintain a “common look and feel” for PWGSC’s procurement documents, contracting officers must not modify or change the order and content of these standard templates except where indicated.

For more information, contact [Gaëtane Dagenais](#) or [Ginette Plante](#), Procurement Process Tools Division.

Contract Approval

6E.647 (1994-06-23) All requirements over \$50,000 require approval through either the Contract Planning and Advance Approval (CPAA) or the formal Procurement Plan processes.

Requirements for less than \$50,000 are approved according to sector/region procedures.

The CPAA or formal Procurement Plan must be approved before the Notice of Proposed Procurement, Advance Contract Award Notice or bid solicitation document is released.

Contract Request Forms

6E.651 (2002-05-24) Submissions are prepared using the Contract Request forms PWGSC-TPSGC 1151-1 and PWGSC-TPSGC 1151-2.

Contract Planning and Advance Approval Process

6E.655 (1994-06-23) The CPAA process allows contracting officers to award contracts without further reference to the approval authority when there are no significant changes from an approved CPAA form.

The CPAA is to be used for procurements valued at \$50,000 or more which fall within approval levels up to and including directors general, except for procurements which require a formal Procurement Plan (see [6E.662](#)).

6E.656 (1994-06-23) Contracting officers must complete the CPAA form and submit it to the appropriate approval authority. Copies of the form are to be sent to all line management officers between the contracting officer and the approval authority, sector/region resources such as legal counsel, contract quality control and cost analysts, as required, and commodity teams, if applicable.

6E.657 (1994-06-23) On receipt of the submission, the approval authority will, within two working days, review it and either grant full approval to proceed or identify concerns and direct changes to the proposed strategy.

6E.658 (1994-06-23) If the procurement action results in a significant change from the originally approved plan, this change must be approved in accordance with sector/region procedures. If there is no significant change, the contracting officer will prepare the contract for the appropriate signing authority.

Once the contract is prepared, it is subject to a mandatory independent review, in accordance with sector/region procedures, prior to award and signing.

Formal Procurement Plan Process

6E.662 (1996-12-02) A formal Procurement Plan is normally prepared for:

- (a) all procurements estimated to exceed the approval levels of directors general;
- (b) all procurements for the services of former public servants in receipt of a pension where the fee component is estimated to exceed \$25,000 for non-competitive contracts or \$100,000 for competitive;
- (c) all procurements which are considered to be sensitive or have significant socio-economic impact (i.e. which will or may require the Minister's involvement at some stage).

The exclusions are the supply of edible agricultural and fishery products purchased for foreign aid programs, and CCC contracts.

6E.663 (2005-12-16) The Procurement Plan must include the following elements:

DESCRIPTION

Give a brief description of the requirement.

ESTIMATED COST AND NAME OF CLIENT

ANTICIPATED CONTRACT APPROVAL AUTHORITY REQUIRED

SOURCING

Identify applicable trade agreements (NAFTA, WTO-AGP, AIT and CLCAs) and any significant policies governing sourcing decisions (Set-aside Program for Aboriginal Business; Canadian Content; Shipbuilding, Repair, Refit and Modernization, etc.)

Explain the sourcing strategy i.e. GETS, GBO, other public advertising, source lists (one time, ongoing).

Substantiate any decision to go sole source.

POLICY ISSUES

Attach relevant Procurement Review Committee documents (see [5.090](#)). Identify any other relevant socio-economic considerations.

Outline any special or unusual aspects of the procurement.

Recommend a course of action to resolve or handle any problems involving potential major risks or deviations from sourcing policy or other PWGSC policy. Where there are major risks inherent in the proposed approach, they must be examined in consultation with PWGSC financial and legal officers.

EVALUATION CRITERIA

Identify the evaluation criteria and the selection method to be used with any bid solicitation, including pricing basis, point rating or mandatory/desirable criteria for the technical evaluation.

MILESTONES

Give target dates for important milestones (e.g. bid solicitation, contract award, delivery schedule).

ADDITIONAL COMMENTS

Include any information that should be brought to the approval authority's attention.

CONTRACTING OFFICER

State the name, sector/region, division and telephone number of the officer responsible for the project.

COMMENTS

Leave two or three lines for comments by the approval authority.

Approvals

- 6E.667 (1994-06-23) The director general will forward the completed Procurement Plan to the next level of management for approval.
- 6E.668 (2001-12-10) If events during the procurement process result in a significant change in procurement strategy, a revised Procurement Plan must be approved before implementation.