

Chapter 7 - Competitive Procurement

Section 7A: Preparing a Bid Solicitation

Documents

7A.001 (2005-06-10) The cover pages of bid solicitations are based on standard forms. They are:

PWGSC-TPSGC 9400-2	Request for Proposal
PWGSC-TPSGC 9168	Request for a Supply Arrangement
PWGSC-TPSGC 212	Revision to a Supply Arrangement
PWGSC-TPSGC 9169	Supply Arrangement (This is not a contract)

Every bid solicitation should include the standard instructions and conditions ([Section 1](#) of the *Standard Acquisition Clauses and Conditions* [SACC] Manual), which will provide bidders with relevant information.

Terms and Conditions

7A.002 (2005-06-10) Most procurements of goods and services are to be carried out using the general conditions and supplemental general conditions found in the SACC Manual. The conditions to be used depend on the nature of the procurement:

	General Conditions	Supplemental General Conditions
General Conditions - Goods or Services (Medium Complexity)	2010	
General Conditions - Goods or Services (Low Dollar Value)	2029	
Other goods and services, except those listed below	9601	
Goods with some R&D, Contractor to own Intellectual Property	9601	9601-6
Goods with some R&D, Canada to own Intellectual Property	9601	9601-7
Research and Development	9624	
Services, except those listed below	9676	
EDP Requirements		
Hardware Purchase/Lease	9601	9601-1 *See NOTE below
Software Development / Modification	9601 or 9624	9601-2
Systems Integration	9601	
Licensed Software	9601	9601-4
Support Services for Licensed Software	9601	9601-5

Ships		
Construction - Firm Price	1026A	1028 or 1036
Construction - Cost Reimbursable	1026B	1033
Repairs	1026A	1029
Construction (not ships)	1034	LAB 180
Procurement for the Canadian Commercial Corporation		
Defence requirements (other than US Government)	1026A or 1026B	
Defence requirements (US Government)	1026A or 1026B (see CCC-6 for exceptions)	
Non-defence requirements	CCC50	

Note: If any software is to be delivered under the contract, including any software necessary to run the hardware, supplemental general conditions [9601-3](#) and [9601-4](#) must also form part of the contract. Other supplemental general conditions should also be incorporated if applicable.

Where other than standard terms and conditions are required, the contracting officer must consult Legal Services.

7A.003 (2005-06-10) General conditions and supplemental general conditions must be used as complete sets. Contracting officers may not mix sections from different sets of conditions to create contract documents.

A specific procurement may require the modification or deletion of individual terms or conditions. These changes must be discussed with the client prior to inclusion in the bid solicitation or contract, to ensure that complete understanding exists as to the extent of the client's rights and responsibilities. They must also be approved by Legal Services, to ensure that the rights of the Crown are protected.

A change approved by Legal Services within the previous two (2) years may be used without again consulting Legal Services. (See [6E.508](#).)

Bid Solicitation and Comprehensive Land Claims Agreements

7A.004 (2002-12-13) Methods of bid solicitation include the Government Electronic Tendering Service, Telephone-Buys, source lists, facsimile distribution, and newspapers or a combination of methods. Longer bidding periods may be required because of the remoteness of some of the areas. Whenever possible, competition must be sought.

Urgent requirements must continue to be dealt with on a case-by-case basis in a manner which is consistent with the provisions of the applicable Comprehensive Land Claims Agreement.

The Nunavut Tunngavik Incorporated is responsible for preparing and maintaining a List of Inuit firms in the Nunavut Settlement Area. The Makivik Corporation, the Cree Regional Authority and the Naskapi Indian Band of Quebec are responsible for preparing and maintaining lists of aboriginal firms in the James Bay and Northern Quebec Settlement Area. These lists include information on the goods and services the firms are in a position to furnish in relation to government contracts. These lists shall be used by Canada for the purpose of requesting firms in the respective settlement areas to participate in solicited bidding. This shall not restrict the ability of any firms, not on the lists, to tender bids for government contracts.

To obtain an up-to-date copy of the Nunavut List of Inuit Firms, please contact:

Nunavut Tunngavik Incorporated
Business Development Department
P.O. Box 638
Iqaluit, NU X0A 0H0

Telephone: 1-888-646-0006
Facsimile: (867) 975-4949

For information on how to obtain up-to-date copies of the list of James Bay and Northern Quebec firms, please contact the organizations listed below.

Makivik Corporation
3333 Place Cavendish, 3rd Floor
St-Laurent, QC H4M 2X6
Telephone: (514) 745-8880
Facsimile : (514) 745-3700

Crees of Oujé-Bougoumou
203 Opemiska Meskino
Oujé-Bougoumou, QC G0W 3C0
Telephone: (418) 745-3931
Facsimile: (418) 745-3844

Grand Council of the Crees (of Quebec)
24 Bayswater Avenue
Ottawa, ON K1Y 2E4
Telephone : (613) 761-1655
Facsimile : (613) 761-1388

Naskapi Development Corporation
120-1000 St-Jean-Baptiste Avenue
Quebec, QC G2E 5G5
Telephone : (418) 871-5100
Facsimile : (418) 871-5254

Naskapi Indian Band of Quebec
P.O. Box 970
Schefferville, QC G0G 2T0
Telephone: (418) 585-2686
Facsimile : (418) 585-3130

Canadian Content

7A.010 (1995-07-01) When requirements consist of more than one good, the Canadian content certification can be done in the following ways:

- (a) Aggregate. Multi-item requirements will be certified on an aggregate basis; or,
- (b) Item by Item. Multi-item requirements will be certified on an item-by-item basis. In these cases, suppliers will be asked to identify separately, each item that meets the definition of Canadian goods in [5.072](#) or [5.073](#).

7A.011 (2003-12-12) For procurement to which the Canadian Content Policy applies, the contracting officer shall decide, at the procurement planning stage, whether a competition will be:

- (a) **Solely Limited:** the solicitation will be solely limited to suppliers who could offer Canadian goods and/or services when the contracting officer believes there exists, in the marketplace, three or more such suppliers (solely limited certifications are provided in the

SACC Manual, under clause numbers [K4001T](#), [K4003T](#), [K4004T](#), [K4011T](#), [K4013T](#) or [K4014T](#)). Except for bids that will be publicly opened, the contracting officer will determine whether:

- (i) the bidder will be required to submit the certification of content with bid ([K4001T](#), [K4003T](#) or [K4004T](#)), or
- (ii) the bidder will be asked for the certification if it is not submitted with bid ([K4011T](#), [K4013T](#) or [K4014T](#)) The contracting officer must indicate in the clause the number of days that the bidder will have to submit the certification upon request. Bidders will normally be given no more than three (3) working days to provide signed Canadian Content certifications. The specified time period should be dependent upon the urgency of the requirement.

For publicly opened bids, the bidder must be required to submit signed certification with bid ([K4001T](#), [K4003T](#) or [K4004T](#)).

The contracting officer will normally not require bidders to submit certifications with bid unless the requirement is urgently needed by the client; or

- (b) **Conditionally Limited:** the solicitation will be conditionally limited when the contracting officer is uncertain whether three or more suppliers of Canadian goods and/or services exist (conditionally limited certifications are provided in the SACC Manual, under clause numbers [K4002T](#), [K4005T](#) or [K4006T](#)). The bidder will be required to submit certification of content with bid; or
- (c) **Open:** when the contracting officer is of the opinion that three or more suppliers of Canadian goods and/or services do not exist, the solicitation shall be open to all suppliers. Bidders are not required to provide a certification.

7A.013 (2003-12-12) Once the sourcing strategy is determined, the contracting officer will prepare a Notice of Proposed Procurement (NPP). The procurement opportunity will be coded on GETS as:

Solely Limited, per procedure [7A.011](#) a): Code O-5;
Conditionally Limited, per procedure [7A.011](#) b): Code O-4; or,
Open, per procedure [7A.011](#) c): Code O-1.

Bid Closing

7A.015 (1995-07-01) All bid solicitations must specify the bid closing date, time and location.

Contracting officers must ensure that instructions for the submission of bids and closing time for each solicitation are clearly stated in the bid solicitation document and not open to misinterpretation. Contracting officers must also ensure that the closing date appearing on the Notice of Proposed Procurement (NPP) does not conflict with the bid solicitation.

SACC Manual clause [A0000T](#) should be used, so that it is clear that only bids received via Canada Post and bearing a "postmark" are eligible bids if they were mailed prior to the day of bid closing, and received prior to bid award. This applies to bids sent via any Canada Post service, including Priority Courier and Xpresspost. Provisions of the Late Bid procedure (see [7D.304](#)) do not apply if any other courier service is used.

7A.016 (1996-06-03) Where a need is identified (e.g. a large number of bulky proposals is expected) to receive bids at a location other than the designated bid receiving area, contracting officers must make arrangements with the bid receiving personnel before establishing a bid closing date.

*An assessment of this location is carried out by bid receiving personnel, **in consultation with departmental security personnel**, to ensure the complete physical security of bids from the time*

of receipt to the time of opening. The responsibility for recording bids received at these locations remains with the designated bid receiving personnel.

- 7A.017 (2004-05-14) Bids resulting from a competitive Request for Quotation (RFQ) below \$25,000 (including all applicable taxes) may be submitted to the contracting officer instead of a designated bid receiving area. These RFQs must inform suppliers that:
- (a) modifications are not permitted after a quotation is received;
 - (b) any quotation received after the specified date, regardless of time of mailing, shall be considered non-responsive; and,
 - (c) if all quotations are received before the specified date, the appropriate contract document (see [7E.500](#)) may be issued immediately.

Bid Security

- 7A.020 (1997-09-15) When bid security is required, the bid solicitation must clearly state that it is mandatory and, unless otherwise indicated, will either be in the form of a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit), or a surety bond.
- 7A.021 (1997-09-15) Bidders who supply a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) as bid security are required to submit their bids under seal (except in Quebec, where the seal concept does not apply). This procedure provides a legal basis for full or partial forfeiture of the security deposit in the event the bidder withdraws the bid before acceptance, refuses to enter into a contract or fails to furnish the required contract security.
- 7A.022 (1997-09-15) To prevent problems in obtaining the required contract financial security at a later date, bid solicitations must specify that, if the required contract security is not furnished within the period specified, a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) given as bid security will be forfeited or payment demands will be made against the bid support letter of credit. The amount forfeited must not exceed the difference between the bid price and the amount of the contract entered into by Canada. This provision is also contained in the Bid Bond in [Annex 7.1](#).
- 7A.023 (2003-05-30) Unless the acceptable form of security is limited to security deposits (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit), the bid solicitation must include a list of those [surety companies](#) whose bonds are acceptable to the government, together with specimen forms of the applicable model bond forms. Deviation from the specimen bond shall be permitted only with the prior approval of Legal Services.

Specimen forms are in [annexes 7.1](#) (Bid Bond), [7.2](#) (Labour and Material Payment Bond), and [7.3](#) (Performance Bond).

“The Labour and Material Payment Bond contained in [Appendix S](#) of the Treasury Board Contracting Policy and the current versions of the Bid Bond and the Performance Bond are all under revision, and should continue to be used until further notice.”

“The Claimant’s Payment Bond form is a security option that may be used in construction contracts effective January 1, 1994. When one or more claims are made against the prime contractor, the posting of a Claimant’s Payment Bond by the prime contractor will permit regular payments by Canada under the contract while the disputes are being settled between the various parties. The use of the bond in construction contracts provides a remedy to contractors whose cash flow would otherwise suffer as a result of claims against them.”

- 7A.024 (2000-12-01) For procedures on handling bid security, see [Annex 7.4](#), Handling, Custody and

Safekeeping of Financial Security. The contracting officer must instruct the bid receiving area as to the handling of bid securities received.

Performance

7A.026 (1995-07-01) Performance means the fulfillment or accomplishment of that which is required by a contract or under a condition.

7A.027 (1998-11-23) When required, bid solicitations may contain various mechanisms for encouraging timely performance, such as:

- (a) contract security (financial):
 - (i) security deposits, whereby the contractor deposits securities (government guaranteed bonds, bill of exchanges or irrevocable standby letters of credit) which Public Works and Government Services Canada (PWGSC) may convert to complete the contractor's obligation; or
 - (ii) performance bonds, which are a type of surety bond used to guarantee the performance of the contract;
- (b) holdbacks, whereby an amount is withheld under a contract to ensure the due performance of the contract.

Normal arrangements for holdbacks will be incorporated into contracts by including the relevant SACC Manual clause [H1003D](#) in bid solicitation or contractual documents.

- (c) liquidated damages clauses, whereby provision is made for Canada to recover the pre-estimated loss or rate of loss that would result from a delivery default, without being required to prove actual damages.

Where the inclusion of a liquidated damages clause is appropriate, the contracting officer must incorporate such provisions by including SACC Manual clause [D0024D](#) in both the bid solicitation and contract.

Care should be taken to ensure that the rate of assessment of liquidated damages is reasonable. The probable damages should be established by reference to the individual circumstances of the particular procurement. The contract should specify the ceilings for collection of liquidated damages. Such ceilings or maximums can be stated in either of two ways:

- (i) by specifying a fixed amount payable upon delinquency (refer to SACC Manual clause [D0024D](#)). This method should be used when it is intended that the contract will be terminated immediately when delinquency occurs and the supplies or services reprocured elsewhere. The cost of reprocurement is to be included in the overall fixed amount; or
- (ii) by specifying a rate of assessment of damages (refer to SACC Manual clause [D0024D](#)). This rate per calendar day of delay up to a stated maximum number of days will be subject to the limitation that the total amount of liquidated damages shall not exceed a stated percent of the contract price. This method should be used when, upon default occurring, it is intended to serve notice of default requiring the contractor to remedy the default within a stated period of time. The cost of reprocurement is to be excluded in computing liquidated damages, since this item will be claimable separately in the event that the contract is terminated and the supplies or services procured elsewhere.

To ensure uniformity of application, the amount or overall ceiling should not exceed 10 percent of the contract price. Ceilings in excess of 10 percent may be used where justified by the individual

circumstances of the particular acquisition, subject to the approval of the contract approval authority.

- (d) delivery incentive payments, whereby provision is made in the pricing basis for early delivery.

Such incentives for early delivery should be considered only in the case of major procurements with long lead times for delivery, where such payment provisions can act as an incentive to the contractor in putting forth special efforts to achieve earlier than scheduled delivery and the client agrees because of substantial realizable cost savings and other benefits.

Communications - Solicitation Period

7A.028 (2005-12-16) To ensure the integrity of the competitive bid process, enquiries and other communications regarding the bid solicitation must be directed **only** to the PWGSC contracting officer identified in the bid solicitation, not to the client department or other government officials. (See *Standard Acquisition Clauses and Conditions* [SACC] Manual clause [A0012T](#).)

Bidders' Conference and Site Visits

7A.029 (1997-09-15) Whenever there is to be a bidders' conference (see [6E.611](#)) or site visit (see [6E.615](#)):

- (a) The NPP and bid solicitation documents must clearly state that there will be an optional bidder's conference or optional/mandatory site visit and indicate the location, date and time.
- (b) Schedule the meeting on a date that will:
 - (i) allow bidders time to obtain and review the bid solicitation; and
 - (ii) allow for preparation and distribution of minutes in sufficient time for bidders to prepare and submit bids before the bid closing date.
- (c) In the event of a mandatory site visit, the NPP and bid solicitation documents must clearly state that:
 - (i) the site visit is mandatory; and
 - (ii) failure to attend will render bidders non-responsive.
- (d) In the event of either an optional site visit or bidder's conference:
 - (i) the NPP and bid solicitation documents shall indicate that attendance by potential bidders is optional; and
 - (ii) bidders that do not attend are not precluded from submitting a bid.

7A.030 (1995-07-01) Refer to SACC Manual, [Subsection 5-A](#), for clauses concerning location, timing and administration of the bidder's conference or site visit. Request in the bid solicitation that bidders identify, in writing, before the meeting date, the names of the representatives who will attend and a list of the issues they propose to raise.

Payments of Invoices

Progress Payments and Advance Payments

7A.033 (2005-12-16) When progress payments or advance payments are used, contracting officers should include the appropriate clause from [Subsection 5-H](#) of the SACC Manual in their bid solicitations and contracts.

Interest Payments on Overdue Accounts

7A.035 (1994-06-23) Canada pays interest on overdue accounts for contracts, call-ups against a standing offer and purchase orders.

7A.037 (1994-06-23) When dealing with federally or provincially regulated public utility companies, the conditions for payment of interest must conform with those approved by the appropriate regulatory bodies.

7A.038 (2005-12-16) SACC Manual general conditions [9601](#) reflect Canada's policy to automatically pay interest to contractors when an account is overdue and Canada is responsible for the delay.

The interest payment conditions set out in the general conditions must be strictly adhered to, except in special cases where the client requisition specifies a payment period longer than thirty (30) days, for example, when extensive product evaluation, inspection or testing requirements are involved.

Cash Discount Considerations

7A.041 (2005-12-16) For all contracts except those for advertising, payment may be made in advance of the due date when the supplier offers a cash discount for advance payment and the discount at least offsets the cost to Canada of paying early. Cash discounts for advance payment will not be considered in the evaluation of bids.

When the successful bidder offers a cash discount, this should be shown prominently in the contract, so that the paying office can take appropriate advantage of the offered discount.

Payment by Credit Card

7A.042 (2005-12-16) Supplier invoices may be paid using the Government of Canada Acquisition Card (credit card) in lieu of cheque issue, however, suppliers are not obligated to accept credit cards as a payment instrument unless it is specifically set out in the contract or standing offer. In some instances, advance payment via credit card may still represent a cost saving to the supplier.

The decision to use credit cards for payment of supplier invoices is a cash management decision made by the client. Where it is anticipated that the client may use the credit card to pay invoices, this should be identified in the contract (use SACC Manual clauses [H3027T](#) and [H3027C](#)) or standing offer (use SACC Manual clauses [M3503T](#) and [M3503C](#)).

When the successful bidder accepts payment by credit card, this should be shown prominently in the contract, so that the paying office can take appropriate advantage of the offered method of payment.

Audit Clauses

Cost Reimbursable

7A.045 (1994-06-23) Bid solicitations and contracts containing cost reimbursable elements must incorporate an appropriate audit clause. The term "cost reimbursable" covers the following bases of payment: actual cost; cost plus fixed fee; cost plus percentage of cost; and target price/ceiling price/target cost.

7A.046 (1998-11-23) Upon completion of a cost reimbursable contract, and also annually for multi-year contracts, the contractor will be required to provide a cost submission to the contracting officer. This is implemented by using SACC Manual clause [C0300D](#) and [C0301D](#). The requirement for a cost submission must be listed as a mandatory deliverable item within the contract, except that it is discretionary in the case of repair and overhaul contracts.

Fixed Time Rate

7A.047 (1998-11-23) Upon completion of a fixed time rate contract, the contractor must provide a submission detailing the actual time incurred in performance of the contract. The requirement for this submission will be included as a mandatory deliverable item by using SACC Manual clause [C0708D](#). In addition, SACC Manual clause [C0700D](#) or [C0701D](#) must be used, to provide for the verification of time for acceptability and the verification of time for accuracy.

Method of Bid Response

7A.051 (2004-05-14) The contracting officer may select from the following methods of bid response:

- (a) in writing
 - all values;
- (b) by telephone
 - below \$25,000 (including all applicable taxes);
 - any amount, in cases of documented extreme urgency (director approval mandatory)
- (c) by electronic transmission (e.g. electronic bid package or facsimile). (See [7D.317](#))
 - any amount, except for bids required to be under seal and bids required to contain a surety bond.

Where some form of, or any, electronic transmission of bids is not acceptable, this must be clearly indicated in the bid solicitation, and should be in the Notice of Proposed Procurement.

Canadian Arsenals Limited Certification

7A.055 (1994-06-23) The Act to authorize the divestiture of Canadian Arsenals Limited reflects Canada's wish to maintain Canadian Arsenals Limited as a Canadian-owned and -controlled Corporation. It prevents non-residents from holding or beneficially owning more than 25 percent of the voting shares in respect of which votes may ordinarily be cast to elect directors of the Corporation. The Purchase and Sale Agreement relating to the divestiture also contains this restriction. By the same instrument, the seller and the buyer have agreed respectively to request confirmation of and to confirm the maintenance of the Canadian ownership status of the Corporation as a condition of each future supply contract to be entered into between these two parties.

7A.056 (1994-06-23) All PWGSC contracts with Canadian Arsenals Limited, or any successor corporation formed by any subsequent amalgamation of the Corporation, must include SACC Manual clause [K9002D](#). This clause certifies compliance with the requirements of the [Canadian Arsenals Limited Divestiture Authorization Act](#).

Transportation Costs

7A.060 (1998-02-16) For most requirements with an estimated expenditure of \$25,000 (including GST/HST) or more, with known delivery points, contracting officers should solicit bids on the basis of FOB destination. (See [6E.621](#) and [7D.409](#).)

For requirements with unknown delivery points, contracting officers should solicit bids on the basis of FOB origin only.

Truck Haulage Rates

7A.061 (2002-12-13) The purpose of this policy is to make provision for independent trucking contractors working on federal government contracts to be paid haulage rates that are in accordance with minimum or maximum rates as and where established by the provincial and territorial governments across Canada, as required by [section 16.14](#) of the *TB Contracting Policy*. These rates are not necessarily those established or recommended by the various independent trucker's association. For haulage work between provinces and territories, the applicable rates are to be those that are in effect in the province or territory in which the majority of the work or the largest component of the work is located.

For requirements involving work in whole or in part of a haulage nature, bid solicitation documents must include SACC clause [C5205T](#). Clause [C5205C](#) must be included in any resulting contractual documents. The bid solicitation clause requires the prime contractor to agree to pay and to certify that, under any resulting contract, it will pay its subcontractors haulage rates as established by the relevant provincial or territorial authority, as and where applicable. The contractor is also required to flow down this commitment to any subcontractors. The contract document clause will provide the right to audit to ensure compliance with the requirement of the Truck Haulage Rates policy.

Where the rates quoted are below the minimum rates or above the maximum rates established by the appropriate provincial or territorial authorities, prior to the award of the contract or standing offer, contracting officers should exercise due diligence by:

- (a) challenging the validity of the quoted rates,
- (b) requesting the bidder/tenderer to confirm its intention to comply with the policy and/or regulations and to explain how it intends to comply, and
- (c) providing that bidder/tenderer with the opportunity to withdraw (not correct / fix) its bid/tender/offer.

Fair Wages

7A.062 (2002-12-13) The purpose of this policy is to make provision for ensuring that, on federal government construction contracts, contractors will pay their employees at least the minimum wages as and where established by the federal government across Canada and described in the applicable Fair Wages schedule(s). The applicable wage schedule is to be the one that is in effect in the area in which the work, the majority of the work or the largest component of the work is located.

For requirements involving fair wages, bid solicitation documents must include clause [C5205T](#). Clause [C5210C](#) must be included in any resulting contractual document. The bid solicitation clause requires the prime contractor to agree to pay and to certify that, under any resulting contract, it will pay its employees at least the minimum wage rates as established by the relevant federal authority. The contractor is also required to flow down this commitment to any subcontractor. The contract document clause will provide the right to audit to ensure compliance with the requirement of the Labour Conditions and Fair Wage Schedule.

Where the wages quoted are below those in the schedule published by the federal authority, prior to the award of the contract or standing offer, contracting officers should exercise due diligence by:

- (a) challenging the validity of the quoted wages,
- (b) requesting the bidder/tenderer to confirm its intention to comply with the policy and/or regulations and to explain how it intends to comply, and
- (c) providing that bidder/tenderer with the opportunity to withdraw (not correct / fix) its tender/offer.

Multi-Item Bids

7A.064 (1994-06-23) While the standard conditions of bids provide for their acceptance "in whole or in part", it is sometimes appropriate to emphasize the prerogative to award the contract, or create the Standing Offer (SO), on either an aggregate or partial basis by including SACC Manual clause [C9000T](#) in the bid solicitation.

Royalty Payments and Licence Agreements

7A.068 (1997-06-23) Where royalty payments may have to be made by the contractor or subcontractors in the performance of contracts, the applicable sections of the appropriate general conditions or supplemental general conditions should be included in the bid solicitation document. Bidders must provide where applicable, the patent or registered industrial design numbers together with places and dates of issues and copies of the licence agreements; or technical descriptions and drawings of the processes or devices being purchased. (See [6B.159](#).)

Intellectual Property

7A.070 (2005-06-10) The bid solicitation should make clear to potential bidders the ownership of any Intellectual Property (IP) rights, as determined by the client department. SACC Manual clauses may be used in conjunction with the general conditions and supplemental general conditions to meet the client department's requirement (see [Annex 7.5](#)).

In the case of low-dollar value procurements which use general conditions [2029](#), section 13, Title, contains a provision to the effect that copyright, where it exists, belongs to Canada upon delivery and acceptance by Canada.

Exchange Rate Fluctuations

7A.075 (2003-05-30) Whenever it is proposed to offer protection against the risk of exchange rate fluctuation, SACC Manual clause [C3010T](#) must be included in the bid solicitation. (See [6C.313](#).) *Bidders requesting the exchange rate adjustment provision will use form [PWGSC-TPSGC 9411](#), Claim for Exchange Rate Adjustments, to identify the value in foreign funds of the foreign currency component. The contracting officer will show in Column 3 the initial exchange rate factor which will be the Bank of Canada exchange rate in effect on the date of bid closing or on any other date specified in the bid solicitation. This exchange rate factor will be reflected in the resulting contract for the purpose of calculating the amount of any claim for adjustment.*

7A.076 (1996-06-03) Whenever exchange rate fluctuation is not expected to be an issue and that it is therefore not proposed to offer protection against it, SACC Manual clause [C3011T](#) must be included in the bid solicitation to clearly indicate to bidders that a request for exchange rate adjustment will not be considered and that it will render the bid non-responsive.

Request for a Standing Offer

7A.080 (2005-12-16) When we seek standing offers (SOs) from suppliers on a competitive basis, the supplier downloads a Request For a Standing Offer (RFSO) from MERX. When standing offers are awarded on a sole source basis, the contracting officer sends the RFSO directly to the supplier. The RFSO must give instructions on the use, purpose and limitations of the proposed SO.

7A.081 (2005-12-16) The standard instructions and conditions [9403-6](#) are designed specifically for SOs, and should be incorporated by reference at the beginning of each RFSO and Standing Offer and Call-up Authority document.

7A.082 (1994-06-23) The contracting officer will establish and make reference to minimum, if applicable, and maximum financial limitations for individual call-ups in the SO.

Call-ups against SOs are considered individual contracts and are subject to contracting authorities delegated by Treasury Board to clients. The contracting officer may nevertheless set more restrictive limits appropriate to the individual SO.

7A.083 (2001-12-10) The inclusion of a Limitation of Expenditure in standing offers is optional. The contracting officer will determine the need for inclusion of a limit based on the type of Standing Offer (Master or Individual), the degree of control over total expenditures which is either possible or desirable, and the needs of the client.

Services - Non-Permanent Residents

7A.088 (1994-06-23) The *Immigration Act* and Regulations set out the conditions under which non-permanent residents obtain employment authorization before receiving permission to enter Canada for temporary work. This includes temporary entry to perform work under contract to the federal government.

7A.089 (2006-06-16) When soliciting bids for goods and services that may result in the need for the services of non-permanent residents to be performed in Canada, the appropriate SACC Manual clauses must be included in bid solicitations and contracts:

- (a) [A2000C](#) where the contract is to be with a Canadian supplier;
- (b) [A2001C](#) where the contract is to be with a foreign supplier.

Former Public Servants

7A.095 (2004-05-14) 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](#).)

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 interested in the entity.

Taxes and Duties

7A.100 (2003-12-12) It is established procedure, as set out in following sections, that bidders from outside Canada do not include applicable Canadian customs duties and excise taxes in their bids. SACC Manual clause [A0221T](#) should be used.

Contracting officers may on occasion judge it appropriate to request foreign suppliers to bid prices inclusive of these duties and excise taxes. In these cases, SACC Manual clause [A0220T](#) should be used. However, this may have an effect on the number of bidders, many of whom are accustomed to bidding FOB plant, and who are not prepared to take the time to gather the required information and make the necessary calculations. Note that it is the importer of record who is responsible for paying these excise taxes and duties, so a foreign bidder has no direct interest in the calculations unless the requirement is to be FOB destination.

Customs Duty

7A.101 (2003-12-12) Bid solicitations must contain all customs duty information necessary to permit bidders to submit responsive bids.

Bidders in Canada must include all applicable duties in their prices, unless otherwise indicated. In resultant contracts, all applicable duties must be included in the price.

Except where prices are specifically requested inclusive of duties and taxes in Canadian dollars (see [7A.100](#)), bidders outside Canada must not include Canadian customs duty. In resultant contracts, duties must not be included in the price, but are to be paid, upon the importation of goods, by the client. However, a foreign-based contractor who subcontracts in Canada for manufacture and delivery of goods in Canada will include all applicable duties chargeable to the subcontract.

7A.102 (2004-05-14) For all Department of National Defence (DND) contracts, the Goods and Services Tax/Harmonized Sales Tax (GST/HST) is to be reimbursed for non GST/HST registrants. DND will reimburse prime contractors only the actual GST/HST that is paid to the Canada Revenue Agency (CRA). Refer to [7E.606](#) for further information on DND contracts only for handling of GST/HST at the contract award stage.

Withholding of 15 percent on Service Contracts with Non-Residents

7A.103 (2005-06-10) Non-resident contractors must be informed during bid solicitation and contract negotiation of the 15 percent withholding of payment. (See [6D.430](#) and [11.022](#).)

7A.104 (2005-06-10) Withholding pursuant to subsection 105(1) of the *Income Tax Regulations* does not apply to the following:

"Reasonable travel expenses

24. *The CRA provides an administrative exception from withholding for reasonable travel expenses. Travel expenses reimbursed to the non-resident for meals to a maximum of CAN\$45 a day per person and accommodation to a maximum of CAN\$100 a day per person will not be subject to Regulation 105 withholding and will not require vouchers to be retained by the payer.*

25. *Reasonable travel expenses, in excess of the above amounts, supported by vouchers retained by the payer and either paid directly to third parties on behalf of a non-resident, or reimbursed to a non-resident will also not be subject to Regulation 105 withholding.*

26. *Such travel expenses are limited to those expenses incurred for transportation, accommodation, or meals."*

Canada Revenue Agency
Income Tax Information Circular [75-6R2](#)

It should be noted that when a non-resident can demonstrate, based on treaty protection or estimated income and expenses, that withholding normally required is in excess of their ultimate tax liability, CRA may issue permission to the payer authorizing a reduction in withholding under subsection 105(1) of the Regulations. The procedure to apply for a reduction of withholding is provided for in Income Tax Information Circular [75-6R2](#), as well as in the [Non-Resident Withholding Guide 2004](#).

7A.105 (1999-12-13) When a service contract is awarded to a non-resident contractor in respect of services rendered in Canada, SACC Manual clause [C2900D](#) must be used.

Defence Contract and Defence Supplies

7A.106 (2006-06-16) Any contract constituting a "[defence contract](#)" as defined in the *Defence Production Act* (DPA) must contain *Standard Acquisition Clauses and Conditions* (SACC) Manual clause [A9006C](#). For standing offers, any call-up constituting a "defence contract" must incorporate clause [M0022D](#).

A contract issued on behalf of the Department of National Defence (DND) is not necessarily a defence contract. For example, a contract for goods purchased for DND's day to day operations is not a defence contract. Furthermore, it is also possible for a defence contract to be issued on behalf of a department other than DND. Only the client, as the technical authority, can determine whether a particular requirement will result in a defence contract as defined in the DPA.

7A.107 (2005-06-10) Bid solicitations, Requests for Standing Offers and contracts for defence supplies estimated at \$250,000 or more, that involve importation of defence supplies, and requires the contractor to be the importer, must contain SACC Manual clause [C2601D](#). This clause specifies that the contractor will be responsible for pre-arranging remission on importation or for paying customs duties on importation and applying to the Canada Revenue Agency (CRA) for a refund. Use SACC Manual clause [C2610D](#) when DND is the Importer of Record. The importer is responsible for applying to Public Works and Government Services Canada in good time for the certification required by the Customs Tariff.

According to the CRA, "defence supplies" include only those specified goods which are, or may be, used directly or indirectly in the defence of Canada. Goods purchased for DND's day to day operations are not eligible.

7A.108 (2003-12-12) In bid solicitation documents subject to Tariff Item No. 9982.00.00 of the Schedule to the *Customs Tariff*, prices should be requested from suppliers located in Canada with customs duty exempted.

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

7A.112 (2004-05-14) Bid solicitations and contracts for the services in Canada of a non-resident must contain a provision which instructs the non-resident contractor to comply with Canada Border Services Agency' requirements and to pay customs duty, the GST and/or the HST, as applicable.

When it is anticipated that a non-resident may be required to import tools, equipment or spare parts to perform services in Canada, SACC Manual clause [C2604D](#) must be used.

Excise Taxes

7A.115 (1994-06-23) Bidders located in Canada must include all applicable excise taxes. In resultant contracts, the applicable taxes must be included in the total estimated price.

7A.116 (1994-06-23) Bidders located outside Canada must not include excise taxes. In resultant contracts, the applicable taxes shall not be included in the total estimated price.

Goods and Services Tax/Harmonized Sales Tax

7A.120 (1999-12-13) Bid solicitations, RFSOs and contracts must contain the appropriate GST/HST clause [C2215D](#) provided in the SACC Manual.

No GST/HST clause is necessary in bid solicitations or contracts where the contract will be performed entirely outside of Canada.

7A.121 (1998-02-16) Bidders shall provide the GST/HST separately in the bid. They must also indicate whether their supplies are fully taxable, zero-rated, or exempt, and must show into which category each item falls (see [Annex 6.10.](#))

Federal Contractors Program for Employment Equity

7A.127 (2006-06-16) All solicitations estimated at \$200,000 or more (including all applicable taxes) must incorporate *Standard Acquisition Clauses and Conditions* (SACC) Manual clause [K2000T](#), which specifies the possible application of the Federal Contractors Program for Employment Equity (FCP-EE). This clause also advises bidders subject to the FCP-EE that if they have been declared “ineligible contractors” by Human Resources and Social Development Canada (HRSDC), they are ineligible to receive government contracts over the *Government Contracts Regulations* (GCRs) threshold for solicitation of bids (currently at \$25,000). They are required to indicate their status with respect to FCP-EE, and sign a certification stating that if they are subject to FCP-EE, they continue to hold a valid certificate number, or if they have not obtained a number in the past, they are submitting an original certificate of commitment. SACC Manual clause [K2003C](#) will indicate that should a verification disclose a misrepresentation on the part of the bidder, the Minister shall have the right to treat the contract as being in default.

It would be prudent to include this clause in solicitations estimated slightly below \$200,000 (for example, starting at \$175,000), to allow for potential increases (beyond \$200,000) in the resulting contract or standing offer value.

7A.128 (2004-05-14) All solicitations over the threshold for solicitation of bids as set out in the GCRs (currently at \$25,000) and under \$200,000 must contain SACC Manual clause [K2002T](#) which advises bidders that if they have been declared “ineligible contractors” by HRSDC, they are ineligible to receive government contracts over the GCR threshold for solicitation of bids (currently at \$25,000). They are required to indicate their status with respect to FCP-EE, and sign a certification stating that if they have been subject to FCP-EE in the past, they continue to hold a valid certificate number. A new certificate is not required in this instance. SACC Manual clause [K2003C](#) will indicate that should a verification disclose a misrepresentation on the part of the bidder, the Minister shall have the right to treat the contract as being in default.

Controlled Goods

7A.130 (2004-12-10) SACC Manual clause [A9130T](#) must be included in bid solicitation documents and clause [A9131C](#) in contracts when there is production of or access to controlled goods.

For more information on controlled goods, contracting officers should visit the [Controlled Goods Program Website](#).

Joint Ventures

7A.133 (1994-06-23) When bids are anticipated from joint ventures, the bid solicitation must include SACC Manual clause [K9001T](#) requiring bidders to state whether the bid is submitted in joint venture and, if so, the participants and the structure of the joint venture.

U.S. Defense Priorities and Allocations System

7A.140 (2004-05-14) The United States (U.S.) Defense Priorities and Allocations System (DPAS) is intended to:

- (a) assure the timely availability of industrial resources to meet current national defense and emergency preparedness program requirements; and
- (b) provide an operating system to support rapid industrial response in a national emergency. By specific agreement, Canada may have its contracts, involving U.S. suppliers, for defense program items assigned priorities under the DPAS.

Priority Ratings are intended to support approved Defense programs. Priority Ratings should **not** be used to support procurement of:

- (a) civilian items for resale in Military Exchanges or the packaging for such items;
- (b) any items which
 - (i) are commonly available in commercial markets for general consumption;
 - (ii) do not require major modification when purchased for approved program use; and
 - (iii) are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements; or
- (c) items to be used primarily for administrative purposes, such as for personnel or financial management.

Contracting officers should seek assistance from the Central Allocations and Defence Priorities Section Officer, Business Management Directorate (BMD), to determine whether the system may be utilized for U.S. procurements when dealing with a contract with a defence connotation. The intent would be to utilize the system specifically to maintain delivery schedules to meet military production and logistical requirements. As well, section 700.17(f) of the DPAS regulation states: “A person is not required to place a priority rating on an order for less than US\$50,000, or one-half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold, whichever amount is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating.”

Contracting officers may refer to either of the following Internet sites for reference material on the DPAS: <http://www.bxa.doc.gov/defenseindustrialbaseprograms/OSIES/DPAS/Default.htm> and <http://www.ml.afri.af.mil/dpas/default.html>.

Prior to contract award, and with consideration of the foregoing, contracting officers must insert SACC Manual clause [C2800C](#) in all Canadian defence contracts placed with U.S. suppliers and SACC Manual clause [C2801C](#) in all Canadian defence contracts placed with Canadian suppliers. (See [6B.195](#).)

To ensure that the U.S. DPAS is utilized when a U.S. supplier is involved in the procurement process, Canadian contractors should insert SACC Manual clause [C2801C](#) in their orders with other Canadian suppliers.

A priority rating placed on a U.S. supplier may be extended through the procurement chain to second, third and subsequent tiers of U.S. suppliers. This arrangement is not available to Canadian suppliers. Consequently, the priority rating placed on a Canadian supplier cannot be extended to other Canadian suppliers at any level.

Contracting officers must provide a copy of all the defence contracts and amendments placed with

Canadian and U.S. suppliers to the Central Allocations and Defence Priorities Section Officer, BMD.

Copies of headquarters' contracts are distributed through arrangements made with the contract distribution area, but other officers must make their own arrangements to ensure distribution.

For a variety of reasons, U.S. suppliers may be unable to deliver material to Canadian contractors, within the time frames specified, despite the prompt application for and the timely issuance of a priority rating. To enable the Central Allocations and Defence Priorities Section Officer to intervene in delivery problems, the Canadian suppliers should prepare and submit form PWGSC-TPSGC 1451-1, Application for U.S. Priority Rating Covering Importation of Quarterly Requirements of Materials from the United States (english only) or PWGSC-TPSGC 1451-2, Application for U.S. Priority Rating Covering Specific Materials from the United States (english only).

BMD shall, on behalf of PWGSC, coordinate Canada's participation in the U.S. DPAS. Accordingly, all applications for priority rating shall be referred to the Central Allocations and Defence Priorities Section Officer, BMD.

The Special Priorities Assistance request is not a substitute for procurement planning nor is it intended to compensate for delinquency in placing orders.