

Section 7F: Completing the Contracting Process

Completing Client Inappropriately Initiated Procurement Process

7F.690 (2001-12-10) Public Works and Government Services (PWGSC) is asked, from time to time, to process requisitions, which may be viewed as “difficult or sensitive”, where the procurement process was initiated by client departments, i.e. (sourcing, bidding, evaluation, selection etc.) and then PWGSC is asked to endorse the process and award a contract. PWGSC is accountable for the integrity of the completion of the procurement process including all actions within the process: this also applies to actions originating from the client that may or may not be in compliance with Treasury Board or PWGSC policies or applicable legislation. To reduce the risk of undefendable complaints and challenges associated with these procurements, the following procedures shall be followed:

- (a) Upon receipt of a requisition for a contract or contract amendment, where the client has already taken certain steps in the procurement process, the contracting officer shall alert the Manager to the situation.
- (b) The contracting officer will review the procurement process already initiated by the client, to identify any deviations from normal practice or policy and to determine whether PWGSC can endorse the procurement process. The contracting officer must develop a clear understanding of all procurement related activities that have been completed, including whether a contract has been awarded or the supplier has been given the go-ahead to commence work. Where a contract has been awarded, or the supplier authorized to proceed with the work, the procedures in [7F.692](#) shall apply.
- (c) In the event that some of the actions of the procurement process, initiated by client departments, do not adhere to the established supply policy guidelines, PWGSC may have to reinstate the procurement process. Whenever a PWGSC contracting officer must act in a way not clearly set out in this Manual, integrity and its supporting principles provide necessary guidance. (See [1.001](#))

Ratification by Treasury Board

7F.691 (2002-12-13) "If a contracting authority enters into a contract without Treasury Board approval, when such approval should have been obtained, ratification by the Treasury Board must be sought as soon as possible."

*TB Contracting Policy
Subsection 4.1.11*

In a case where contract approval is being sought for work already commenced for whatever reason, the contracting officer must include with the request for Treasury Board (TB) approval the client's certification to the effect that the minister concerned had agreed to the commencement of work before the receipt of TB approval.

Confirming Orders and Contracts Involving Pre-contractual Work

7F.692 (2005-06-10) Public Works and Government Services Canada (PWGSC) is not in the business of placing contracts to confirm the actions of client departments. The practice of providing such service to client departments should be discouraged to the maximum extent practicable. However, acknowledging that in some instances it may be necessary for PWGSC to become involved because of its exclusive goods procurement authority, and that PWGSC may have some value to add in processing confirming orders where the work is complete or contracts where the work is incomplete, the following procedures will apply:

- (a) Requests for confirming orders and contracts involving pre-contractual work must be evaluated and processed on the basis of the circumstances surrounding each instance. Where the request is the result of attempts to circumvent normal procurement procedures, return of the request to the client department should be a prime consideration.
- (b) Where the work has been completed, a confirming order will be prepared by Legal Services and will only contain the information necessary to document the transaction (the parties, the work performed, the dates, the amount, a release and, if required, a transfer of intellectual property rights). Confirming orders processed by PWGSC are to be approved by the appropriate director or higher authority, as determined by the contract value and non-competitive contract approval authority limits. These limits are reduced by 50 percent below the Assistant Deputy Minister (ADM) level as per [Annex 6.1.2](#).
- (c) Where the work has not been completed, a contract will be prepared by the contracting officer. This contract should only include work that was not subject to proper contract authorization. Even though the work started prior to required contract authorization, the contract should not be backdated. The date (including the date in the Period of the Contract clause) of the contract must be the date of issuance of the written contract. To ensure that the work done prior to the contract date will be covered by the contract, a Pre-contractual Work clause (*Standard Acquisition Clauses and Conditions Manual* clause [A9120C](#) or [A9094C](#) as appropriate) indicating the date the work has started must be included in the contract to pay the contractor for any work performed prior to the issuance of the written contract. Contracts processed by PWGSC are to be approved by the appropriate director or higher authority, as determined by the contract value and non-competitive contract approval authority limits. These limits are reduced by 50 percent below the ADM level as per [Annex 6.1.2](#).

7F.693 (2005-06-10) When the client department's activities prior to PWGSC's involvement have created an exposure, consideration must be given to obtaining an indemnification from a senior official of the client department before processing begins. Such consideration will assess the probability and impact of potential negative events (e.g. Canadian International Trade Tribunal complaint) that may occur as a result of the exposure.

Coding

7F.694 (1994-06-23) Statistical information pertaining to PWGSC contracting activities is required to meet corporate and parliamentary needs. Contracting officers are responsible for ensuring the complete and accurate recording of all contracts.

Contracting officers must follow the coding procedures in the Contract Coding Reference Guide.

Debriefings

7F.698 (1998-11-23) Debriefings should be made available to unsuccessful bidders on request, **but** only after contract award. A debriefing should include an outline of the reasons the bid was not successful, making reference to the evaluation criteria. In addition, unsuccessful bidders must be informed of the recourse mechanisms available to them, should they feel that despite the information provided during the debriefing, they are still dissatisfied with the handling of a particular procurement. In the case of procurements subject to trade agreements, unsuccessful bidders shall be informed that they have the right to file a complaint with the Canadian International Trade Tribunal; in the case of procurements not subject to trade agreements, unsuccessful bidders shall be informed that they have the right to bring action in Federal Court.

Care must be taken to protect the confidentiality of information relating to other bids. **The release of information relating to other bids by contracting personnel must comply with**

procedure [7F.706](#) below.

Disclosure of Information

7F.705 (1997-02-31) To ensure a consistent approach to the public release of information, Public Works and Government Services Canada (PWGSC) has agreed to release the unit prices contained in goods and services standing offers on a routine basis. However, it was determined necessary for bidders to be informed of PWGSC's intention to disclose their unit prices, in the event of a resultant standing offer. Contracting officers must therefore incorporate clause [M0090T](#) of the *Standard Acquisition Clauses and Conditions* (SACC) Manual to all requests for standing offers pertaining to goods and services requirements, and clause [M0090C](#) in the subsequent standing offer.

There may be rare circumstances where the policy as set out in [7F.705](#) above cannot be applied. Such situations shall be handled on a case by case basis and shall require the approval of the manager or higher, depending on the approval authority, following consultation with the Access to Information and Privacy (ATIP) office as appropriate, prior to the issuance of a solicitation document.

7F.706 (2004-12-10) PWGSC has determined that the following requests for bid, contract or standing offer information can be handled by contracting officers on a routine basis, **after** a contract or standing offer has been awarded:

- (a) for all goods and services requirements, the name of the successful bidder and unsuccessful **corporate** bidders, responsive and non responsive, together with the total amount of their bid and total score if applicable. (Since information on bidders who are **individuals** may qualify for exemption under the [Privacy Act](#), such requests should be directed to the ATIP office as indicated in [7F.707](#) (a) below.)
- (b) for all goods and services requirements subject to public opening, information which was released at the public opening of bids (i.e. name and address of each bidder and the total amount of each bid); and
- (c) individual unit pricing information contained in standing offers only, whenever the bidder has been notified of the Department's intent to disclose such information by incorporating clause [M0090T](#) of the SACC Manual to the request for standing offer.

7F.707 (2002-12-13) The following types of requests for bid, contract or standing offer information must be referred to:

Access to Information and Privacy Office
 Portage III, 5C1
 Gatineau, Québec K1A 0S5

Telephone: (819) 956-1820
 Facsimile: (819) 994-2119.

Requestors should be advised that to be processed by the ATIP office, their requests must be submitted in writing, and be accompanied by an application fee in the amount of \$5 either by cheque or debit to a credit card.

- (a) names of bidders who are **individuals** and the content of their bids, including prices, as such information may qualify for exemption under the [Privacy Act](#);
- (b) copies of bids, including any accompanying catalogues, handbooks or pricing guides;
- (c) copies of contracts, purchase order or standing offer documents, including any

- accompanying PWGSC-produced catalogues, handbooks, or acquisition guides;
- (d) bid and contract information pertaining to classified requirements;
 - (e) information contained in bids that have been cancelled or superseded by later bids;
 - (f) **individual pricing** information pertaining to contracts and purchase orders for goods and services and construction;
 - (g) any information not covered herein.

Notification to Unsuccessful Bidders

7F.710 (1997-03-31) Contracting officers must notify unsuccessful bidders as soon as possible **after contract award** where large expenditures are involved or when considerable professional, technical or production resources or equipment, e.g. charter aircraft, must be marshalled and held in reserve by bidders pending a contract award decision. (Notification to unsuccessful bidders **prior** to contract award is covered in procedures [7D.47B](#) to [7D.486](#).)

It is a good practice to notify unsuccessful bidders as soon as possible after contract award.

Posting of Award Notices

7F.717 (2004-12-10) For all publicly advertised procurements, award notices are generated automatically through the Automated Buyer Environment (ABE) and published on the Government Electronic Tendering Service (GETS) (MERX). However, where the procurement is not advertised for reasons related to national security, an Award Notice will not be posted. Contracting officers must identify the appropriate Goods and Services Identification Number, to the eight-character level, for each contract.

Contracting officers who do not use ABE are responsible for creating an award notice using the GETS (MERX) on-line notice creation tool, as MERX will not create this notice automatically.

7F.718 (2004-12-10) For procurements that are subject to North American Free Trade Agreement and World Trade Organization Agreement on Government Procurement, an Award Notice must be published on GETS (MERX) **as well as** in the *Government Business Opportunity* within seventy-two (72) days of awarding the contract. For procurements that are subject to the Canada - Korea Procurement Telecommunications Equipment Agreement, an Award Notice must be published on GETS (MERX) within seventy-two (72) days of awarding the contract. Although there are no minimum time periods identified for the Agreement on Internal Trade, the seventy-two (72)-day limit applies for reasons of consistency.

Award notices are generated by ABE and sent to GETS (MERX) once the contracting officer releases the procurement summary with the electronic coding sheet. An Award Notice will be generated for all solicitations that have been publicly advertised on GETS (MERX), regardless of the value of the resulting contract.

Industrial Security Requirements

7F.724 (2002-05-24) If the contract contains security requirements, a copy of the contract must be forwarded to the Canadian and International Industrial Security Directorate.

Release of Bid Security

7F.726 (1997-09-15) Surety bonds lapse automatically and must be destroyed on expiration of the purpose or period for which they were required. Security deposits (government guaranteed

bonds, bills of exchange, irrevocable standby letters of credit) must be returned to bidders. Letters of credit must be returned by the bidder to the issuer to complete the discharge.

7F.727 (1997-09-15) Lapsing of surety bonds, or return of security deposits (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) shall occur:

- (a) for all bidders, at the expiration of the bid validity period, either as originally set or as extended;
- (b) for unsuccessful bidders, prompt notification or return of a security deposit, immediately after a contract is issued, is essential in such cases so as not to constrain the unsuccessful bidder's ability to make new bids;
- (c) for a successful bidder, immediately upon award of a contract, once the contract security has already been received or immediately if no contract security is required.

Mandatory Registration of Interest in Crown Goods

7F.733 (1994-06-23) Measures may be required to guard against the possibility that unpaid suppliers, contractors or lenders will attach liens to goods to which the Crown has taken title through full or partial payment. In provinces other than Quebec, the Crown can register notice of its interest in the goods with a view to protecting itself against the risk of liens. The registration requirements differ for each province.

In practical terms, because of the complexities involved, this action is appropriate only on high dollar value contracts. Contracting officers must register notice of the Crown's interest in the goods deliverable in the following cases:

- (a) PWGSC goods contracts valued at \$50 million or over, with registration effected promptly after contract award.
- (b) PWGSC goods contracts valued at \$10 million or over, awarded to a contractor found, after detailed financial analysis, to have weak financial capability.

Registration is to be performed promptly after the receipt of the financial opinion.

- (c) Other PWGSC goods contracts valued under \$10 million and awarded to a contractor found, after detailed financial analysis, to have weak financial capability, if registration is recommended by Legal Services.

In all provinces, for contracts relating to ships, Crown interests can be registered under the [Canada Shipping Act](#).

7F.734 (1994-06-23) All registration procedures will be executed in consultation with, and as directed by, Legal Services. (See [11.106](#).)