

Chapter 5 - Sourcing Strategy

Determining the Extent of Competition

- 5.001 (1994-06-23) Whenever possible, contractors are to be selected using a competitive process. The flexibility to depart from this approach depends on the procurement framework being followed. The type of competitive solicitation that may be used will also depend on the procurement framework.
- 5.002 (2002-12-13) The *Government Contracts Regulations* (GCR) require the competitive soliciting of bids before any contract is entered into. However, contracts may be entered into without soliciting bids when:

“(a) the need is one of pressing emergency in which delay would be injurious to the public interest;

An emergency may be an actual or imminent life-threatening situation, a disaster which endangers the quality of life or has resulted in the loss of life, or one that may result in significant loss or damage to Crown property.

(b) the estimated expenditure does not exceed \$25,000; or \$100,000 where the contract is for the acquisition of architectural, engineering and other services required in respect of the planning, design, preparation or supervision of the construction, repair, renovation or restoration of a work; or \$100,000 where the contract is to be entered into by the member of the Queen’s Privy Council for Canada responsible for the Canadian International Development Agency and is for the acquisition of architectural, engineering or other services required in respect of the planning, design, preparation or supervision of an international development assistance program or project;

Contracting authorities are nevertheless expected to solicit bids whenever it is cost effective to do so.

(c) the nature of the work is such that it would not be in the public interest to solicit bids;

“This provision is normally reserved for dealing with security considerations or to alleviate some significant socio-economic disparity.

(d) only one supplier person or firm is capable of performing the contract.

This exception is quite definite and should be invoked only where patent or copyright requirements or technical compatibility factors and technological expertise suggest that only one contractor exists.”

*Treasury Board Contracting Policy
Section 10.2*

Use of the National Security Exceptions

- 5.007 (2005-12-16) The national security exceptions provided for in the North America Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement (WTO-AGP) and the Agreement on Internal Trade (AIT) allow Canada to remove a procurement from some or all of the obligations of the relevant trade agreement(s) where Canada considers it necessary to do so in order to protect its national security interests specified in the text of the national security exceptions. The purpose of the national security exceptions is to ensure that parties to the agreements are not required in any way to compromise these interests through application of the obligations of the trade agreements.
- 5.008 (2005-12-16) Texts of the National Security Exceptions

- (a) NAFTA: Article 1018: Exceptions
- “1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes.
- (b) WTO-AGP: Article XXIII: Exceptions to the Agreement
- “1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.
- (c) AIT: Article 1804: National Security
- “Nothing in this Agreement shall be construed to:
- (i) require the Federal Government to provide, or allow access to, information the disclosure of which it determines to be contrary to national security; or
- (ii) prevent the Federal Government from taking any action that it considers necessary to protect national security interests or, pursuant to its international obligations, for the maintenance of international peace and security.”
- 5.009 (2003-12-12) The national security exceptions can be invoked to entirely remove the procurement from the obligations of the relevant trade agreements or to allow the use of some otherwise non-conforming measure.
- 5.010 (2005-12-16) The Canadian International Trade Tribunal (CITT), in its decision PR-98-005, has found that “the most senior level of substantive policy formulation and advice to the department on all supply operations activities...” has the authority to invoke the use of the national security exception, to exclude a procurement from the NAFTA, WTO-AGP and the AIT. For Public Works and Government Services Canada (PWGSC) that authority is the Assistant Deputy Minister of the Acquisitions Branch (ADM/AB).
- 5.011 (2004-05-14) Furthermore, PWGSC has decided that this specific authority will not be delegated to a lower official level because of the nature of the exception and having regard to s.24(2)(d) of the *Department of Public Works and Government Services Act*. PWGSC has further decided that a national security exception will not be invoked by anyone other than the ADM/AB.
- 5.012 (2005-12-16) Therefore, the following procedure is now in effect:
- (a) All requests to invoke the national security exceptions to exclude a procurement from the WTO-AGP, NAFTA or the AIT, or any combination of the agreements, will normally be submitted by the client department to the ADM/AB for approval, regardless of dollar value.
- (b) A request must be in the form of a letter from the responsible ADM, or equivalent to the ADM level, at the client department. The letter must explain the nature of the proposed procurement and, depending upon which trade agreement(s) applies, how it relates to:
- (i) Canada's "national security interests" or, pursuant to Canada's international obligations, "the maintenance of international peace and security". (AIT: Article 1804(b)); and/or
- (ii) Canada's "essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national

security or for national defense purposes". (NAFTA: Article 1018.1 / WTO-AGP: Article XXIII).

- (c) In reviewing requests to invoke the national security exception, the ADM/AB will be considering only the issue of whether or not to invoke the national security exception and will not be considering, at that time, other matters such as procurement methods, Procurement Plans or authority to enter into the contract. Client departments should work with contracting officers in determining which method of procurement should be used, in parallel with any request for approval of a national security exception, bearing in mind that even in situations where the national security exception is invoked, it remains government policy to compete requirements, subject to the exceptions to competitive contracting provided in the *Government Contracts Regulations* (GCRs).
 - (d) The utilization of the national security exceptions must be documented. In documents used to seek authority to enter into contract, and on the file, contracting officers must explain clearly that the national security exception is being invoked, specifying each of the trade agreements from which the procurement is being excluded and include a copy of the NSE approval on the file.
- 5.013 (2003-12-12) Contracting officers should bear in mind that invoking a national security exception to the trade agreements does not affect the obligation to comply with the GCRs in respect of such matters as sole source justifications, other sourcing strategy issues and contracting authority limits. Procurements for which an NSE is invoked remain subject to other relevant regulations and governmental and departmental policies, which may include posting a Notice of Proposed Procurement or an Advanced Contract Award Notice on the Government Electronic Tendering Services where appropriate, though the requirements of security may, in some cases, preclude such actions.
- 5.014 (2004-12-10) Within PWGSC, the Acquisition Strategy and Relations Directorate (ASRD) reviews, on behalf of the ADM/AB, requests to invoke the national security exception. Once approved, ASRD will notify the ADM/AB who, in turn, will provide a written confirmation to the client department that the national security exception has been invoked.

Contracting officers seeking advice to aid client departments in properly framing and requesting a national security exception should contact ASRD at (819) 956-6501.

Comprehensive Land Claims Agreements

- 5.020 (1996-01-01) Dependent upon the requirement, competition may be restricted to claimant group enterprises located within a certain Comprehensive Land Claim Settlement Area (CLCSA). For example, certain agreements make provision for the "right of first refusal" for the provision of certain commodities, i.e. business opportunities and ventures that are contracted out with respect to Parks and the right of first refusal to any new licenses to carry on economic activities related to wildlife and tourism.

Other agreements make provisions for giving the claimant group enterprises "first consideration or first priority" in sourcing certain requirements, i.e. silviculture services, management of designated heritage sites, and first consideration in providing technical and support services for contracts related to surveying the CLCSA.

- 5.021 (1996-06-03) Standing Offers and other supply arrangements are also affected by CLCAs. Contracting officers must notify all claimant groups of this type of procurement opportunity, especially when the contracting officer is unaware of which client department will issue a call-up against a standing offer.

The origin of the order (i.e. ordering office) does not determine the applicability of a CLCA, only the final delivery point.

- 5.022 (2004-12-10) For any procurement which has contracting activities that take place within a

CLCSA, contracting officers should consult the Acquisition Policy and Process Directorate (APPD), at telephone number (819) 956-4744 to determine whether a CLCA may affect the overall procurement strategy. APPD will assist contracting officers in identifying these obligations and in developing methods of meeting them on a case-by-case basis.

NAFTA, WTO-AGP and AIT

5.030 (2005-12-16) With the introduction of trade agreements like North America Free Trade Agreement (NAFTA), World Trade Organization Agreement on Government Procurement (WTO-AGP) and Agreement on Internal Trade (AIT), the non-competitive approach to the procurement process is limited tendering. Limited tendering is a process which allows deviations from the competitive process including the ability to contact a sole or single supplier or a number of suppliers individually. This in fact means that it is possible to have a competitive procurement within a limited tendering procurement. This concept should be kept in mind when examining the following circumstances (limited tendering reasons) for NAFTA, WTO-AGP and AIT. (See [5.031](#), [5.032](#), [5.033](#), [5.036](#) and [5.037](#).)

In procedures [5.031](#), [5.032](#), [5.033](#), [5.036](#) and [5.037](#) the applicable Contract Award Process (CAP) Code is included with each of the limited tendering reasons. This was done in order to ensure that the comparable limited tendering reason for each of the agreements (NAFTA, WTO-AGP and AIT) will be coded by contracting officers in a consistent manner. [Annex 5.3](#) - Contract Award Process (CAP) Codes illustrates the permissible CAP Codes depending on the type of solicitation chosen for the particular procurement.

"...limited tendering procedures are not used with a view to avoiding maximum possible competition or in a manner that would constitute a means of discrimination between suppliers of the other Parties or protection of domestic suppliers." (NAFTA Agreement, [Article 1016.1](#).)

5.031 (2005-12-16) For procurements subject to either NAFTA, WTO-AGP and AIT, limited tendering procedures may only be used under the following conditions:

- (a) in the absence of tenders in response to an open or selective tender, or where the tenders submitted either have resulted from collusion or do not conform to the essential requirements of the tender documentation, or where the tenders submitted come from suppliers that do not comply with the conditions for participation, on condition that the requirements of the initial procurement are not substantially modified in the contract as awarded; (CAP Code 05)
- (b) where, for works of art, or for reasons connected with the protection of patents, copyrights or other exclusive rights, or proprietary information or where there is an absence of competition for technical reasons, the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists; (CAP Code 71)
- (c) where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures; (CAP Code 81)
- (d) for additional deliveries by the original supplier that are intended either as replacement parts or continuing services for existing supplies, services or installations, or as the extension of existing supplies, services or installations, where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability* with already existing equipment or services, including software to the extent that the initial procurement of the software was covered; (CAP Code 74) and

* For procurements subject to AIT only, compatibility with existing equipment or services is acceptable and would be subject to a less stringent test than the interchangeability under NAFTA, WTO-AGP.

- (e) where an entity procures a prototype or a first good or service that is developed at its

request in the course of and for a particular contract for research, experiment, study or original development. Original development of a first good may include limited production in order to incorporate the results of field testing and to demonstrate that the good is suitable for production in quantity to acceptable quality standards, but does not include quantity production to establish commercial viability or to recover research and development costs. Where such contracts have been fulfilled, subsequent procurement of goods or services shall be competed, where applicable; (CAP Code 72)

- (f) for goods purchased on a commodity market; (CAP Code 20)
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as unusual disposals by enterprises that are not normally suppliers, or disposal of assets of businesses in liquidation or receivership, but not routine purchases from regular suppliers; (CAP Code 21) and
- (h) for a contract to be awarded to the winner of an (architectural) design** contest (CAP Code 22), on condition that the contest is:
 - (i) organized in a manner consistent with the principles of openness and fairness and is publicly advertised to suitably qualified suppliers to participate in the contest; and
 - (ii) organized with a view to awarding the design contract to the winner; and
 - (iii) to be judged by an independent jury.***

** For procurements subject to NAFTA only, the design contest is specifically architectural.

*** For procurements subject to AIT only, conditions for an independent jury are not required.

5.032 (1996-01-01) In addition, for procurements subject to NAFTA and/or AIT, the use of limited tendering procedures may also be applied where an entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected to compromise government confidences, cause economic disruption or similarly be contrary to the public interest (CAP Code 23).

5.033 (1996-06-03) In addition, for procurements subject to **WTO-AGP alone**, limited tendering procedures may be used under the following conditions:

- (a) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 percent of the amount of the main contract; (CAP Code 24) and
- (b) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV of the [WTO-AGP](#) and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services (CAP Code 25).

5.036 (1996-01-01) In addition, for procurements subject to AIT only (see [Article 506](#)), the following

circumstances may be used to justify deviations from the competitive procurement procedures of the AIT, provided that it is not done so for the purpose of avoiding competition between suppliers or in order to discriminate against suppliers of any other Party:

- (a) where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the Party and the organization includes rules for awarding contracts that differ from the obligations set out in [Chapter Five](#) of the AIT; (CAP Code 87)
- (b) where construction materials are to be purchased and it can be demonstrated that transportation costs and technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and pre-mixed concrete for use in the construction or repair of roads; (CAP Code 87) and
- (c) where normal procurement procedures would interfere with a Party's ability to maintain security or order or to protect human, animal or plant life or health. (CAP Code 90)

5.037 (1996-01-01) Where only one supplier is able to meet the requirements of a procurement, an entity may use procurement procedures that are different from those described in AIT [Article 506](#) (paragraphs 1 through 10), in the following circumstances:

- (a) for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly; (CAP Code 86)
- (b) for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor; (CAP Code 87)
- (c) for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work; (CAP Code 87)
- (d) for the procurement of subscriptions to newspapers, magazines or other periodicals; (CAP Code 87) and
- (e) for the procurement of real property (CAP Code 87).

5.038 (1996-01-01) The client must provide the rationale for any exception to competitive procurement. It is up to the contracting officer to determine the acceptability of the rationale. If there is no or inadequate substantiation, the contracting officer must advise the client of alternative products or sources, and attempt to reach agreement with the client on the most appropriate procurement strategy. When differences cannot be resolved, the next level of management should be consulted.

If a sole source issue cannot be resolved up to the director general level, a recommendation is to be submitted to the Departmental Executive Committee, and possible involvement of the Minister considered.

Competitive Processes

5.040 (1997-03-31) It is the contracting officer's responsibility to select the most effective process for notifying suppliers of a bid opportunity by taking into consideration the requirements of the trade agreements and the policies set out in this chapter.

Procurements Subject to Trade Agreements

5.041 (2005-12-16) For procurements subject to NAFTA, WTO-AGP or AIT, or a combination of these, public advertisement/notification provisions specified within these trade agreements must be followed. The procedures to be followed are generally consistent for all of the agreements. When there are inconsistencies, the contracting officer must select the procedures that demonstrate the

highest example of openness, e.g. the longer of two bidding periods.

Competitive procurements covered by NAFTA and/or the WTO-AGP must be advertised on the Government Electronic Tendering Service (GETS) and in the *Government Business Opportunities (GBO)* only. Procurements that are covered by the AIT must be advertised on GETS only. A procurement that is covered by the AIT and is also covered by NAFTA or the WTO-AGP must be advertised on both GETS and in the GBO. Additional notification processes (e.g. direct contact with suppliers), are not permitted.

Publication on the GETS, and, in the GBO for NAFTA or the WTO-AGP procurements is required when using:

- (a) Open tendering; and,
- (b) Selective tendering,
 - (i) Covered by NAFTA and WTO-AGP (or these agreements in combination with other agreements including the AIT):
 - When using a one-time source list, notice must be published to invite suppliers to qualify for inclusion on the list. Notice must also be given to solicit bids. This would normally require the publishing of two separate notices.
 - When using a permanent source list, a notice must be published annually identifying the existence of the source list and how to qualify and notice must also be published for each bid solicitation involving the use of the list; and,
 - (ii) Covered by AIT only when using a one-time or permanent source list a notice must be published annually identifying the existence of the source list and how to qualify.

For procurements subject to the Comprehensive Land Claims Agreements (CLCAs), contracting officers must check the particular CLCA to ensure that correct notification has been provided.

Procurements Not Subject to Trade Agreements

5.043 (2002-12-13) For procurements not subject to trade agreements, government policy requires that bids be solicited competitively before entering into a contract. Competition can be achieved by soliciting bids through public advertising (GETS or other public media) or by referring to source lists. Non-competitive procurement will only be used in specific circumstances. (See [5.002](#).)

This is consistent with the [Government Contracts Regulations](#), Part 1, Section 7, as follows:

- "7. A contracting authority shall solicit bids by:
- (a) giving public notice, in a manner consistent with generally accepted trade practices, of a call for bids respecting a proposed contract; or
 - (b) inviting bids on a proposed contract from suppliers on the supplier's list."

Public Advertising

5.044 (1997-09-15) PWGSC's preferred process for notifying potential suppliers is to publicly advertise requirements on the GETS. (See [7B.160](#).)

When advertising through the GETS may not achieve the necessary results, the use of other public media (e.g. newspapers, trade journals, etc.), in addition or instead, can be considered on a

case-by-case basis. (See [5.048](#).)

When public advertising (GETS or other public media) is used, potential suppliers may be notified directly about the opportunity.

When public advertising other than the GETS is used, the procurement officer is responsible for preparing the Notice of Proposed Procurement and for distributing bid documents directly to suppliers. Ensure that the name and telephone number of the contracting officer is included in the notice. Any associated costs will be at the department's expense.

The Treasury Board Open Bidding Contracting Authorities can only be used when a procurement has been advertised on the GETS and/or in the GBO. When the GETS and/or GBO are not used, the traditional competitive authorities must be used. (See [6A.020](#).)

Source Lists

5.046 (2002-12-13) When public advertising is not considered the most effective means to notify potential suppliers of a bid opportunity, source lists must be used. Advertising on the GETS in order to generate a source list is an option which can be considered.

Source lists can be developed and maintained by individual sectors or regions for specific commodities. Suppliers may apply to be listed at any time, and all qualified suppliers are to be included on the list within a reasonably short time.

When using source lists, it is essential that the selection of potential suppliers is fair and ensures equity of opportunity.

Normally, where source lists are used, other than rotational source lists:

- (a) any other supplier making a request may be provided with a bid solicitation and be considered for evaluation; and
- (b) these lists may be supplemented by a contracting officer's knowledge of potential sources and recommendations made by the client.

Automated Source Lists, i.e. AVRS and SELECT, provide a systematic rotation of vendors in order to ensure equity of opportunity for suppliers, and must be used where they apply. For SELECT, only those firms identified in the rotation are entitled to be invited and to bid.

Selecting the Notification Process

5.047 (2005-12-16) Except for those procurements covered under NAFTA, WTO-AGP or AIT, public advertising (GETS or other public media) is not required for the following:

- (a) Procurements for the protection of Canada's essential security interests; this can only be exercised when:
 - (i) the Department of National Defence (DND) certifies that the requirement meets national security requirements, or
 - (ii) the bid documentation from any client is classified "TOP SECRET", "SECRET" or "CONFIDENTIAL" or designated "PROTECTED";
- (b) procurements from government rehabilitation institutions (e.g. CORCAN);
- (c) local procurements made by Public Works and Government Services Canada (PWGSC) offices abroad;
- (d) Major Crown Projects;

- (e) procurements for bulk foods and fertilizer made in furtherance of "tied aid" to developing countries;
- (f) procurements subject to direction by Cabinet, legislation or regulations such as the Small Arms Replacement Project, Munitions Supply Program, Foreign Military Sales, and Shipbuilding;
- (g) procurements subject to the Canada/U.S. Defence Production Sharing Program, or the European Research, Development and Production agreements;
- (h) procurements for the Canadian Commercial Corporation (CCC).

For these requirements, source lists may be appropriate.

5.048 (1997-09-15) When choosing a notification process other than the preferred GETS, contracting officers must have a clear rationale. Issues to be considered include the following:

- (a) what are the reasons for not using the GETS?
- (b) what are the expected benefits of using another process?
- (c) how will an alternate sourcing strategy compare to the GETS:
 - in achieving openness, fairness, transparency, and access?
 - in achieving competitiveness, value for money, efficiency/economy, and client service?
- (d) will the use of source lists or other public media withstand public scrutiny?

Combinations of notification processes may resolve any deficiencies in using one process alone.

The Treasury Board Open Bidding Contracting Authorities can only be used when a procurement has been advertised on the GETS and/or in the GBO. When the GETS and/or GBO are not used, the traditional competitive authorities must be used. (See [6A.020](#).)

NAFTA, WTO-AGP and AIT Tendering Approaches

5.050 (2005-12-16) For procurements under NAFTA, WTO-AGP or AIT, there are three tendering approaches.

- (a) Open Tendering - where a Notice of Proposed Procurement (NPP) is advertised, any individual, firm or other eligible supplier is free to submit a bid.

Open Tendering is the preferred approach.

- (b) Selective Tendering –
 - (i) Selective Tendering not involving the use of a permanent list of suppliers* - a two stage procurement where potential bidders express an interest in participating and meet predetermined qualifications for participation publicized in the NPP at the first stage. Bid documentation is issued to those bidders meeting the qualifications at the second stage. For NAFTA, WTO-AGP, an NPP must be published at both stages of the procurement (it is also acceptable to amend the original NPP once the bid closing date has been determined). Any supplier who wishes to bid at the second stage may do so, as long as there is sufficient time to carry out the qualification process.

- (ii) Selective Tendering involving the use of a permanent list of suppliers - where a source list is developed and maintained and qualified suppliers for the product or service in question are issued the bid documentation. Any other potential supplier who requests bid documentation must be considered. For NAFTA, WTO-AGP and AIT, an annual notice of the existence of the source list must be published (use the NPP form). For AIT, when using a source list, all qualified suppliers in a given category on a source list must be invited to bid for all procurement in that category.
- (c) Limited Tendering - a process which allows for deviations from the above procurement practices. In situations, where a specific limited tendering justification can be applied, limiting the number of suppliers, to one or more suppliers, is allowed (see [5.030](#)).

*A permanent list of suppliers is a source list.

5.051 (2003-05-30) In addition to the above, specific government enterprises (Crown corporations) subject to NAFTA, [Annex 1001.1a-2](#)), may use a notice of planned procurement to advertise potential procurements. This notice is normally published at the start of a fiscal year and lists potential procurements for the enterprise in the upcoming fiscal year.

A response from potential suppliers to a notice of planned procurement is not required.

The notice of planned procurement may also be used as a notice regarding a qualification system. When used in this manner, a response from suppliers would be required; bid documentation is issued to those bidders meeting the qualifications.

Determining Eligible Bidders

- 5.060 (1995-07-01) Normally, any individual, firm or other entity may submit a bid.
- 5.061 (2006-06-16) A government department, agency, or Crown corporation (or a company owned, in whole or in part, by any of these), whether federal, provincial or municipal, or from another country, may be sourced if it:
- (a) is the sole source for the good or service; or
 - (b) has established itself as competing with private industry. The organization must have proven, to the satisfaction of Public Works and Government Services Canada (PWGSC), that it is indeed competing with private industry in the normal course of business. It must not have an unfair competitive advantage over other potential bidders, either through subsidization or through the absence of any liability to pay corporate income taxes; or
 - (c) is a federal service delivery unit which has been designated a Special Operating Agency (SOA) and is competing with private sector suppliers to provide goods or services to the federal government. See the Public Service Human Resources Management Agency of Canada [Population Affiliation Report](#) for a list of SOAs.

Under the Common Services Policy, Treasury Board (TB) confirmed that the following common service organization "is authorized to engage in the competitive process to serve departments:

Canada School of Public Service (CSPS) for the provision of training consulting services.

The Policy also allows departments and agencies to obtain services from Consulting and Audit Canada and CSPS, as internal suppliers, on a negotiated, sole source basis.

Arrangements between government entities are not considered contracts within the meaning of the Government Contracts Regulations, the TB Contracting Policy, and Canada's international agreements. An appropriate form of documentation for the procurement must be prepared with the assistance of Legal Services.

- 5.062 (1995-07-01) PWGSC, on behalf of the federal government, has entered into agreements in the form of Memoranda of Understanding (MOU) with all the provinces and territories. These agreements, which apply only to the ministries or departments specified in the MOUs, allow the federal and provincial/territorial governments to provide goods and services to each other by means of Supply Transfer Orders.
- 5.063 (1995-07-01) Universities and not-for-profit organizations may be sourced for knowledge-oriented requirements when private industry is not able or willing to undertake the work, or when the university or organization is a recognized centre of excellence in the particular field involved. In sourcing from universities or not-for-profit organizations, competition shall be used whenever possible.
- 5.065 (2004-05-14) Whenever possible, Public Works and Government Services Canada provides CORCAN (Special Operating Agency of Correctional Services of Canada) with adequate, stable and continuing market outlets for items or product lines identified in Supply Arrangement number E60PQ-000008/001/PQ.

If a procurement is to be sourced through CORCAN, the special procedures in [Section 9A](#) apply. Direct enquiries, by telephone, to the coordinator in Furniture Division, Commercial and Consumer Products Directorate, Acquisitions Branch, at (819) 956-3816.

Set-Aside Program for Aboriginal Business

- 5.066 (1997-03-31) In accordance with the Procurement Strategy for Aboriginal Business and the Set-Aside Program for Aboriginal Business announced on March 27, 1996, requirements designated by client departments as set aside will be restricted to qualified Aboriginal businesses. Detailed procedures for conducting set aside procurements are set out in [Section 9L](#).

Canadian Content Policy

- 5.070 (2005-06-10) The Canadian Content Policy is a Cabinet-mandated policy. The Policy encourages industrial development in Canada by limiting, in specific circumstances, competition for government procurement opportunities to suppliers of Canadian goods and services.

The Policy applies to procurement carried out by the former Supply and Services Canada (SSC), now a part of Public Works and Government Services Canada. Therefore, it would not normally apply to construction procurement unless this procurement had been previously carried out by SSC.

Note: The complete text of the Canadian Content Policy can be found in [Annex 5.1](#).

- 5.071 (2005-12-16) The Canadian Content Policy applies to competitive procurements, publicly advertised, with an estimated value of \$25,000 or more, **except** for the following:
- (a) government procurements subject to the NAFTA, WTO-AGP;
 - (b) procurements made in furtherance of aid to developing countries, but does apply to purchases made by the Canadian International Development Agency (CIDA) on its own account;
 - (c) procurements made by Public Works and Government Services Canada (PWGSC) Supply Operations Offices located outside Canada; and
 - (d) Cabinet-mandated Sourcing, including Sourcing Relating to Shipbuilding, Ship Repair, Refit and Mid-Life Modernization.
- 5.072 (2004-12-10) A good wholly manufactured or originating in Canada is considered a Canadian good. A product containing imported components may also be considered Canadian for the

purpose of this policy when it has undergone sufficient change in Canada, in a manner that satisfies the definition specified under the North American Free Trade Agreement (NAFTA) Rules of Origin (see [Annex 5.5](#)). For photocopiers, computers and office equipment within Federal Supply Classification (FSC) groups 36, 70 and 74, only the products of CIRCLE Canada and MERIT Partnership Program firms or companies in Priority Group 1 prior to April 1992 are considered Canadian (See [5.073](#)).

A service provided by an individual based in Canada is considered a Canadian service. Where a requirement consists of only one service, which is being provided by more than one individual, the service will be considered Canadian if a minimum of 80 percent of the total bid price for the service is provided by individuals based in Canada.

5.073 (2005-06-10) Other Canadian Goods and Services:

- (a) CIRCLE Canada and MERIT Partnership Program: For photocopiers, computers and office equipment within FSC groups 36, 70 and 74, only the products of the following firms are considered Canadian goods:
 - (i) MERIT Partner under the [MERIT Partnership Program](#) (administered by Industry Canada [IC] and Public Works and Government Services Canada [PWGSC]);
 - (ii) Companies which, on March 31, 1992, were allocated to Priority Group 1 under the Priority Groups Policy in effect at that time; or
 - (iii) [CIRCLE Canada](#) companies as agreed on by IC and PWGSC.
- (b) **Textiles:** Textiles are considered to be Canadian goods according to a modified rule of origin, copies of which are available from the Clothing and Textiles Division, Logistics, Electrical, Fuel and Transportation Directorate.

5.074 (2003-12-12) The bidder will certify Canadian content by signing a statement that the products offered meet the definition of Canadian Goods and Services. The certification forms are contained in the *Standard Acquisition Clauses and Conditions* (SACC) Manual under clause numbers [K4001T](#), [K4002T](#), [K4003T](#), [K4004T](#), [K4005T](#), [K4006T](#), [K4011T](#), [K4013T](#), and [K4014T](#).

Procurement Review for Socio-Economic Benefits

- 5.090 (2003-05-30) In accordance with government objectives, as described in Treasury Board (TB) [Procurement Review Policy](#), procurement strategies for goods and services between \$2M and \$100M are considered for potential socio-economic benefits.
- 5.091 (2003-05-30) The review process is carried out through the interdepartmental Procurement Review Committee (PRC), which is responsible for providing linkages between the government's industrial and regional benefits policy and other national objectives to individual procurements.
- 5.092 (2001-10-12) PRC decisions should be consistent with other government objectives, e.g. the pre-eminence of operational requirements, competition, fairness and accessibility. Review decisions are binding on PWGSC and the client and are manifested primarily in the bid evaluation criteria.
- 5.093 (2002-05-24) Mandatory procurement review does not apply to:
 - (a) foreign aid by or on behalf of the Canadian International Development Agency;
 - (b) procurements by the Canadian Commercial Corporation on behalf of entities not subject to this policy, e.g. foreign governments;
 - (c) the acquisition, modification and routine maintenance of real property;
 - (d) security requirements by or on behalf of the Canadian Security Establishment of the

Department of National Defence; the Canadian Security Intelligence Service; and the Royal Canadian Mounted Police for the purpose of pursuing criminal investigations; and

Notwithstanding this exemption, the above organizations must apply the principles of the policy where appropriate, consistent with the security requirements of their procurement.

In cases of emergency, as defined in the TB Contracting Policy, departments may enter into contract without submitting the procurement review pursuant to this policy. Such action should be noted in any subsequent submission or report to TB or TB Secretariat, and should also be reported to the PRC Secretariat within sixty (60) days.

5.094 (2005-12-16) The PRC divides procurements into the following categories:

- A. NAFTA, WTO-AGP requirements
- G. All other including requirements subject to AIT with the following exceptions: Foreign Military Sales, Security Services, Temporary Help Services, procurements under the Munitions Supply Program and requirements subject to the Shipbuilding Policy.

5.095 (2001-12-10) The Advisory Council on Repair and Overhaul (ACRO) will carry out the review process for military repair and overhaul requirements, under the strategic direction of the PRC.

For Major Crown Projects (MCPs), or those requirements exceeding \$100M, the Senior Project Advisory Committees (SPAC) will, in accordance with the TB Policy on Management of MCPs, continue to carry out associated procurement review functions. It is the responsibility of the client department to convene a SPAC.

5.096 (2005-06-10) For proposed procurements between \$2M and \$100M, the contracting officer must complete a "Detail Document" (see [Annex 5.2](#)), and forward it to the PRC Secretariat once it has been reviewed by their individual Sector approval processes.

The PRC Secretariat is part of the Risk, Integrity and Strategic Management Sector, and can be reached either by telephone: (819) 956-7424 or via e-mail at: <mailto:PRC.Secretariat@pwgsc.gc.ca>.

The following process is followed for review and approval of requirements:

- (a) The Detail Document is forwarded to PRC Committee members by e-mail. Committee members are given five (5) working days to review each individual requirement. At any time within those five (5) days, members can request that the PRC Secretariat place a requirement on hold pending further discussions or clarifications.
- (b) Queries on a particular requirement sent to the PRC Secretariat by Committee members will be forwarded directly to the responsible contracting officer for direct reply.
- (c) If no queries or concerns have been received at the end of the fifth day, the PRC Secretariat will then issue a Record of Decision (see [Annex 5.2.1](#)).
- (d) Copies of both the Detail Document and Record of Decision are provided to all PRC members and the responsible PWGSC contracting officer whose name has been indicated on the Detail Document.
- (e) A requirement which has been placed on hold will only be released once direction to do so has been received by e-mail from the PRC member who has made such a request.
- (f) Contracting requirements which are initially under \$2M must be reviewed by the PRC if the contract value increases to \$2M and above.
- (g) Amendments to a requirement must be added to the Detail Document by the contracting officer and returned to the PRC Secretariat for forwarding to PRC members for further

review. PRC members are given three (3) working days to review amendments. At the end of this time period, a Record of Decision will be issued.

When completing the Detail Document, the following should be taken into consideration:

- (a) Socio-economic benefits, if any, must be clearly indicated in the Detail Document.
 - (b) The Project Value should clearly identify whether it is one contract or part of a project involving several requirements to be sent for individual PRC review and approval, or whether the PRC is being requested to approve the entire project. If this is the case, then this should be clearly stated in the detail document.
- 5.097 (2001-12-10) Copies of the PRC Detail Document and Record of Decision must be kept on the contracting file.
- 5.098 (2001-12-10) When a PRC review is required, the Secretariat will, as part of the background document, request that the contracting officer develop procurement strategies for consideration by the PRC. As a member of the PRC, the contracting officer plays a major role in these deliberations. The PRC's recommendations are recorded in a Record of Review which accompanies the contract submission to TB.
- 5.099 (1995-07-01) Recommendations that involve increased cost or risk must be supported by a cost-benefit analysis using the factors set out in the TB policy. This analysis is carried out by the department whose program will be supported by the benefits being sought.
- 5.100 (1995-07-01) The use of relative weightings for evaluating socio-economic benefits should be limited, except in special circumstances, to procurements exceeding \$50 million.

When relative weightings are utilized for evaluating socio-economic benefits, TB approval of the procurement strategy is required before release of the bid solicitation regardless of delegated levels. TB approval will be sought by the department acting as proponent of the alternate strategies.

- 5.101 (1995-07-01) Where socio-economic benefits form part of the bid evaluation, the PRC may request that the contracting authority provide a briefing on the results of the bid evaluation.

The contracting authority may be required to provide the PRC with feedback relative to the results of the Committee's recommendations. However, monitoring the achievement of the benefits being sought is the responsibility of the department whose program was supported by the socio-economic benefits.

- 5.103 (1995-07-01) All procurements which contain a requirement for **any local content or regional economical benefit**, including those procurements for which the PRC has imposed local content or regional economic benefits, contracting officers must ensure that the NPP/solicitation documentation contains details of the restrictions or practices. When the value of the procurement is \$2 million or below and local content or regional economic benefits have been sought, these procurements must be reported as "exceptional circumstances." In order to prepare the report, it will be necessary for contracting officers to include the details of the restrictions in the Contract Award Notice also.

Shipbuilding, Repair, Refit and Modernization

- 5.104 (2005-12-16) The PWGSC procedures for sourcing suppliers for work on Canadian government vessels derive from the government's Shipbuilding, Repair Refit and Modernization Policy. The objective of the policy is to encourage competition amongst Canadian shipyards. For all competitive shipbuilding requirements as defined in the above-mentioned Policy, subject to AIT, contracting officers must ensure that the details of the restrictions or practices are highlighted in the Notice of Proposed Procurement (NPP)/solicitation documentation.

The **NPP/solicitation documentation** must contain the following statement:

"The sourcing strategy relating to this procurement will be limited to suppliers in the (as applicable) Province or Territory of Origin or the (as applicable) Area of Origin in accordance with the Shipbuilding, Repair Refit and Modernization Policy."

For procurements below \$2 million subject to the Shipbuilding, Repair Refit and Modernization Policy, the Contract Award Notice (CAN) must also contain these details.

The following procedures ([5.105](#) to [5.111](#)) apply only when the procurement is not subject to NAFTA, WTO-AGP. NAFTA, Chapter 10, [Annex 1001.2b](#), paragraph 1.(a) and WTO-AGP, [Annex 4](#), exempts "shipbuilding and repair".

- 5.105 (2003-12-12) Definitions specific to the sourcing strategy of shipbuilding, ship repair, refit and mid-life modernization procurements are as follows:
- (a) Origin of the vessel - the operational home port of the vessel.
 - (b) Area of Origin - the following Areas of Origin are recognized:
 - Eastern Canada: Atlantic Canada (Newfoundland and Labrador, Prince Edward Island, Nova Scotia and New Brunswick), Quebec and Ontario.
 - Western Canada: All shipyards west of Ontario and those in the Yukon, Nunavut and Northwest Territories.
 - (c) Province or Territory of Origin - The following Provinces or Territories of Origin are recognized:
 - Newfoundland and Labrador
 - Nova Scotia
 - New Brunswick
 - Prince Edward Island
 - Quebec
 - Ontario
 - Manitoba
 - Saskatchewan
 - Alberta
 - British Columbia
 - Nunavut Territory
 - Northwest Territories
 - Yukon
- 5.106 (2003-12-12) For procurements \$25,000 and below, competitions may be limited to the Province or Territory of Origin of the vessel.
- 5.107 (2003-12-12) For new construction requirements over \$25,000, competitions are to be conducted on a nation-wide basis when the following conditions are present:
- (a) The statement of requirement is sufficiently defined to permit assessment of competing bids by common standards.
 - (b) Available shipyards, both in Eastern Canada and in Western Canada, have the technical capability to perform the work.
 - (c) The vessel being procured is of a type that can be transferred and for which contingency costs (see [5.110](#)) are not unrealistic in relation to the total price.
- 5.108 (2003-12-12) For new construction requirements over \$25,000, competitions are to be conducted

within the Area of Origin when all conditions, except [5.107](#), are present.

- 5.109 (2003-12-12) For ship repair, refit and mid-life modernization requirements over \$25,000, competitions are to be conducted within the Region of Origin of the vessel, provided adequate competition exists.

If adequate competition (two or more bidders) does not exist, the requirement may still remain in the Area of Origin provided a satisfactory contractual agreement can be reached with the one available capable shipyard. If a satisfactory contractual agreement cannot be reached, the competition is to be extended on a nation-wide basis.

- 5.110 (2003-12-12) Contingency costs for ship repair, refit and modernization requirements shall be only those costs which are directly related with the transfer of the vessel as defined below:
- (a) **For vessels that can be transported unmanned:** Solicitation documents will specify the pick-up point and the delivery point. Bidders will be required to provide a cost to transport the vessel from the pick-up point and once the work is completed, a cost to transport the vessel to the delivery point. In cases where the Government will retain responsibility for delivery of the vessel to and from the shipyard/ship repair facility and the vessel's home port, using commercial towing, railway, highway transportation or other suitable means, solicitation documents will identify the cost of such transportation as the vessel transfer cost that will be added to the evaluation price. (See SACC Manual clause [A0240T](#).)
 - (b) **For vessels that are manned for transport:** Solicitation documents will identify the contingency cost that will be added to the evaluation price for the transfer of the vessel and its minimum delivery crew based on the geographical distance to and from the vessel's home port location and the shipyard/ship repair facility where the work will be undertaken, and:
 - (i) The fuel cost based on the current market price for fuel and the vessel's fuel consumption at its most economical speed.
 - (ii) For unmanned refits, transportation costs for the minimum delivery crew base on the latest Treasury Board directives. (See SACC Manual clause [A0240T](#).)
 - (iii) For manned refits, contingency costs shall only include the fuel costs for transferring the vessel and shall not include any costs for transporting the crew. (See SACC Manual clause [A0240T](#).)
- 5.111 (2003-12-12) Procurements by direct allocation of contracts to specific shipyards are to be made only in cases where the conditions permitting nation-wide, area and Province or Territory competitions are not present. Such cases will arise when one or more of the following conditions exist:
- (a) Only one shipyard is capable of performing the work.
 - (b) Performance of the work necessitates access to particular facilities that are adjacent to one shipyard.
 - (c) The statement of requirement is not sufficiently defined to permit assessment of competitive bids by common standards.
 - (d) Emergency requirements necessitate use of the nearest yard capable of performing the work.
 - (e) Special operational considerations of the client limit movement of the vessel beyond a specified location.

Supplier Qualifications

- 5.116 (2005-12-16) Suppliers to the Canadian government must demonstrate to the satisfaction of the Canadian government that they have the legal, technical, financial and management competence to discharge the contract. The eligibility of suppliers to bid may be restricted by requiring bidders to meet pre-established qualification criteria. (See [Section 6B.](#))

For procurements subject to NAFTA, WTO-AGP or any combinations of these agreements, interested potential bidders who do not meet such a specified standard must be able to apply for the qualification after the notice of procurement is advertised, and the process of qualification must be started promptly. No discrimination between foreign suppliers or between domestic or foreign suppliers shall be made when establishing qualification criteria.

A particular area for attention is personnel security screening and/or organization's security clearance, where, due to the time it can take to process such requirements, it may be necessary to stipulate appropriate security screening requirements as a mandatory element of bids. (See [6C.270](#) and [6C.275.](#))

Requirements below \$25,000

- 5.117 (2004-05-14) Requirements below \$25,000 (including all applicable taxes) are considered to be low dollar value (LDV) procurements. When identifying an LDV requirement based on the estimated value of the final contract, contracting officers must not split or artificially divide requirements to meet the LDV threshold. (See [6A.001.](#))

Contracting officers are to procure LDV requirements below \$25,000 (including all applicable taxes) using the most efficient and cost effective approach to select a contractor either by soliciting bids or by directing the requirement to a single supplier when it is not cost effective to call for bids.

Contracting officers will determine the most appropriate procurement strategy for each LDV requirement in order to obtain best value and ensure the timeliness and cost effectiveness of each contract, while respecting Public Works and Government Services Canada (PWGSC's) Guiding Principles which include client service, competition, accountability and equal treatment (See Chapter 1).

Contracting officers are to use the electronic tools available to them to identify and select a supplier on a competitive or directed basis. Examples of tools include the Supplier Registration Information (SRI) service, Automated Vendor Rotation System (AVRS), SELECT, Government Electronic Tendering Service (GETS), telephone and online trade directories, or any other electronic tool available to identify and select a supplier.

Contracting officers are to use the appropriate tools in the following order of precedence to select a supplier:

- (a) Departmental electronic tools such as e-Purchasing;
- (b) Existing standing offers or supply arrangements;
- (c) Request for Quotation (via letter, e-mail or facsimile) or a Telephone Buy;
- (d) GETS.

Contracting officers must document the procurement file with the rationale to support the procurement strategy. Contracting officers must also document the basis on which the estimated value of the contract (i.e. below \$25,000) was established.

Procurement Business Number

- 5.123 (2005-12-16) Firms interested in receiving a contract from Public Works and Government Services Canada (PWGSC) are encouraged to register in the Supplier Registration Information

(SRI) System. An important feature of the SRI is the Procurement Business Number (PBN) created using the Canada Revenue Agency Business Number to uniquely identify a branch, division, or office of a company, where appropriate. PWGSC is using the PBN for its purchasing and payment systems as a supplier identifier code.

All Canadian companies are required to have a PBN prior to contract award in order to receive a PWGSC contract (see [7D.415](#)). In exceptional circumstances, PWGSC may decide to award, at its own discretion, a contract to a company without a PBN. In these cases, the Director General's approval is required. At this moment, non-Canadian firms are strongly encouraged to obtain a PBN but do not require one. The requirement for a PBN (see SACC Manual clause [A9109T](#)) must be included in all bid solicitations.

A PBN can be obtained by registering in the SRI System, a database of registered suppliers who want to do business with the federal government.

For more information on SRI and how to register, visit the [Business Access Canada](#) Website or call the InfoLine at 1-800-811-1148.

Controlled Goods

- 5.124 (2003-05-30) Bill S-25 amended the *Defence Production Act* (DPA) and established a new regime for regulating access to certain controlled military and military related goods, technical data and technology, referred to as controlled goods (see [6B.192](#)). The amended DPA and the [Controlled Goods Regulations](#) came into force on 30 April 2001. It requires all "persons" in Canada examining, possessing, or transferring controlled goods, to another person in Canada to be registered, exempt or excluded from registration under the Controlled Goods Program (CGP). (See for a definition of controlled goods.)

To meet this requirement, the CGP, a federal government program, was established under the DPA and the *Controlled Goods Regulations*. The CGP is administered by Public Works and Government Services Canada.

Contracting officers are invited to visit the [CGP](#) Website for more information.

Geographic Factors

- 5.126 (2004-05-14) Regional offices are to source requirements below \$25,000 (including all applicable taxes) within their geographic area provided the area has adequate sources of supply (which may include suppliers of foreign goods or services) and offers the required level of service to clients and fair value for the taxpayer's dollar.

Federal Contractors Program for Employment Equity

- 5.128 (2003-12-12) The [Federal Contractors Program for Employment Equity](#) (FCP-EE) procedures apply, with exceptions listed in [5.129](#) below, to suppliers of goods and services who employ 100 people or more, and bid on requirements of \$200,000 or more (including all applicable taxes).

The \$200,000 threshold should include the amount of option years, when included in contracts and standing offers.

Any joint venture partner with 100 or more employees is required to certify its commitment to implement employment equity when bidding on solicitations valued at \$200,000 or more (including all applicable taxes).

Requests for Standing Offers and supply arrangements are also subject to the FCP-EE procedures, whenever the total procurement requirements are estimated at \$200,000 or more (including all applicable taxes).

The employment equity requirements of the FCP-EE apply to foreign suppliers only if they have a

resident workforce in Canada of 100 or more permanent full or permanent part-time employees.

Exclusions from the FCP-EE

- 5.129 (2003-12-12) The FCP-EE policy does not apply to:
- (a) contractors having a combined work force of less than 100 employees in Canada;
 - (b) offshore suppliers who will conduct and perform the work outside Canada;
 - (c) federally regulated companies, i.e. those companies regulated under the Canada Labour Code and Crown corporations, as they have to comply with the provisions of the [Employment Equity Act](#);
 - (d) Canadian Commercial Corporation (CCC) contracts where CCC, as the prime contractor, purchases goods and services from Canadian sources and sells the products to foreign governments or international agencies through back-to-back contracts;
 - (e) contracts with or on behalf of provincial governments;
 - (f) construction contracts and contracts for the acquisition or lease of real property (Architecture & Engineering [A&E] Services requirements are not excluded);
 - (g) subcontractors.

Requirements estimated at \$200,000 or more

- 5.130 (2006-06-16) Contracts (*including standing offers and supply arrangements*) for goods and services requirements (*including A&E services*) valued at \$200,000 or more (including all applicable taxes) may be awarded only to vendors who:
- (a) have signed and submitted a Certificate of Commitment ([LAB 1168](#)) and have not been declared ineligible by Human Resources and Social Development Canada (HRSDC) to receive government contracts over the *Government Contracts Regulations* (GCRs) threshold for solicitation of bids (currently \$25,000) as a result of a finding of non-compliance, or as a result of having voluntarily withdrawn from the Program for a reason other than a reduction in their workforce; or
 - (b) have provided a valid certification number, **prior to contract award**; or
 - (c) are exempted from the employment equity policy (see [5.129](#)).

When the bid is accompanied by an original certificate, the contracting officer will forward that original to the:

Communications and Training Coordinator
Workplace Equity Programs
Human Resources and Social Development Canada
Portage II, 10th Floor
165 Hôtel de Ville Street
Gatineau, Québec K1A 0J2

OR fax at (819) 953-8768.

Contracts valued above \$25,000 to under \$200,000

- 5.131 (2004-05-14) Contracts (*including standing offers and supply arrangements*) valued above \$25,000 (including all applicable taxes) to under \$200,000 must be awarded only to vendors who, if subject to FCP-EE in the past, have not been declared “ineligible” by HRSDC to receive

government contracts over the GCR threshold for solicitation of bids (currently \$25,000) as a result of a finding of non-compliance, or as a result of having voluntarily withdrawn from the Program for a reason other than a reduction in their workforce.

Compliance Reviews

- 5.132 (2004-05-14) Once a certified contractor receives a contract of \$200,000 or more, the organization is required to honour its commitment of implementing employment equity as an ongoing obligation, and not simply during the life of the contract. HRSDC provides assistance to contractors throughout this process. It also monitors the contractor's performance in relation to employment equity criteria, and conducts compliance reviews. The findings and recommendations of HRSDC are forwarded to the contractor involved, who is expected to initiate remedial action should the findings be unfavourable. Contractors have the right to appeal to the Minister of HRSDC, and an independent assessor will study the findings.

Sanctions for non-compliance or withdrawal from FCP-EE

- 5.133 (2003-12-12) Findings of non-compliance will be communicated to Public Works and Government Services Canada which will be advised that the contractor, due to its failure to live up to the commitment to implement employment equity, will be declared ineligible to do business or receive federal contracts valued over the threshold for solicitation of bids, as set out in the GCRs (currently at \$25,000).

Contractors who voluntarily withdraw from the FCP-EE for any reason other than the decrease of their workforce are subject to the same sanction as those who are found non-compliant as a result of a compliance review.

In either case, the contractor's Certificate of Commitment number will be cancelled and the contractor in question will not be eligible to receive government contracts over the threshold for solicitation of bids as set out in the GCRs (currently at \$25,000).

Reinstatement

- 5.134 (2006-06-16) To be reinstated, ineligible contractors must contact HRSDC and demonstrate compliance with the requirements of the FCP-EE prior to bidding on contract opportunities.

The [List of Certified Employers](#) with their certificate numbers, as well as the List of Ineligible Contractors (withdrawn) can be verified on Publiservice site. (NOTE: Only federal government employees can access this site).

For policy advice and guidance, contact the Workplace Equity Program Advisor directly at (819) 953-7495.

Solicitation Methods

- 5.135 (2004-05-14) Before deciding on the type of solicitation to be used, the contracting officer should ensure that the good or service is not available through a current Standing Offer (SO) or Supply Arrangement (SA). If the requirement is available using an SO or an SA and demonstrates good value for that procurement, the contracting officer should advise the client of the option.

The list of National Master Standing Offers (NMSOs), Regional Master Standing Offers (RMSOs) and Departmental Individual Standing Offers (DISOs) is available from the Standing Offer Coordination Office (SOCO), Electronic Processes Directorate, telephone (819) 956-3382. SOCO provides information associated with the administrative aspects of SOs, including:

- (a) *facilitating the exchange of information on SOs between PWGSC and clients;*
- (b) *preparing, updating and coordinating the distribution of indices of all NMSOs, DISOs, and RMSOs; and,*

- (c) *coordinating the distribution of NMSOs, DISOs and RMSOs originating from PWGSC headquarters.*

Invitation to Tender

- 5.137 (1995-07-01) An Invitation to Tender (ITT) should be used when all of the following criteria apply:
- (a) two or more sources are considered capable of supplying the requirement; and
 - (b) the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria; and
 - (c) the market conditions are such that tenders can be submitted on a common pricing basis; and
 - (d) it is intended to accept the lowest-priced responsive tender without negotiations; and
 - (e) the evaluation of tenders will exclude any Product, Resource, Operating and Contingency (PROC) costs or socio-economic considerations, other than the employment equity provisions.
- 5.139 (1995-07-01) Of the possible solicitation methods, tenders are unique in that they can be opened publicly. Public opening should be considered for all ITTs estimated to exceed \$25,000, except for those that are classified. ITTs for requirements less than \$25,000 may be opened publicly if circumstances warrant.

Public opening should be considered for any tender where the contract award will have a high degree of public visibility.

Request for Proposal

- 5.142 (1995-07-01) A Request for Proposal (RFP) should be used when one or more of the criteria for issuing an ITT cannot be met, such as:
- (a) only one source is being solicited; or
 - (b) it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirement; or
 - (c) owing to the nature of the requirement, suppliers are invited to propose a solution to a problem, requirement or objective and the selection of the contractor is based on the effectiveness of the proposed solution rather than on price alone.
- 5.143 (1995-07-01) Proposals shall be evaluated in accordance with specific criteria set out in the RFP.
- 5.144 (2005-12-16) The preparation of proposals is often costly to industry. To keep the total cost to industry down while ensuring freedom of access to potential suppliers, consideration should be given to soliciting proposals in two steps.

During the first step of this process, suppliers are requested to provide letters of interest and qualifications, from which a short list is developed. During the second step, suppliers on the short list are requested to submit detailed proposals.

Suppliers not included on the short list can request the RFP and submit proposals.

Such a process might be appropriate where many potential suppliers are known. Contracting officers should note, however, the special procedures required under NAFTA, WTO-AGP for selective tendering.

Request for Quotation

- 5.148 (2004-05-14) A Request for Quotation (RFQ) can be used to solicit bids for low dollar value (LDV) requirements below \$25,000 (including all applicable taxes) from one or more suppliers. An RFQ solicitation may not include all of the terms and conditions required to form a contract and the response or quotation provided by the bidder may be used to form the applicable contract document, along with the terms and conditions and final pricing. (See [7E.500.](#))

There may be instances for requirements below \$25,000 (including all applicable taxes) when it will be more appropriate to solicit bids using an Invitation to Tender or a Request for Proposal (RFP). For example, an RFP may be more appropriate for a requirement which may be used to establish specifications for a future contract.

Telephone Buys

- 5.150 (2004-05-14) A Telephone Buy is a form of an RFQ that can be used to solicit bids by telephone for requirements below \$25,000 (including all applicable taxes). Written confirmation from the bidder is not required for bids received by telephone but the contracting officer must record the details of the telephone bid on the procurement file. A verbal contract may be entered into by telephone but must be confirmed in writing by issuing the applicable contract document. (See [7E.500.](#))

Standing Offer

- 5.153 (2002-13-12) A Standing Offer (SO) is not a contract. It is an offer made by an offeror (a supplier or a provider) for the provision of certain goods and/or services to clients at prearranged prices or a prearranged pricing basis, under set terms and conditions, that is open for acceptance by one or more authorized user(s) on behalf of Canada during a specified period of time. A separate contract is formed each time a call-up for the provision of goods and/or services is made against a Standing Offer. When a call-up is made, it constitutes an unconditional acceptance by Canada of the supplier's offer for the provision, to the extent specified, of the goods and/or services described in the SO. Canada's liability shall be limited to the actual value of the call-ups made by the duly authorized user(s) representing Canada within the period specified in the Standing Offer.

Prior to commencing any procurement action, the contracting officer must determine if a procurement instrument such as a standing offer exists to procure the requisitioned goods and/or services. In the affirmative, the contracting officer should advise the client of the availability and suitability of that procurement instrument. If it can be used, the client should be encouraged to use it.

Methods of Supply

- 5.154 (2002-12-13) The SO method of supply is usually considered when:
- (a) one or more clients repetitively order(s) the same range of goods, services, or both and the actual demand (e.g. quantity, delivery date, delivery point) is not known in advance; and
 - (b) some of the following conditions are present:
 - (i) the goods, services, or both are well defined;
 - (ii) prearranged prices or a prearranged pricing basis can be established at the outset and there is no need nor any intention to negotiate them at the time of the call-up;
 - (iii) the goods, services, or both are readily available and are to be ordered (called-up) as-and-when the requirement arises;

- (iv) at the time of the call-up, there is no need nor any intention to further negotiate the terms and conditions.

5.155 (2002-12-13) The SO method of supply **cannot** be used when:

- (a) prices, pricing basis or terms and conditions are not stated or are subject to change at any time at the discretion of the supplier; or
- (b) the authorized users of the standing offers intend to negotiate further the prearranged prices, pricing basis, or set terms and conditions of the SO; or
- (c) it is intended to solicit bids each time goods and/or services are required.

In these cases, another method of supply such as a Supply Arrangement (SA) should be considered. (See [5.190](#) and [Section 9J](#).)

Approximation Given in Good Faith

5.157 (2002-12-13) The quantity of goods and / or level of services specified in the Request for Standing Offer (RFSO) and the resulting SO(s) are only an approximation of the requirements given in good faith by Canada to the offerors.

Government Policies, Regulations and Procedures including Trade Agreements

5.159 (2002-12-13) All government policies, regulations and procedures related to contracting, including those required under the trade agreements, apply to the standing offer method of supply. The total estimated expenditure of the requirement (the whole project /program) proposed to be satisfied by the standing offer method of supply, GST/HST included, is to be used to determine the applicability of any procedures required by any trade agreement to which the Government of Canada is signatory.

When procedural requirements of any trade agreement apply to a standing offer method of supply, the complete procurement process, including all standing offers authorized for use and their ensuing call-ups, falls within the purview of the Canadian International Trade Tribunal (CITT).

Approval and Signing Authority

5.162 (2002-12-13) Approval, signing and amendment authorities are set out in annexes 6.1 through 6.2 of this manual.

The Contract Planning and Advanced Approval (CPAA) or formal procurement plan issued to seek advance approval to use of the SO method of supply is to be approved based on the total estimated value, GST/HST included, of the requirement (the whole project / program) that is proposed to be satisfied by this method of supply. Therefore, if it is intended to issue more than one SO pursuant to an RFSO, it is the sum of the total estimated value, GST/HST included, of all resultant standing offers that is to be used to obtain CPAA or formal procurement plan approval.

When more than one SO will be authorized for use, the signing authority level is to be determined based on the total estimated value of each individual SO, not the total estimated value of the requirement.

Treasury Board Contracting Limits

5.164 (2003-05-30) A call-up issued against an SO constitutes an individual contract and normal Treasury Board contracting limits apply. The call-up limits for PWGSC on behalf of clients are set out in [Section 6A](#). For most clients, their individual call-up limits (inclusive of GST/HST) are usually the normal Treasury Board contracting limits as follows:

	Competitive	Non-Competitive
Goods/Construction	\$400,000	\$40,000
Services Excluding A&E	\$400,000	\$100,000
A&E Services	\$40,000	\$40,000
Transport Canada Services	\$2 million	\$100,000

NOTE: For a detailed breakdown of Treasury Board contracting limits, refer to Treasury Board Contracting Policy, [Appendix C, Treasury Board Contracts Directive](#), Part I, Basic Contracting Limits and Part II, Exceptional Contracting Limits.

PWGSC Call-up Limitation

- 5.166 (2002-12-13) PWGSC has the authority to further limit the value of individual call-ups.

Treasury Board Approval

- 5.168 (2002-12-13) TB approval is required when individual call-ups will exceed the contracting limits specified in the TB Contracting Policy.

Limitation of Expenditure

- 5.170 (2002-12-13) The inclusion of a Limitation of Expenditure in standing offers is optional. The contracting officer will determine the need for inclusion of a limit on the basis of the type of SO (Master or Individual), the degree of control over total expenditures and the needs of the client.

SACC clause [M4506D](#), *Financial Limitation*, may apply.

Coding in the Automated Buyer Environment (ABE) System

- 5.172 (2002-12-13) While the limitation of expenditure in standing offers is optional, the contracting officer must enter the estimated expenditure/value of all standing offers in the Procurement Summary in ABE. The use of \$0 or \$1 as a document value in the Procurement Summary in ABE, is not acceptable.

The above coding requirement does not apply to Departmental Individual Standing Offers (DISOs) because the financial information for DISOs is captured at the time of call-ups. Contracting officers are therefore required to enter \$0 as the estimated expenditure/value of the DISO and the actual value of the call-up against a DISO.

Types of Standing Offers

- 5.174 (2002-12-13) There are five types of standing offers:
- (a) National Master Standing Offer (NMSO) - for use by several authorized users identified in the NMSO for delivery throughout Canada.
 - (b) Regional Master Standing Offer (RMSO) - for use by several authorized users identified in the RMSO for delivery within a specific geographic area.
 - (c) National Individual Standing Offer (NISO) - for use by a specific authorized user identified in the NISO for delivery throughout Canada.
 - (d) Regional Individual Standing Offer (RISO) - for use by a specific authorized user identified in the RISO for delivery within a specified geographic area.
 - (e) Departmental Individual Standing Offer (DISO) - for use by PWGSC only on behalf of one

or more client(s) identified in the DISO.

Authorized Users

- 5.176 (2003-05-30) Authorized users of standing offers could include any departments and agencies listed in [Schedule I](#), [Schedule II](#) and [Schedule III](#) of the *Financial Administration Act*.
- 5.177 (2002-12-13) A Request for Standing Offer (RFSO) shall include the following information, as a minimum:
- (a) a clear definition of the requirement and the period for making call-ups;
 - (b) information on the number of standing offers intended to be authorized for use;
 - (c) clear evaluation criteria;
 - (d) clear offeror selection methodology;
 - (e) clear ranking methodology where applicable;
 - (f) clear call-up procedure(s);
 - (g) a notice to bidders regarding disclosure of their unit prices (see SACC clause [M0090T](#));
 - (h) instructions, information, terms and conditions applicable to the RFSO;
 - (i) offer preparation instructions;
 - (j) terms and conditions applicable to the ensuing call-ups.

Whenever practical, the Request for Standing Offer should include an estimated utilization.

Competitive and Non-competitive Call-ups

- 5.180 (2002-12-13) Competitive call-ups:

The Best Standing Offer:

In many instances, only one SO will be authorized for use. For some requirements, only the offer that meets all the requirements of the RFSO and provides best value (highest ranked) will be retained. In such instances, the resulting call-ups are considered competitive and the competitive call-up authorities can be used.

Multiple Standing Offers:

In other instances, more than one SO will be authorized for use based on a reasonable expectation of business activity such that a single offeror would lack the capacity to meet the demands. In such cases, clear ranking methodologies and call-up procedures must be described in the RFSO, so that potential offerors are aware of these when preparing their submissions, and in the standing offers, to guide the authorized call-up authority(ies) when making call-ups. Two models of multiple standing offers are described below:

- (a) **Right of first refusal basis:**
The call-up procedures require that when a requirement is identified, the authorized call-up authority shall approach the offeror of the highest ranked standing offer to determine if the requirement can be satisfied by that offeror. If the highest ranked offeror is able to meet the requirement, the call-up is made against its standing offer. If that offeror is unable to meet the requirement, the authorized call-up authority will approach the offeror of the next ranked SO. The authorized call-up authority will continue and proceed as above until one offeror indicates that it can meet the requirement of the call-up. In other words, call-ups are made based on the "right of first refusal" basis. Where the highest ranked offeror is unable to fulfil the need, the authorized call-up authority is required to document his/her file appropriately. The resulting call-ups are nonetheless considered competitive and the competitive call-up authorities can be used.
- (b) **Proportional basis:**
The call-up procedures require that call-ups be issued on a proportional basis such that the offeror of the highest ranked standing offer receives the largest predetermined amount of the work, the offeror of the second highest ranked standing offer receives the second largest predetermined amount of the work, etc. (e.g. 50 percent to highest ranked offer, 30

percent to next highest ranked offer and 20 percent to third highest ranked offer). This predetermined distribution of the resulting work is to be described in the RFSO so that potential offerors are aware of these when preparing their submissions. It is also known as “collective best value”. The highest ranked standing offer represents the best value for Canada and its offeror receives the greatest portion of the work. A clear advantage in terms of distribution of expected business volume should be given to the offeror of the highest ranked standing offer (e.g. 20 percent or more than the next offer) and the same for the others. The determination of what constitutes a clear advantage is the responsibility of the contracting officer and may vary by commodity, service or by business case. The resultant call-ups are considered competitive and the competitive call-up authorities can be used.

Master standing offers are not suitable for the proportional basis approach. Where individual standing offers are to be authorized based on the proportional basis approach, the contracting officer should inform the authorized user of his/her obligation to monitor call-up activities to ensure work is allocated in accordance with predetermined work distribution.

In both cases (a) and (b) above, contracting officers should clearly state in the RFSO the expected number of standing offers that are intended to be authorized for use. If the intention is that multiple standing offers will be authorized for use, the RFSO should state the basis upon which call-ups will be issued; right of first refusal or proportional. If call-ups are to be issued against standing offers issued under the proportional basis approach, the breakdown should be stated (e.g. 50 percent, 30 percent and 20 percent) in the RFSO.

In addition to the above, when the intention is that multiple standing offers will be authorized for use, contracting officers should include a condition that only those standing offers who are within, for example, 10 percent of the best priced offer, will be considered.

Furthermore, a system must be in place to monitor call-up activity and ensure that call-ups are allocated in accordance with the predetermined work distribution, resulting ranking and call-up procedures specified in the standing offers.

5.181 (2002-12-13) Non-competitive call-ups:

In other instances, more than one SO will be authorized for use but no ranking is established. This would occur, for example, when prices are sought for a full range of items contained in a catalogue items and ranking of offers is impossible. The authorized call-up authority may choose whichever SO to use. For some requirements, the contracting officers may set parameters to guide the authorized users in the selection of one of the standing offers. Call-ups made against these standing offers are non-competitive and only the non-competitive call-up authorities can be used.

An SO may be directed on a non-competitive basis to one offeror for its full range of catalogue products or services. The resulting call-ups are non-competitive and only the non-competitive call-up authorities can be used.

Duplication of Standing Offers

5.182 (2004-05-14) Contracting officers should not authorize a second SO if one already exists for the same commodity, client, and geographical area. For example, a request for a RISO or RMSO should not be issued if an NMSO already exists. Conversely, an NMSO should not be established without consultation with the Regions. (Refer to **Standing Offer Index**)

In their role of commodity managers, Acquisitions Branch is responsible to coordinate the issuance of standing offers. Where a contracting officer proposes to put in place an SO similar to one already in existence, the commodity manager responsible for the commodity and/or service must first approve it. If deemed appropriate, the commodity manager will approve the issuance of that similar or duplicate SO. The contracting officer who proposed this similar or duplicate standing offer remains responsible to develop the procurement strategy and implement it, like any

other procurement. In the approval document (CPAA or procurement plan), contracting officers will indicate that this is for the issuance of an SO similar to an existing one, explain why it is required and indicate that the responsible commodity manager has approved its release.

Standing Offer Forms

- 5.184 (2005-06-10) The following forms are used for call-ups against an SO: (forms are available in ELF and on-line).

Forms Number	Forms Title
PWGSC-TPSGC 942	Call-up Against a Standing Offer
PWGSC-TPGSC 942-2	Call-up Against a Standing Offer - Multiple Delivery
PWGSC-TPSGC 944	Call-up Against Multiple Standing Offers (<i>English version only - French version is PWGSC-TPSGC 945.</i>)
PWGSC-TPSGC 8251	Call-up Against a Standing Offer for Temporary Help
PWGSC-TPSGC 2829	Call-up Against a Standing Offer - Real Property Sector
PWGSC-TPSGC 7169	Call-up Against a Standing Offer for Commissionaire Services
PWGSC-TPSGC 7169-1	Call-up Against a Standing Offer for Security Guard Services
PWGSC-TPSGC 191	Acquisition Card Application (MasterCard) ¹ may also be used at the time of the call-up against Standing Offers, as an alternative to other payment methods identified in the Standing Offers. ²

Industrial Security

- 5.186 (2002-12-13) The contracting officer, in conjunction with the client must determine:

- (a) the minimum level of security required by potential offerors to participate in the Standing Offer Method of Supply.

Security requirements must be stipulated in both the RFSO and the Standing Offer and Call-up Authority. Call-ups must identify, when applicable, security requirements that are in accordance with the terms and conditions of the SO. A Security Requirements Check List (SRCL), must be attached to any such call-up, and a copy must be forwarded to PWGSC Industrial Security for action, when the call-up is made.

OR

- (b) if the SO is NOT to be used with call-ups where any level of security is required.

Withdrawal of a Standing Offer

- 5.188 (2002-12-13) If an offeror wishes to withdraw its SO after it has been authorized for use, unless otherwise indicated in the SO it must provide no less than thirty (30) days written notification to the contracting authority of its intent to withdraw. A "Revision to the Standing Offer and Call-up Authority" would then be issued by the contracting authority notifying all the authorized users and the offeror of the effective date of the withdrawal. Call-ups received by the offeror prior to the

¹ Because use of a credit card results in immediate payment to the vendor, the normal payment period and interest on overdue accounts provisions do not apply. (See SACC Manual clauses [M3503T](#) and [M3503C](#).)

² Contracting officers should verify if the client(s) need such a service and include appropriate details in the standing offers. In such cases a call-up form may, or may not, be warranted.

effective withdrawal date are legally binding and must be honored.

Supply Arrangements (SA)

5.190 (2002-12-13) An SA is a method of supply where clients, under the framework of the Arrangement, may solicit bids from a pool of prescreened vendors.

5.192 (2002-12-13) An SA may be used when:

- (a) a commodity is procured on a regular basis (goods or services), and
- (b) an SO is not suitable, due to variables in resulting call-ups (e.g. varying methods/basis of payment, or the statement of work or commodity cannot be adequately defined in advance), and
- (c) the commodity or service value is best expressed as a ceiling price, and
- (d) if clients are intended to be able to negotiate price reductions from the ceiling price, and
- (e) it is more efficient for PWGSC to operate as the provider of the framework and not as the contractual authority.

See [Section 9J](#) for SA procedures.