

Chapter 8 - ACAN/Negotiated Procurement

Advance Contract Award Notice

- 8.001 (2001-05-25) An Advance Contract Award Notice (ACAN) allows departments and agencies to post a notice, for no less than fifteen (15) calendar days, indicating to the supplier community that it intends to award a good, service or construction contract to a pre-identified contractor. If no other supplier submits, during this posting period, a Statement of Capabilities that meets the requirements set out in the ACAN, then the competitive requirements of the government's contracting policy have been met. Following notification to suppliers not successful in demonstrating that their Statement of Capabilities meets the requirements set out in the ACAN, the contract may then be awarded using the electronic bidding authorities.
- 8.002 (2001-05-25) If other potential suppliers submit Statements of Capabilities during the posting period which meet the requirements set out in the ACAN, (i.e. considered valid) then the contracting authority must proceed to a full tendering process (electronic or traditional).

The objectives of posting an ACAN are to: a) enhance transparency in government procurement; b) support the Government's objective of enhanced competition; c) provide potential suppliers the opportunity to submit a statement of capabilities to a proposed directed procurement if they believe they have the capability and capacity to provide the good, service or construction requirement; and, d) meet the government's and suppliers need for an efficient and cost-effective government procurement system.

(The above statements are based on TBS Guide for Managers - Best Practices using ACANs.)

Policy Requirement

- 8.005 (2004-12-10) ACANs are required for each proposed procurement of goods and services estimated at \$25,000 and over; for each proposed contract of construction estimated at \$60,000 and over and architectural engineering services estimated at the North American Free Trade Agreement (NAFTA) threshold and over, and, for proposed contracts subject to the trade agreements, subject to the exclusions in [8.010](#) to [8.012](#) below. ACANs must be published on the Government Electronic Tendering Service (GETS), and in the case of procurements subject to NAFTA and/or the World Trade Organization Agreement on Government Procurement (WTO-AGP), they must also be published in the *Government Business Opportunity* (GBO).
- 8.006 (2001-05-25) ACANs are not required for amendments to contracts.
- 8.007 (2001-05-25) ACANs must clearly state that the proposed procurement meets one of the exceptions to solicit competitive bids under the Government Contracts Regulations (see [5.001](#)) and one of the limited tendering reasons, or the exceptions set out in the applicable trade agreements (see [5.031](#) to [5.038](#)). Such exceptions shall be fully and clearly justified in writing on the contract file.
- 8.008 (2001-05-25) ACANs shall not be used to circumvent the competitive process or be structured in a way that discourages possible submissions of Statements of Capabilities. (For example, one should not say, "this is not a competitive solicitation...", or any words to that effect.)

Exceptions

- 8.010 (2001-05-25) ACANs must not be posted where the competitive process using electronic or traditional bidding cannot be used. Examples include:
- (a) confirming orders;
 - (b) Corps of commissionaires if right of first refusal applies;

- (c) government direction such as Munitions Supply Program;
 - (d) works of art;
 - (e) 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 (see [5.031 c](#)); (CAP Code 81)
 - (f) tobacco products purchased for inmates by Correctional Service Canada;
 - (g) regulatory body determined sole-source service contracts (e.g. National Transportation Agency, Canadian Radio-Television and Telecommunications Commission)
 - (h) consolidated announcements that advertise a program consisting of several non-competitive standing offers/contracts. (Pharmaceutical and medical supplies are the only products currently eligible for this exclusion.)
 - (i) when, for security/public interest reasons, the information contained in an ACAN cannot be provided to the public.
 - (j) when 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)
- 8.011 (2001-05-25) An ACAN is not required in the following circumstances, however, one can be posted, at the discretion of the contracting officer.
- (a) in the absence of valid tenders in response to an open or selective tender; (see [5.031\(a\)](#)); (CAP Code 05)
 - (b) 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 (see [5.031 \(e\)](#)). (CAP Code 72)
 - (c) the purchase of commercial off-the-shelf proprietary software from the software developer/exclusive licence holder, when it can be demonstrated to the satisfaction of the contracting officer that the specified commercial software is the only product capable of meeting the stated requirement and competing commercial software is unavailable;
 - (d) formal advisory committee determined sole source contracts arrived at through interdepartmental arrangements (e.g. Advisory Committee on Repair and Overhaul);
- 8.012 (2001-05-25) It is recognized that other circumstances exist where challenges cannot be considered and where the posting of an ACAN might be inappropriate. In such circumstances, the decision not to publish an ACAN must be approved by the Director General or Regional Director General.

Publicly Advertised Procurement (posting process)

- 8.015 (2001-05-25) Contracting officers are responsible for preparing an ACAN for publication on GETS and if applicable, in the GBO. Before publishing the ACAN on GETS, the contracting officer must have ready any supporting documentation. A copy of the proposed solicitation document may be

used as supporting documentation.

A model ACAN is provided in [Annex 8.1](#).

Time Limits

8.017 (2004-12-10) ACANs shall be posted for a minimum of fifteen (15) calendar-days on GETS. Where the procurement is subject to either the NAFTA or the WTO-AGP, the fifteen (15) calendar days shall commence on the date the ACAN is published in the GBO. For procurements covered by the Canada-Korea Telecommunications Equipment Agreement and the Agreement on Internal Trade, the publishing period commences with the publication of the ACAN on the GETS. (See [7B.183](#))

If there are no challenges within this fifteen (15) calendar-day period, the contracting officer may proceed with the award.

Notwithstanding the above, when a Statement of Capabilities is received after the specified date but before the award of the contract, the contracting officer must nevertheless consider the statement of capabilities prior to proceeding with the procurement. To do otherwise would contravene the Government Contracts Regulations.

Statements of Capabilities (Challenges)

8.020 (2001-05-25) Statements of Capabilities submitted by suppliers shall:

- (a) be provided in writing within the specified time-frame indicated on the ACAN (within the fifteen calendar day posting period); and,
- (b) include documentation demonstrating that the interested supplier meets the requirements as set out in the ACAN.

Review of Supplier's Statement of Capabilities by Contracting Officer

8.021 (2001-05-25) Once a Statement of Capabilities is received:

- (a) There must be a fair review of all Statements of Capabilities.
- (b) In instances where a Statement of Capabilities may be rejected, a separate review of the rejection is required. This Review shall be made at one level higher than the original approval authority, but not lower than that of Manager and not higher than the Assistant Deputy Minister.
- (c) When additional information not specifically set out in the ACAN is provided on the requirements it shall be provided equally to all interested parties. If the information provided is considered a significant clarification to the information provided in the ACAN, an amended ACAN should be issued. Extending the closing date would be appropriate in such cases.
- (d) Contracting officers may request additional information from suppliers or third parties, as appropriate, to ensure the interested supplier has the capability to meet the requirements of the ACAN.
- (e) When a supplier's Statement of Capabilities provides sufficient information to indicate that a supplier has the capability to meet the requirements, it should be advised in writing of the decision to accept its Statement of Capabilities before proceeding to a full tendering process (electronic or traditional). The recommended supplier must also be notified of the decision to compete the requirement.
- (f) There must be full documentation on the procurement file with respect to all decisions

taken regarding Statements of Capabilities and resultant changes in the procurement action.

- (g) Withdrawal/cancellation of Statements of Capabilities must be documented on file, and should be provided in writing from suppliers.

Statements of Capabilities that are not accepted

8.022 (2001-05-25) With respect to Statements of Capabilities that are not accepted in accordance with [8.021](#) (b) above:

- (a) suppliers should be advised in writing of the decision to reject a Statement of Capabilities before a contract is awarded;
- (b) the rationale for the decision to reject a Statement of Capabilities shall be included in the file;
- (c) debriefings must be offered to these suppliers.

8.023 (2001-05-25) If the requirement subject to an ACAN is cancelled, suppliers that submitted Statements of Capabilities must be notified.

DND Requirements

8.025 (2003-12-12) Department of National Defence (DND) requirements which are successfully processed through the use of an ACAN can be awarded on a FCA Free Carrier (...named place) Incoterms 2000 basis. If the ACAN is successfully challenged and gives way to an open competitive process, the contracting officer shall consider what alternatives to use in lieu of FCA for the bid solicitation and resultant contract.

Approval Authorities

8.026 (2001-05-25) For the purposes of Contract approval authorities, ACANs are classified under the "electronic bidding" category.

The electronic bidding approval levels apply whenever an ACAN has been posted and no valid Statement of Capabilities was submitted. (See [Annex 6.1.1](#).)

Award Notices

8.030 (2001-05-25) Award notices for all procurements published on the GETS through the ACAN process, are generated automatically through Automated Buyer Environment once the contracting officer releases the procurement summary with the electronic coding sheet. (See [7F.717](#) and [7F.718](#).)

8.031 (2001-05-25) For procurements that have not been published on the GETS through the ACAN process, the award notice will have to be generated manually by the contracting officer, particularly in the case of procurements subject to trade agreements where the award notice is mandatory.

Negotiated Procurement

Receiving Bids

8.033 (2001-05-25) Responses to bid solicitations from pre-selected suppliers should normally be received directly by the contracting officer.

Federal Contractors Program for Employment Equity

- 8.035 (2006-06-16) When it is proposed to award a contract to a contractor subject to the [Federal Contractors Program for Employment Equity](#) (FCP-EE) that is estimated over the threshold for soliciting bids (i.e. over \$25,000 including all applicable taxes), contracting officers must ensure that the recommended bidder is eligible to receive government contracts. This can be done either by using the *Standard Acquisition Clauses and Conditions* (SACC) Manual clause [K2000T](#) for requirements estimated at \$200,000 and over, or [K2002T](#) for requirements over \$25,000 but below \$200,000, in conjunction with [K2003C](#), or by verifying the proposed contractor's eligibility by consulting the [List of Ineligible Contractors](#) on the 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, or the PWGSC policy advisor at (819) 956-4744.

In exceptional circumstances where the only supplier capable of performing a goods and services contract does not conform to the FCP-EE requirements, the matter is to be referred to Senior Management for approval. Prior consultation with Human Resources and Social Development Canada should take place to attempt to resolve the issue.

Exchange Rates

- 8.040 (1994-06-23) For negotiated requirements, bidders may include their own conversion factor or propose a specific exchange rate in the bid. Any currency conversion rate or factor proposed by the bidder should be checked and substantiated by comparing it with prevailing rates for the amount of currency transaction involved.

Negotiations

- 8.045 (1994-06-23) Negotiations with a proposed contractor are normally at the discretion of the contracting officer, in consultation with the client. However, negotiations relating to price are subject to the procedures in [Chapter 10](#), Cost and Profit.

Price Certification and Discretionary Audit

- 8.050 (2001-05-25) All negotiated firm price contracts valued over \$50,000, whether for the acquisition of commercial or non-commercial products and services, require the submission of a price certification. Contracting officers must include the appropriate price certification and corresponding discretionary audit clauses in procurement documents.

The price certifications submitted by a contractor should be as follows:

- (a) negotiated firm price contracts for the acquisition of all products and services valued over \$50,000 from foreign suppliers - Standard Acquisition Clauses and Conditions (SACC) Manual clause [C0001T](#).
- (b) negotiated firm price contracts for the acquisition of commercial products and services, other than petroleum products, from Canadian suppliers other than agency and resale outlets - SACC Manual clause [C0002T](#).
- (c) negotiated firm price contracts for the acquisition of non-commercial products and services from Canadian suppliers other than agency and resale outlets - SACC Manual clause [C0003T](#).
- (d) negotiated firm price contracts for the acquisition of commercial products and services from Canadian agency and resale outlets, including subsidiaries of foreign manufacturers - SACC Manual clause [C0004T](#).

- (e) negotiated firm price contracts for the acquisition of non-commercial products and services from Canadian agency and resale outlets, including subsidiaries of foreign manufacturers - SACC Manual clause [C0003T](#).
- (f) negotiated firm price contracts for the acquisition of petroleum products from Canadian suppliers - SACC Manual clause [C0006T](#).

The discretionary audit clauses included in the bid solicitation and contract should be as follows:

- (g) negotiated contracts valued over \$50,000 for the acquisition of commercial products or services where price certifications [C0002T](#), [C0004T](#), or [C0006T](#) are used - SACC Manual clause [C0100D](#).
- (h) negotiated contracts valued over \$50,000 for the acquisition of non-commercial products or services where price certifications [C0003T](#) is used - SACC Manual clause [C0101D](#).

Rate Certification and Discretionary Audit

8.055 (2001-05-25) All negotiated fixed time rate contracts valued over \$50,000 require the submission of a rate certification by the contractor and shall have a discretionary audit clause included in the contract. The appropriate clauses, for the bid solicitation and contract, are:

- (a) Rate Certifications:
 - (i) for commercial services - SACC Manual clause [C0600T](#);
 - (ii) for non-commercial services - SACC Manual clause [C0601T](#);
- (b) Audit clauses:
 - (i) for commercial services - SACC Manual clause [C0100D](#);
 - (ii) for non-commercial services - SACC Manual clause [C0101D](#).