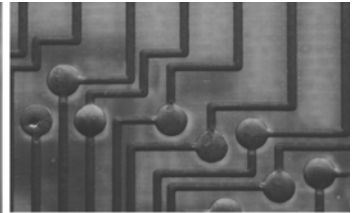
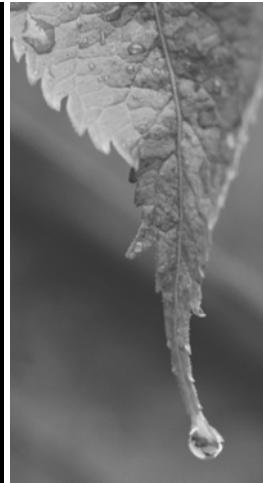




# Supply Manual



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**Prepared by:**

**Acquisition Policy and Process Directorate  
Public Works and Government Services Canada**

# **Supply Manual**

## **Chapter 5**

### **Evaluation and Selecting the Contractor**

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## Chapter 5 - Evaluation and Selecting the Contractor

### 5.1 Overview

(2010-01-11)

- (a) This chapter contains information concerning the evaluation process, which includes both the evaluation of bids and the selection of a successful bidder. The chapter further addresses negotiations with the bidder(s) before contract award.
- (b) It is recommended that contracting officers familiarize themselves with the [Basic Guidelines for Bid Evaluation Process - Contractor Selection Methods](#).

### 5.5 Evaluation Procedures

(2010-01-11)

- (a) The main purpose of bid evaluation is to determine the best responsive bid, in accordance with the evaluation and selection methodology specified in the solicitation document, among the bids submitted before the bid closing time on the date specified in the bid solicitation.
- (b) The responsive bid offering the best value to Canada may or may not necessarily be the one with the lowest price. In order to accurately determine best value, a logical systematic evaluation procedure covering all aspects of the evaluation process must be followed.
- (c) Before starting the actual technical and financial evaluation of bids, it is necessary to ensure that all the information required at bid closing is available and ready to be transmitted to the evaluators. It is the responsibility of Public Works and Government Services Canada (PWGSC) to determine whether the bids received are complete, as specified in the bid solicitation, before further detailed evaluation of the bids. This means, for example, verifying:
  - (i) that required certifications or required securities are included;
  - (ii) that bids are properly signed;
  - (iii) that the bidder is properly identified (particularly important in the case of joint ventures);
  - (iv) acceptance of the terms and conditions of the bid solicitation and resulting contract, such as bid validity period;
  - (v) ability to meet a clearly specified critical delivery schedule;
  - (vi) whether the bid is conditional (e.g. limitation of liability), or
  - (vii) that all supporting documents, required by the bid solicitation to determine technical responsiveness, have been submitted.

**Note:** *It is recommended that the contracting officer creates and uses a check list of all requirements, which can be used throughout the evaluation of each bid.*

- (d) Evaluation of bids must be in accordance with the procedures stipulated in the bid solicitation. They must be checked for responsiveness to the contractual, technical and financial requirements of the bid solicitation. Fair, accurate and transparent evaluation of bids is an important aspect of procurement process. Generally, financial bids should not be sent to the technical evaluators until after completion of the technical evaluation.

### 5.10 Confidentiality of Bids

(2010-01-11)

- (a) The contracting officer must treat all information in a secure and confidential manner to ensure the integrity of the contracting process.

- (b) When referring bids to the client (or technical evaluators) during the evaluation process, the following cautionary note must be provided to the client:

"Bid information must be divulged only to individuals authorized to participate in this contracting process. Information must not be divulged to, or discussed with, the private industry."
- (c) During the period from bid closing to contract award, (including the contract approval process), contracting officers receiving requests from suppliers for the names of bidders must not release this information. Contracting officers may, however, release information on the number of bids received. Contracting officers may also inform suppliers that they can consult the Government Electronic Tendering Service (GETS) to view the suppliers who had requested a copy of the bid documents. For more information, suppliers should contact the Access to Information and Privacy Office.
- (d) After contract award, the names of bidders and other information may be released in accordance with departmental policy. (See [7.30](#).)

### 5.15 Verifying Compliance with Security Requirements

(2010-01-11)

- (a) Before contract award, the contracting officer must verify with the [Canadian Industrial Security Directorate](#) (CISD) that the proposed contractor meets the security requirements of the bid solicitation. This verification can be done by contacting the CISD call centre and requesting a security status sheet for the successful bidder. The request for a security status sheet should include the proposed contract number, the full name and address of the proposed contractor, as well as the required security levels stipulated in the proposed contract. If the supplier has the appropriate security clearance, the contracting officer must sign the Security Requirements Check List ([SRCL](#)) at block 16 and include the fully signed SRCL as an annex in the resulting contract.
- (b) During the period of the contract, the client must ensure that all contractor or subcontractor personnel who will have access to any classified or protected information, assets or sensitive work sites, or to government systems are identified as working under the contract and that their security status has been verified with CISD. The contracting officer will assist in this process as required.
- (c) When security clearances are mandatory, they must be obtained before the commencement of any work. However, it is recognized that there may be circumstances under which, for reasons of urgency, the contractor, or the contractor's employee(s) must begin the work before the completion of the security process. In these cases, consult with CISD for options. However, in a competitive solicitation, the method of selection must be followed; therefore, any delay must be in accordance with the solicitation procedures.
- (d) If, at any time during the period of the contract, the contracting officer becomes aware that a subcontractor, whose security status has not been verified with CISD, will require access to any classified or protected information, assets or sensitive work sites, the contracting officer must verify with CISD that the subcontractor meets the security requirements.

### 5.20 Use of Subject Matter Experts/Specialists

(2010-01-11)

- (a) Contracting officers should take advantage of the knowledge of specialists or subject matter experts. They are available to provide guidance in their areas of expertise, whenever it would be helpful and/or appropriate in making a recommendation or confirming a decision.

- (b) Subject matter experts/specialists include: legal services, Access to Information and Privacy officers, contract quality control officers, cost analysts and risk management advisors, auditors, policy authorities, green procurement specialists, ethics officers, Human Resources authorities, commodity team leaders, client engagement officers, experienced contracting officers, industry/association representatives, etc.

### 5.25 Use of Fairness Monitors

(2010-01-11)

- (a) When a fairness monitor has been engaged to support a procurement process, he/she will provide written reports to the Departmental Oversight Branch (DOB), in accordance with the statement of work included in the fairness monitor's contract, attesting to the fairness of the procurement process.
- (b) If a fairness monitor observes a situation that constitutes, or has the potential to create, fairness deficiencies, the fairness monitor will inform the project team of its concerns and seek a resolution. If a resolution cannot be reached, the fairness monitor will immediately advise DOB.
- (c) The fairness monitor will submit a final report to DOB, which includes among other things, the fairness monitor's overall attestation of assurance on the fairness of the monitored activity and any unresolved fairness deficiencies observed. This report will be made public after tabling with senior management.

### 5.30 Clarifications

(2010-01-11)

- (a) To be considered for contract award, a bid must, at closing date meet all mandatory requirements stipulated in the bid solicitation. Bidders are responsible to meet the criteria stipulated in the bid solicitation as well as request clarification before submitting a bid if they are not sure they understand a requirement. The instructions to bidders clearly provide that PWGSC may request clarification from bidders, but it is under no obligation to do so.
- (b) If PWGSC decides to request clarifications or additional supporting data from the bidders, the contracting officer must ensure that this process does not give any bidder an advantage over the others. In no event can this clarification alter the price quoted or any substantive element of a bid.
- (c) Only clarifications which do not change the substance or price of a bid may be requested and accepted. The request for clarifications and response must be in writing. Any response, which leads to a substantial change in the bid is considered bid repair and must not be considered in the bid evaluation. Pursuant to the [Canadian International Trade Tribunal \(CITT\)](#), a clarification is acceptable only if it is an explanation of some existing aspect of the bid that does not amount to a substantive revision or modification of the bid. Bidders cannot be allowed to repair their bid through a clarification process.
- (d) In conducting its evaluation of the bids, Canada may, but has no obligation to correct any error in the extended pricing of bids by using unit pricing and any error in quantities in bids to reflect the quantities stated in the bid solicitation. In the case of error in the extension of prices, the unit price will govern.
- (e) If an unusually low price is identified, the bidder must be given the opportunity to either confirm or withdraw its bid in writing. Once confirmed, the supplier must accept the price in any resulting contract. The contracting officer must not divulge the difference in price between that bid and the next lowest bid. In no event will the bidder be permitted to increase the price. In solicitations with

bid security, this provision may not apply.

- (f) The contracting officer will specify in the request the number of days the bidders will have to comply with any request. Failure to comply with the request may result in the bid being declared non-responsive.

### 5.35 Evaluating the Bids

(2010-01-11)

- (a) The client is responsible for the evaluation of the technical portion of the bids, and, where applicable, the management portion. PWGSC is responsible for the evaluation of the contractual terms and conditions and the financial portion of the bids. Bids must meet all the mandatory requirements and criteria set out in the bid solicitation. Bids that fail to meet a mandatory requirement (such as a bid bond or any information or document) or any other mandatory evaluation criteria (technical, financial or other) will be declared non-responsive.
- (b) In some cases, third parties may be invited to assist in evaluating bids, for example, scholars and other experts. When third parties will be involved, bidders must be advised in the bid solicitation. In general, third parties participating in the evaluation, or in the bid preparation, must sign a non-disclosure agreement and a conflict of interest agreement before such participation.
- (c) Bids must be evaluated in accordance with the evaluation criteria established in the bid solicitation. Even though the onus is on bidders to submit clear and well-organized bids, bids must be reviewed with diligence and thoroughness to ensure that no essential information is missed. The evaluators must not use criteria or factors not included in the bid solicitation or derive conclusions from information contained in bids that may prove wrong. Whenever possible, the same evaluators should evaluate all bids. When evaluating bids, evaluators must consider all vital information provided in the bid, and must not base their evaluation on undisclosed criteria.
- (d) Documents pertaining to the evaluation of bids must be retained. Evaluators must provide the original or a copy of all evaluation notes and communications to the contracting officer for filing on the procurement file. All such information is subject to the *Access to Information Act*. For example, evaluators' worksheets must not be destroyed even if the information contained in the worksheets is recorded in other evaluation documents. Following a relevant Canadian International Trade Tribunal decision, it was found that evaluators' worksheets are an integral part of the evaluation process and constitute part of the complete record regarding the procurement and part of the written record of all communications substantially affecting the procurement within the meaning of the international trade agreements. Destroying the evaluators' worksheets is a breach of the international trade agreements. Although no similar provision exists in the Agreement on Internal Trade (AIT), the maintenance of complete documentation is also essential under the AIT to promote fair and open procurement procedures. Contracting officers can also refer to the Treasury Board [Directive on Recordkeeping](#).

### 5.40 Technical Evaluation of Bids

(2010-01-11)

- (a) The client department is responsible for the technical evaluation of the bids.
- (b) Following the completion of the technical evaluation, the client department must provide a report to the contracting officer detailing the results of the evaluation, including details on all non-responsive bids and the reasons for declaring them non-responsive. Each person who participated in the technical evaluation as an evaluator must sign the report.
- (c) Complete documentation, including all notes, worksheets, etc. made during the processing or evaluation of the bids must be retained, for future reference, on the PWGSC procurement file.

### 5.40.1 Evaluation of Technical Mandatory Criteria

(2010-01-11)

- (a) Mandatory criteria are assessed on a simple pass/fail basis. Bids that fail to meet any of the mandatory criteria will be considered non-responsive.
- (b) The reasons for declaring a bid non-responsive must be clearly documented by the contracting officer in the procurement file.

### 5.40.5 Evaluation of Technical Rated Criteria

(2010-01-11)

- (a) Only bids that meet the mandatory criteria will be subject to point rating, as applicable. Rated criteria are used to assess various elements of the technical bid so that the relative merits of each bid can be determined. The maximum points that can be achieved for each rated criterion must be specified in the bid solicitation.
- (b) When point rating is used, bids may have to achieve a minimum number of points overall to be considered responsive, and often they must also achieve a minimum number of points for certain individual criteria. Bid solicitations must clearly identify any mandatory minimum thresholds.
- (c) Over the years, there have been numerous complaints to the CITT alleging that the scoring against individual criteria was unfair. In the majority of cases however, the CITT has said that it cannot undertake a re-weighting of the points assigned unless the treatment of the bid under review amounts to a denial of fair treatment. In the absence of evidence that the evaluation was not conducted in a fair manner, the CITT will generally defer to the judgment of the evaluators who are best qualified to assess the merits of the bids. The CITT will intervene however if it feels that the evaluators improperly applied the evaluation criteria and methodology set out in the bid solicitation.

### 5.45 Financial Evaluation of Bids

(2010-01-11)

- (a) PWGSC is responsible for the evaluation of the financial portion of the bids. PWGSC does not provide client departments with price information during the technical evaluation process to ensure its integrity. Pricing information should only be provided to the client following the completion of the technical evaluation.
- (b) Under the following circumstances, more than one PWGSC employee must be involved in the evaluation of the bid prices to ensure an appropriate level of checks and balances, and to ensure that, in terms of price, the bids are ranked properly, in accordance with the bid solicitation:
  - (i) for any competitive procurement requiring contract entry approval of the Minister, the Assistant Deputy Minister or Treasury Board; and
  - (ii) for any procurement which is considered to be sensitive or high-risk.
- (c) Contracting officers should also consider having more than one PWGSC employee involved in the evaluation of the bid prices, under the following circumstances:
  - (i) when the evaluation involves extensive computation or is mathematically complex; and
  - (ii) for standing offers and supply arrangements requiring the approval of the Assistant Deputy Minister.
- (d) All PWGSC employees involved in evaluating the bid prices must sign the financial evaluation

report.

### 5.45.1 Provincial Taxes

(2010-01-11)

Excluding legislated exceptions, departments and agencies are not required to pay any provincial sales tax (PST) payable to the province in which the taxable goods or services are delivered, except for reimbursement of actual costs which include PST (e.g. PST on actual travel and living expenses incurred during the performance of the contract). Federal departments are required to pay the Harmonized Sales Tax (HST). For further details, consult the relevant section of the *Standard Acquisition and Clauses* (SACC) Manual general conditions (e.g. section 11 of [2010A](#) or section 13 of [2035](#).)

### 5.45.5 Foreign Taxes and Canadian Customs Duties

(2010-01-11)

- (a) Customs duties must be considered in the evaluation of bids when bids are received from both Canadian-based and foreign-based bidders, since foreign-based bidders exclude duties in their bids. When rates of duties or exemption status need to be verified, the contracting officer may:
  - (i) obtain from the client department the information on the rate of duty applicable to the goods being imported, and add the estimated amount of duties to the price quoted by the foreign-based bidder; or
  - (ii) verify with the Canada Border Services Agency (CBSA) the application of customs duty to the goods being imported.

*The tariff and value administrator at the CBSA will provide a written ruling to any request for rate of duty, tariff classification, or customs value. Importers or their agents who wish a written ruling must send their request to the nearest CBSA office.*

- (b) Contracting officers are responsible for verifying the application of excise taxes and the amount and specific rate(s) set out in bids. Contracting officers must evaluate bids exclusive of the Goods and Services Tax (GST) or the HST, as applicable. For the list of goods on which excise tax is payable, see [Annex 4.5](#).
- (c) Clients may be entitled to exemption from taxes or duties. They should, in such cases, refer to a certificate of exemption or remission or drawback Order in Council. Issues relating to such remissions should be resolved between the client department and CBSA.

### 5.45.10 Transportation Costs

(2010-01-11)

All goods requirements with an estimated value of \$25,000 or more, including Goods and Services Tax/Harmonized Sales Tax (GST/HST), and with transportation costs exceeding \$7,500 must be submitted to the Traffic Management Directorate (TMD) for a detailed analysis of the charges subject to the exceptions of [4.60](#). TMD will provide an analysis and recommendations regarding the proposed transportation method(s) and costs within two working days or advise the contracting officer of any delay.

### 5.45.15 Bids in Foreign Currency

(2010-01-11)

Unless the bid solicitation specifically requires bids to be made in Canadian currency, bids that are made in a foreign currency must be converted to Canadian currency for evaluation. The noon rate given by the Bank of Canada in effect on the bid closing date, or on another date specified in the bid solicitation, must be applied as a conversion factor to the bids made in foreign currency.

#### **5.45.20 Exchange Rate Fluctuation**

- (a) For bids submitted by Canadian-based suppliers that request the exchange rate adjustment on the [Foreign Currency Component](#) (FCC) (site in English only) identified on form [PWGSC-TPSGC 9411](#), Claim for Exchange Rate Adjustments, the contracting officer will show in Column 3 of the form, the Bank of Canada rate in effect on the bid closing date, or on another date specified in the bid solicitation. This rate will be reflected in the resulting contract and will establish the conversion rate against which claims for adjustment will be calculated. The Bank of Canada rate may be obtained by visiting the [Bank of Canada](#) Web site.
- (b) If a bidder requests an exchange rate adjustment and an exchange rate is used other than the rate specified in the bid solicitation, the price will then be adjusted based on the rate stipulated in the bid solicitation and confirmed with the bidder.

#### **5.50 Selecting the Successful Bidder**

(2010-01-11)

The successful bidder must be selected in accordance with the methodology specified in the bid solicitation.

#### **5.55 Vendor Performance**

##### **5.55.1 Role of the Contracting Officer**

(2010-01-11)

- (a) The contracting officer should ascertain whether a bidder/offeror/supplier selected as a result of a competitive process or a supplier being considered for a sole source contract, is subject to any Vendor Performance Corrective Measure (VPCM), and should determine if that measure affects the procurement the contracting officer is working on. If so, then it may be that the contract award cannot be made or that there are conditions to be imposed with the award.
- (b) When accessing the VIM file on a bidder/offeror/supplier, the contracting officer will have a clear notice of any VPCM. The Automated Buyer Environment (ABE) will not interfere with the awarding of a contract or the issuance of a standing offer or a supply arrangement to a bidder/offeror/supplier subject to a VPCM. As the VPCM details area is limited to about 250 characters, additional information may be contained on VPCM type comments, which should also be consulted.

##### **5.55.5 Authority to Reject a Bid/Offer/Arrangement**

(2010-01-11)

The authority to reject a bid/offer/arrangement, under the section on vendor performance contained in *Standard Acquisition Clauses and Conditions* Manual standard instructions [2003](#), [2004](#), [2006](#), [2007](#) and [2008](#), rests with the contracting officer responsible for evaluating the bids/offers/arrangements, except that in the case of bids/offers/arrangements being considered for rejection in accordance with 1.(d)(ii), (iii) or (iv), the authority to reject a bid/offer/arrangement rests with the appropriate director general.

##### **5.55.10 Notice to the Bidder/Offeror/Supplier**

(2010-01-11)

- (a) Notice of intent to reject a bid/offer/arrangement under the above-mentioned section should be given by telephone, and followed by confirming facsimile or letter, except that a bidder/offeror/supplier excluded under the section on vendor performance contained in all SACC

Manual standard instructions will not be notified. Notice of intent is considered to have been received by the rejected bidder/offeror/supplier at the time of the telephone call. The person making the call should note on the file the date and time of the call, and the person spoken to.

- (b) The notice of intent must set out the facts and the reasons for the decision to reject the bid/offer/arrangement. For example, when a bidder/offeror/supplier with a record of persistent lateness is excluded from a procurement where timeliness is critical, in accordance with 1.(d) of the section on vendor performance contained in all SACC Manual standard instructions, the notice must cite the contracts on which the bidder/offeror/supplier was late (facts) and state that this record shows an unacceptable risk in light of the critical nature of the time requirement in the present procurement (reason). However, when a bid/offer/arrangement is being rejected in accordance with 1.(b) or (c) of that section because of a VPCM that is in place, it is sufficient to reference that VPCM.

**5.55.15 Review**  
(2010-01-11)

- (a) A bidder/offeror/supplier, except a bidder/offeror/supplier excluded in accordance with 1.(b) of the section on vendor performance contained in all the SACC Manual standard instructions, may request that the decision to reject the bid/offer/arrangement be reviewed by the Assistant Deputy Minister, Acquisitions Branch (ADM/AB). It is entirely in the ADM/AB's discretion, whether the bid evaluation and contract award process will be held up, to give time to review the decision.
- (b) A review by the ADM/AB will result in an investigation, and a decision. Such a decision can have an effect beyond the particular procurement from which the bidder/offeror/supplier has been rejected. When the decision has been made, the bidder/offeror/supplier should be informed of the results, in writing.

**5.60 Financial Capabilities of Contractor**

**5.60.1 Financial Capability**  
(2010-01-11)

- (a) The bidder must have the financial capability to fulfill the requirement.
- (b) Treasury Board (TB) Policy states "firms considered qualified are those which have the technical, financial and managerial competence to discharge the contract. Contracting officers are responsible for verifying this information, prior to entering into a contract".
- (c) As part of the evaluation process, the contracting officer may obtain an opinion about a successful contractor's capability to finance a requirement through to completion.
- (d) If the selection of the bidder is competitive and the contract is for commercially available goods or services, the risks of financial loss to Canada are minimized because of the ability to find alternate sourcing. However, under any other circumstance, re-sourcing can be costly both in terms of performance delays and monetary risk.
- (e) Assessing the financial capability of potential and existing suppliers is not normally required for:
  - (i) assistance contracts on behalf of Industry Canada (IC), (determination of a contractor's financial capability in these cases is the responsibility of IC);
  - (ii) contracts with universities and colleges, Crown corporations, government departments and agencies;
  - (iii) contracts for the services of individuals; and
  - (iv) contracts for generally available commercial goods or services from bidders selected by

competition.

- (f) A financial analysis of a potential supplier may be warranted at the time of sourcing.
- (g) A financial review of a supplier can be initiated at any stage of the contracting process when considered necessary by the contracting officer. The contracting officer should arrange for ongoing financial capability analysis by a cost analyst during contract performance, when necessary.
- (h) When PWGSC must deal with a financially weak supplier, the risk to Canada must be reduced as much as possible through contract financial security, based on recommendations by a cost analyst.
- (i) For contracts requiring senior director's or regional director's approval, a condition of exercising delegated authority is that the cost analyst be given the opportunity to review the contractual documents and to provide comments. For contracts above a senior director's or regional director's approval level, comments received from the cost analyst must be included as supporting data on form [PWGSC-TPSGC 1151-2](#), Contract Request, in Part 2, Section F. (*NOTE: Only government employees have access to the site.*)

### 5.60.5 Bid Security (Financial)

(2010-01-11)

- (a) If bid security is obtained, it must be held until the terms of the security are fulfilled, including award of a contract and/or expiration of the bid validity period.
- (b) If a bidder submits a bid, which includes insufficient security, that is, less than the exact financial security stipulated, or none at all, the bid will be considered non-responsive.
- (c) Security deposits in the form of government guaranteed bonds with coupons are not acceptable unless all coupons that are not matured at the time the security deposit is provided are attached to the bonds.
- (d) Surety bonds provided by bidders must be examined by the contracting officer, with advice from Legal Services, as necessary, to ensure that they are correct, original, and legally enforceable in all respects; including the bidder's legal name and address, the date of the contract, the contract serial number, and the description of the "Obligee", which is "Her Majesty the Queen in right of Canada". Surety bonds requiring correction are returned to the bidder and not to the surety company.
- (e) PWGSC will hold any bid bond, payment bond, performance bond, non-negotiable security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) until the terms of the security are fulfilled. For detailed instructions on the safekeeping of these instruments, see [Annex 5.2](#).
- (f) The contracting officer must request written instructions from the bidder concerning the action to be taken with respect to any coupons attached to the bonds that will mature while the bond is pledged as security, and the instructions must be forwarded to the Financial Operations Sector.
- (g) The contracting officer must examine the letters of credit submitted by bidders and obtain advice from Legal Services, as necessary, to ensure that each letter is correct in all respects, including:
  - (i) the face amount that may be drawn against it;
  - (ii) its expiry date;

- (iii) provision for sight payment to the Receiver General for Canada by way of the financial institution's draft against presentation of a written demand for payment signed by the authorized departmental representative, and identified in the letter of credit by their office;
- (iv) provision that more than one written demand for payment may be presented subject to the sum of those demands, not exceeding the face amount of the letter of credit;
- (v) provision that it is subject to the International Chamber of Commerce (ICC) [Uniform Customs and Practice for Documentary Credits](#), 2007 Revision, ICC Publication No. 600;
- (vi) clear specification that it is irrevocable or deemed to be irrevocable, pursuant to the ICC Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600;
- (vii) it has been issued or confirmed, in either official language, by a financial institution, which is a member of the [Canadian Payments Association](#) and must be on the letterhead of the Issuer or Confirmer. The format is left to the discretion of the Issuer or Confirmer.

**5.60.10 Business Credit Services**

(2010-01-11)

- (a) Business credit services companies provide both general credit ratings and comprehensive credit reports on individual firms. Their comprehensive reports generally include: simplified financial statements; details of maximum credit obtained from the firm; promptness of payments made; banking information; firm's history and some information into the firm's operations.
- (b) Contracting officers are not to contact a business credit services company directly. They must send all requirements for business credit services to the Policy, Risk, Integrity and Strategic Management Sector (PRISMS).
- (c) Business credit services reports are considered commercially confidential. The information is not to be disclosed outside the government, and is only disclosed within the government on a "need to know" basis.
- (d) Copies of these reports are available for use only within PWGSC. The reports are retained by PRISMS.

**5.60.15 Statement of Cost Accounting Practices**

(2010-01-11)

- (a) PRISMS has a comprehensive program to ensure that contractors' cost accounting practices comply with the Contract Cost Principles [1031-2](#) and related Cost Interpretation Bulletins.
- (b) The general principle of Contract Cost Principles is that the total cost of the contract must be the sum of the applicable direct and indirect costs, which may be reasonably and properly incurred and/or allocated during the performance of the contract, less any applicable credits. These costs must be determined in accordance with the contractor's cost accounting practices, as accepted by Canada and applied consistently over time.
- (c) Contracting officers should inform PRISMS when a contractor or subcontractor has negotiated contracts with Canada and meets the following criteria:
  - (i) the supplier's divisions/entities previous fiscal year and/or current fiscal year forecasted negotiated Canada business volume exceeds \$5,000,000 or
  - (ii) the supplier's divisions/entities previous fiscal year and/or current fiscal year forecasted

negotiated Canada business volume exceeds \$2,000,000 and represents more than half of that division's/entities total business volume.

- (d) The Statement of Cost Accounting Practices (SCAP) is a form used as a management representation describing the cost accounting practices of a supplier. The Cost, Policy and Financial Review Division will determine whether the supplier must complete a SCAP.

### **5.65 Identical Low Bids – Best Value**

(2010-01-11)

- (a) If identical low bids are received, the Treasury Board Contracting Policy ([subsection 10.8.17](#)) provides that the contract should be awarded on the basis of best value. The factors below should be used, subject to directives on national policies and objectives that may be issued from time to time. These criteria may be weighted as considered appropriate by the contracting officer:
  - (i) a bidder with an overall satisfactory performance record is given preference over a bidder known to have a less satisfactory performance record;
  - (ii) a bidder in a position to provide adequate after-sales service, with a good record in this regard, will be given preference over a bidder who is less able to provide adequate service or who has a poor record;
  - (iii) when delivery is an important factor, the bidder offering the best delivery date should be given preference;
  - (iv) when there are several items included in the bid and only some items are priced identically, the bid offering the greatest dollar value should be given preference; and
  - (v) when there are several items included in the bid and one or more bidders bid lower on one or more of the items, the lowest bidder with the greatest dollar value should be given preference both for the items on which it bid equal prices and for the items on which it bid lower.
- (b) If there are two (or more) identical bids, and provided that the bid selected would still be considered the most advantageous to Canada, preference should be given to the bidder who assumes all or part of the exchange rate adjustment risk over a bidder who does not assume any of this risk. Furthermore, preference should be given to the bidder who assumes all of the exchange rate adjustment risk over a bidder who assumes only part of this risk.
- (c) If none of the above applies, a method of tie breaking that is mutually acceptable to Canada and bidders with identical bids can be used. As an example, a simple coin toss could be agreed upon. The mutually agreed solution should involve legal advice.

### **5.70 One Responsive Bid**

(2010-01-11)

- (a) When only one responsive bid is received in response to a competitive bid solicitation, if the contracting officer is satisfied that Canada is obtaining fair value, the contract may be awarded using competitive authorities to the single responsive bidder, without obtaining additional price support.
- (b) If the contracting officer is not satisfied that the bid represents fair value, price justification must be requested from the bidder. If this does not show that the price is fair and reasonable, the contracting officer may consider negotiating or cancelling and reissuing the bid solicitation.

### 5.75 No Responsive Bids

(2010-01-11)

When no responsive bid is received as a result of a competitive bid solicitation, the bid solicitation must be cancelled. For more information on reissuing a solicitation, see [4.100](#).

### 5.80 Bid Rigging/Collusion/Fraud

(2010-01-11)

The contracting officer must notify Legal Services and his or her immediate director whenever there is an indication of possible bid-rigging activities, collusion or fraud. When it is considered necessary, Legal Services will assist in subsequent discussions with [Competition Bureau Canada](#), a federal independent law enforcement agency responsible for the administration and enforcement of the [Competition Act](#). Bid rigging is addressed in [section 47](#) of the Act.

The following are examples of possible bid-rigging activities:

- (a) bid rates/prices are much higher than published price lists, engineering cost estimates, or previous bid rates/prices by the same suppliers, for no apparent reason;
- (b) the successful bidder subcontracts work to suppliers who submit higher bids on the same project;
- (c) bidders use identical wording to describe non-standard items, or submit identical bids for non-standard items;
- (d) there are indications of unusual communications among suppliers, before submitting the bids with regards to bid prices, or allocation of clients, or references to "standard industry prices", "industry self-regulation", etc.;
- (e) the same supplier wins bids for specific clients, or in specific geographic locations, or for specific sizes or types of work, and loses most other bids on a regular basis; or
- (f) a recognizable pattern of systematic or random low bid rotation exists.

### 5.85 Negotiations

(2010-01-11)

- (a) When two or more responsive bids are received in response to a competitive bid solicitation and if no responsive bid represents fair value, contracting officers should examine the solicitation to determine possible causes. Subsequently, the contracting officer may consider negotiating with all responsive bidders or cancelling and reissuing the bid solicitation.
- (b) [Subsection 10.6.6](#) of the Treasury Board Contracting Policy states: "when negotiating with more than one firm, care should be taken that all are treated fairly and impartially. The negotiations should not become an auction of the contract, as firms progressively improve their bids in the light of information about the position of other firms. The confidentiality of each firm's negotiating position is to be assured".
- (c) The contracting officer must conduct all negotiations. If it is of a technical nature, the contracting officer and the client should conduct the negotiations. A negotiation report must be placed on the procurement file.
- (d) For procurements subject to the international trade agreements contracting officers must conduct negotiations in accordance with the conditions of these agreements. See [Article 1014](#) of the North American Free Trade Agreement or [Article XIV](#) of the World Trade Organization Agreement

on Government Procurement. The various bilateral free trade agreements have similar rules to NAFTA.

- (e) For procurements not subject to [NAFTA](#) or [WTO-AGP](#),
  - (i) when a bid solicitation was used, negotiations may be entered into:
    - (A) before the completion of bid evaluation, provided that they are held with all bidders that submitted responsive bids; or
    - (B) after the bid evaluation, with only one bidder, provided that the bidder submitted the only responsive bid. Or, the bidder was selected after evaluating more than one responsive bid, but it can be demonstrated that if the negotiations had been held with all of the bidders that submitted responsive bids, there would have been no change in the bidder selected;

The ability to prove that the same bidder will be selected, regardless of whether negotiations are conducted with all responsive bidders, presupposes that the requirement (for example, technical specifications) will not change during negotiations and, therefore, that other bidders given the same opportunity could not submit different or better offers.
  - (ii) when an Invitation to Tender (ITT) was used and there is more than one responsive bid, but neither the lowest bid nor the other bids represent fair value, the contracting officer must have determined, before considering entering into negotiations, that it would not be more effective to cancel the solicitation and meet the requirement using another method of supply. When urgency is a major factor, the results of the original ITT might be capable of being used as the basis for entering into negotiations with bidders; and
  - (iii) when a Request For Quotation was used, negotiations should be avoided.

### 5.90 Extending the Bid Validity Period

(2010-01-11)

- (a) Bids will remain open for acceptance for a period of 60 days (30 days for construction), from the closing date of the bid solicitation, unless otherwise indicated in the bid solicitation (see *Standard Acquisition Clauses and Conditions* [[SACC](#)] Manual standard instructions [2003](#), [2006](#) and [2008](#)). Contracting officers must carefully assess the potential for extended bid evaluation periods and indicate in the bid solicitation the modified period for bid acceptance. Contracting officers must also carefully monitor events during the bid evaluation period and contract approval process in order to award the contract before the bid acceptance period has expired. Expiry of bid acceptance periods before contract award should thus become an exceptional circumstance.
- (b) If the bid acceptance period has expired, and the contract has not been awarded, the bid solicitation must be reissued.
- (c) Any contract awarded to a bidder after the bid expiry date is considered a sole-source contract, and must be justified accordingly.
- (d) If the evaluation is incomplete and is unlikely to be completed within a reasonable period of time, and the bid acceptance period will expire before the evaluation is complete, the process should be halted and an assessment made to identify the cause of the delay. Any necessary corrections to the solicitation or evaluation methodology may then be made and the bid solicitation reissued.
- (e) As stated in the standard instructions, Canada may seek an extension of the bid validity period from all responsive bidders in writing within a minimum of three (3) days before the end of the bid

validity period. If all responsive bidders accept the extension, Canada will continue with the evaluation of the bids. If all responsive bidders do not accept the extension, Canada will, at its sole discretion, either continue with the evaluation of the bids of those who have accepted the extension or cancel the solicitation.

- (f) Where a bidder does not agree to the extension and it is clear that this particular bidder has no chance of being recommended for award, then it may be appropriate to exercise Canada's right to proceed with the evaluation of only those bids submitted by the bidders that have agreed to an extension. Legal Services may be consulted in instances where a bidder does not agree to the extension, particularly in the case of procurements subject to the trade agreements.

### **5.95 Evaluating Joint Venture Bids**

(2010-01-11)

- (a) Joint ventures may respond to bid solicitations in accordance with the applicable conditions contained in the solicitation. The relevant section of standard instructions [2003](#), [2006](#) and [2008](#) of the SACC Manual permits joint venture bids and provide further details.
- (b) If a contract is awarded to a joint venture, all members of the joint venture will be severally liable for the performance of any resulting contract. (See standard instructions referenced above.)
- (c) If a financial capability assessment is done, then all members of the joint venture will be assessed.

### **5.100 Special Program Considerations**

(2010-01-11)

In the evaluation of bids, consideration may be given to various programs such as Canadian content, green procurement, and the Federal Contractors Program, all as applicable. Employment equity requirements are described in [Annex 5.1](#).

### **5.105 Evaluation Report**

(2010-01-11)

- (a) An evaluation report must be prepared outlining in detail the review of the bids, including any clarifications requested and how the final decision was taken to rank and select the bidders.
- (b) The evaluation report should include the evaluation criteria, the rationale of mandatory and point-rating for each criterion, as well as the names and contact information of all evaluators.
- (c) All persons involved in evaluating the bids must sign the evaluation report.
- (d) All notes taken during the evaluation must be kept in their original form and retained on the procurement file for audit purposes.

*Some sectors/regions have developed checklists to assist contracting officers in the tabulation of bids. They should be used where available.*

### **5.110 Communications before Contract Award**

(2010-01-11)

- (a) Before contract award, contracting officers must not advise unsuccessful suppliers that they will not be awarded a contract except in unusual circumstances. See [5.110.1](#) for specific exemptions on ship construction and refit.

- (b) Particular care is required where bid validity period may require extension. (See [5.90](#).)

**Note:** *No information about other bids may be released. Disclosure of information after contract award is covered in [7.45](#).*

### 5.110.1 Early Notification for Ship Construction and Refit

(2010-01-11)

- (a) For new ship construction and ship refit contracts awarded by Public Works and Government Services Canada headquarters, contracting officers will notify bidders whether their bid is among the two most favourable and responsive when:
- (i) there are more than two responsive bidders;
  - (ii) a lengthy approval process is anticipated (generally for contracts requiring approval above the director general level); and,
  - (iii) none of the following circumstances apply:
    - (A) all bids received are extremely close; or
    - (B) the manager feels that notifying bidders of bid status would not be in the best interests of Canada.
- (b) For shipbuilding or ship refit contracts that do not fall within the normal criteria, contracting officers should consult with the Senior Director, Marine Systems Directorate (SD/MSD), Defence and Major Projects Sector.
- (c) Early notification before contract award can only be made after the SD/MSD has recommended the "Contract Request" (form [PWGSC-TPSGC 1151-2](#)). (**NOTE:** *Only government employees have access to the site.*)
- (d) Bidders will be advised of the circumstances under which notification of their status may be withheld.
- (e) Bidders whose bids are clearly not the two most favourable responsive bids will be permitted to withdraw their bids upon written application to the contracting officer.

**Annex 5.1: Federal Contractors Program**  
(2010-01-11)

1. Overview

The requirements of the [Federal Contractors Program](#) (FCP) apply, with the exceptions listed below, to suppliers of goods and services, including a supplier who is a member of a joint venture, having a workforce in Canada of 100 employees or more, and bidding on requirements valued at \$200,000 or more, including all applicable taxes. They may also apply, depending on the proposed contractor, to procurements valued between \$25,000 and \$200,000. An employee is defined as a full-time or part-time permanent employee, or a temporary employee having worked 12 weeks or more.

- (b) Even if only one member of a joint venture does not meet the FCP requirements, the bid will be declared non-responsive.
- (c) To determine applicability, the thresholds are compared to the total estimated value of the contract, standing offer, or supply arrangement, including any option years and all applicable taxes.
- (d) All contracts, bid solicitations, Requests for Standing Offers (RFSOs) and Requests for Supply Arrangements (RFSAs), meeting the above criteria, are subject to the FCP requirements.
- (e) The requirements of the FCP apply to foreign-based suppliers if they have a workforce in Canada of 100 employees or more, as defined above.

2. **Exclusions from the FCP**

The FCP policy does not apply to:

- (a) suppliers having a combined workforce of less than 100 employees in Canada, including any branch offices and Canadian divisions of the organization;
- (b) offshore suppliers who will conduct and perform the work outside Canada;
- (c) federally regulated companies, that is, 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 and engineering [A&E] services requirements are not excluded); and
- (g) subcontractors.

3. **Ineligible Suppliers**

- (a) Suppliers that have withdrawn voluntarily from the FCP for a reason other than the reduction of their workforce have been warned of the consequence of their withdrawal. That is, they will be ineligible to receive future government contracts over the threshold of \$25,000, including all

applicable taxes, for solicitation of bids, as set out in the *Government Contracts Regulations* (GCRs).

- (b) For requirements valued over \$25,000 and below \$200,000, including all applicable taxes, contracting officers must use *Standard Acquisition Clauses and Conditions* (SACC) Manual clause [A3031T](#) in their bid solicitations, [M2002T](#) in their RFSOs, or [S3031T](#) in their RFSAs, to advise suppliers of the above consequence and to require bidders to certify that they have not been declared ineligible by Human Resources and Skills Development Canada (HRSDC).
- (c) For requirements valued at \$200,000 or more, including all applicable taxes, contracting officers must use SACC Manual clause [A3030T](#) in their bid solicitations, [M2000T](#) in their Request for Standing Offers or [S3030T](#) in their Request for Supply Arrangements. This clause requires that suppliers confirm their eligibility to receive government contracts by indicating that a previously assigned certificate number in the past is still valid. The clause [A3015C](#) must be used in conjunction with [A3030T](#), [A3031T](#), [M2000T](#), [M2002T](#), [S3030T](#) and [S3031T](#). If a verification of the Certificate of Commitment ([LAB 1168](#)) discloses a misrepresentation on the part of the contractor, the contract may be terminated for default.

**Note:** The clause [A3015C](#) is included in all the [templates](#), with the exception of the low dollar value 2T-LDV1 template.

- (d) Contracting officers must declare non-responsive any bid, including a joint venture bid, over the threshold for soliciting bids, received from a supplier under sanction, either as a result of a finding of non-compliance by HRSDC, or following its voluntary withdrawal from the FCP for a reason other than the reduction of its workforce to less than 100 employees. Even if only one member of a joint venture does not meet the FCP requirements, the bid will be declared non-responsive.
- (e) Treasury Board Contracting Policy on FCP ([Appendix D](#)) requires that contracting officers verify the eligibility of contractors before awarding a contract. Contracting officers must ensure that they are not recommending the award of contracts to any ineligible supplier by consulting the [List of Ineligible Contractors](#) available on the "Publiservice" site. (**NOTE:** Only government employees have access to the site.)
- (f) If an ineligible supplier is the only supplier, which can perform the work in a non-competitive situation or the recommended bidder(s) in a competitive solicitation, the contracting officer should obtain approval from senior management before awarding the contract. In such cases, the contracting officer should inform the FCP officer who would then attempt to obtain a commitment from the supplier to seek re-instatement in the FCP.

*For policy advice and guidance, contact a FCP officer from HRSDC, at phone number 819-953-7536.*

#### 4. Contracts Valued at \$200,000 or More

- (a) When it is proposed to award a contract of \$200,000 or more, including all applicable taxes, to a supplier subject to the FCP, the contract will not be awarded unless a signed Certificate of Commitment ([LAB 1168](#)) or valid certificate number is provided by the supplier.

The Certificate of Commitment or a valid certificate number is an essential pre-condition to the award of the contract. Compliance with FCP is not a term of the resulting contract or standing offer; however, if a verification of the Certificate of Commitment discloses a misrepresentation on the part of the contractor, the contract may be terminated for default.

- (b) 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 suppliers who:

- (i) have signed and submitted the Certificate of Commitment identified above, and have not been declared ineligible by HRSDC to receive government contracts over the threshold for solicitation of bids, as set out in the GCRs, either as a result of a finding of non-compliance by HRSDC, or following their voluntarily withdrawal from the FCP for a reason other than the reduction of their workforce to less than 100 employees; or
- (ii) have provided a valid certificate number before contract award or issuance of a standing offer or a supply arrangement; or
- (iii) are exempted from the employment equity policy (refer to the list above).

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

Workplace Equity - Operations  
Human Resources and Skills Development Canada  
Portage II, 10th Floor  
165 Hôtel de Ville Street  
Gatineau, Québec K1A 0J2

OR by

Fax: 819-953-8768.

#### **5. Contracts Valued Over \$25,000 and Below \$200,000**

Contracts, including standing offers and supply arrangements, valued over \$25,000 and below \$200,000, including all applicable taxes, must be awarded only to suppliers who, if subject to FCP in the past, have not been declared ineligible by HRSDC to receive government contracts over the threshold for solicitation of bids, as set out in the GCRs, either as a result of a finding of non-compliance by HRSDC, or following their voluntarily withdrawal from the FCP for a reason other than the reduction of their workforce to less than 100 employees.

#### **6. Compliance Reviews**

Once a certified supplier is awarded a contract of \$200,000 or more, the contractor is required to honour its commitment of implementing employment equity as an ongoing obligation, and not simply during the duration of the contract. HRSDC provides assistance to contractors throughout this process. It also monitors the contractor's performance in relation with the requirements of the FCP, 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.

#### **7. Sanctions for Non-compliance or Withdrawal from FCP**

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 government contracts valued over the threshold for the solicitation of bids, as set out in the GCRs.

Contractors who voluntarily withdraw from the FCP for a reason other than the reduction of their workforce to less than 100 employees are subject to the same sanction as those who are found non-responsive, 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.

**8. Reinstatement**

To be reinstated, ineligible suppliers must contact HRSDC and demonstrate compliance with the requirements of the FCP before bidding on government contracts.

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

*For policy advice and guidance, contact a FCP officer from HRSDC, at phone number 819-953-7536.*

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**Annex 5.2: Handling, Custody and Safekeeping of Financial Security/Handling of Bills of Exchange**

(2010-01-11)

- (a) A bill of exchange tendered as a security deposit in connection with a bid for a contract must be held uncashed in a secure and fireproof place until the successful bid is selected or for up to one year, whichever occurs first. (If at the end of one year the contract still has not been awarded, the contracting officer must exchange the bill of exchange for a current-dated one.) The Bid Receiving Unit (BRU) sends security deposits received with headquarters bids to the Finance Sector, Public Works and Government Services Canada (PWGSC), for safekeeping. The BRU sends three copies of the list together with the deposits to the Finance Sector, showing beside the name of each bidder, the amount and nature of the deposit (for example, certified cheque, bonds). The Finance Sector signs and returns two copies of the list to the BRU, who sends one copy to the contracting officer.
- (b) When a bid is accepted and the bill of exchange is then required as security until completion of the contract, a contractor may request PWGSC to hold and not cash the bill of exchange. It should be stored in approved security equipment by the directorate. If the directorate does not have adequate facilities, it should be sent to the Financial Operations Directorate (FOD), which will arrange for storage. If the contractor makes no such request, the bill of exchange must be forwarded to the FOD for deposit in the Consolidated Revenue Fund (CRF).
- (c) When a bid is rejected or accepted and the bill of exchange submitted in connection with the bid is not required as security until completion of the contract, the bill of exchange is returned to the contractor.
- (d) Bills of exchange received as contract security must be forwarded immediately to FOD for deposit in the CRF, in accordance with the [Receipt and Deposit of Public Money Regulations](#).
- (e) A security deposit provided as collateral for the return of plans and specifications will be forfeited if those plans and specifications are not returned in time and in satisfactory condition. Furthermore, the contracting officer must so inform the Manager, FOD.

**1. Government Guaranteed Bonds, Bills of Exchange and Letters of Credit**

The Finance Sector must ensure that the receipt of bills of exchange and/or government guaranteed bonds and/or irrevocable standby letters of credit is recorded in the accounting records of PWGSC and that it is also appropriately recorded in the Accounts of Canada, as an asset and a liability. Directorates must promptly notify the Finance Sector of all such receipts, regardless of whether they are held by the directorate.

**2. Safekeeping of Bonds, Negotiable Instruments and Letters of Credit**

- (a) There are three acceptable methods for the safekeeping of government bonds, negotiable instruments and letters of credit:
  - (i) custody by FOD, which was established to provide a safekeeping service for securities and any other valuable assets requiring theft-proof storage;
  - (ii) storage by the directorate in approved security equipment, in accordance with Part II of the *Government Contracts Regulations*; or
  - (iii) storage by the Security Deposit Division, 350 King Edward Ave, Ottawa.
- (b) The adequacy of departmental security equipment can be assessed by referring to the PWGSC Security Equipment Catalogue, which lists equipment that is approved for the storage of negotiable instruments. Canadian Industrial Security Directorate assistance is also available on

this subject.

- (c) Where proper security equipment is not available, all security deposits (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) must be forwarded to FOD for safekeeping using a PWGSC deposit form entitled "Contractor's Security Deposit".
- (d) To lessen the risk of loss, bonds should be transmitted directly to FOD from wherever the contracting authority first receives the security (for example, if a bond is received in a regional office, it should not be routed to Headquarters but sent directly to FOD).
- (e) When transmitting bonds from PWGSC to FOD (or to the owner when the securities are held by directorates), registered and hypothecated bonds must be transmitted by registered mail. Bearer bonds may be transmitted by "money packet" or bonded courier, armoured car service or a courier provided from within departmental resources.
- (f) When bearer bonds are transmitted by the "money packet" system, the maximum indemnity from Canada Post is \$100; therefore, appropriate additional insurance should be considered. (For the examination and management of risks, directorates should refer to the Treasury Board Policy [Risk Management – Policies and Publications.](#))
- (g) While coupon-bearer bonds are in its custody, FOD is responsible for their security and for clipping matured coupons and remitting them, as directed by the contracting officer.