



Supply Manual



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Prepared by:

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Public Works and Government Services Canada**

SUPPLY MANUAL

Chapter 8

Contract Management

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Chapter 8 - Contract Management

8.1 Overview

(2010-01-11)

- (a) Contract management is the process of systematically and efficiently managing contract development, implementation, and administration for maximizing financial and operational performance and managing inherent risk. Contract management encompasses the life cycle of a contract and involves many stakeholders including, but not limited to the contracting officer, the client department and the supplier.
- (b) Contract administration is an important part of contract management, which includes those activities performed after a contract award, to ensure files are properly maintained and that the contractor meets the requirements of the contract.
- (c) Contract management is an essential element of the procurement process that protects the interests of Canada while ensuring that suppliers are being treated fairly. Contract management can be divided into four distinct phases:
 - (i) pre-contractual (planning);
 - (ii) contracting (bidding and awarding of contract);
 - (iii) contract administration (after the contract is awarded);
 - (iv) post-contractual (close out, warranty and audit);

The pre-contractual phase is addressed in the contents of [Chapter 2](#) and [Chapter 3](#). The importance of early involvement by contracting officers during the pre-contractual phase cannot be overstated, as this sets the tone for the balance of the contract life cycle activities.

- (d) Planning of the details of how the contract will be managed should start during the formulation of the requirement itself, which will set the standards of what the contractor must do, how performance will be monitored and what standards will be used. These details, together with other procedures related to how the contract will be managed, should be included in the bid solicitation, to allow bidders to determine what is required of them, to plan the activities needed and to reflect the costs in their bids.
- (e) The contracting phase is addressed in [Chapter 4](#) through [Chapter 7](#). Responsibility for the elements of the contracting phase fall generally to the contracting officer, though client departments have lead responsibility for some elements (see [Annex 1.2](#).)
- (f) In general, the level of effort required for contract management will vary depending on the value and complexity of the procurement. Low dollar value or simple contracts may require only minimum management, while more complex contracts will require continuous monitoring by both the client and the contracting officer. A dedicated team of clients and contracting officers may be assigned to large projects, where roles and responsibilities are defined in more detail.

8.5 Contract Administration

(2010-01-11)

- (a) Both the client department and Public Works and Government Services Canada (PWGSC) must administer the contracts. It is important that the client and the contracting officer understand and agree on who is responsible for managing and administering the various aspects of the contract.
- (b) Contracting officers responsible for the management of contracts should be aware of any institutional or personal sanctions. As per [section 12.1.3](#) of the Treasury Board (TB) Contracting

Policy, TB may require that sanctions be imposed on either the department or certain officials when contracting practices or contract administration is not acceptable.

- (c) Contracting officers should set up and maintain complete and up to date documentation on every aspect of the contract, both to provide a record of actions taken and to protect Canada's interests under the contract. The files will provide an organizational memory of activities and events and should include, where applicable, but not be limited, to the following:
- (i) the procurement planning documents;
 - (ii) the requisition and any amendments;
 - (iii) the solicitation documents;
 - (iv) bid evaluation plan and resulting evaluation documents;
 - (v) professional and specialist's advice;
 - (vi) risk identification, assessment and mitigation;
 - (vii) environmental considerations, impacts, and mitigation;
 - (viii) correspondence with clients;
 - (ix) contract conditions;
 - (x) contract amendments;
 - (xi) work schedule, including milestones and deliverables;
 - (xii) payment schedules, invoices and payments;
 - (xiii) other correspondence (written and email);
 - (xiv) records of phone discussions;
 - (xv) formal records of meetings, including minutes;
 - (xvi) records of decisions;
 - (xvii) warranties;
 - (xviii) management reports, including audit reports, and
 - (xix) contract closeout documents.
- (d) Additional information on environmental considerations is provided in the Guideline for Integration of Environmental Performance Considerations in Federal Government Procurement, in [section 4](#); Contract Management, in [section 5](#); Use, Operation and Maintenance, and in [section 6](#); Disposal.
- (e) For guidelines on file organization, see [Annex 8.1](#).

8.10 Administration of Service Contracts

(2010-01-11)

- (a) [Section 16](#) of the TB Contracting Policy sets out the policy for service contracts. [Article 16.11.3](#) states the following:

"The contracting authority should appoint a contracting officer and the technical authority should appoint a project officer (who may be the same person), to be responsible and accountable for monitoring the work through:

- a. *regular physical progress and financial reports from the consultant or professional;*
- b. *attending progress meetings with the consultant or professional;*
- c. *examining the work in progress to ensure conformity with contract requirements;*
- d. *monitoring time, resource, cost and quality aspects of the work against a pre-determined and agreed work plan;*
- e. *amending the contract to reflect new requirements, work schedules and payment provisions in response to changing circumstances;*
- f. *conducting technical and financial audits;*
- g. *accepting or approving the work at intermediate stages and at completion;*
- h. *certifying all payments and following up to ensure timely payment.*

The division of these responsibilities among authorities should be agreed to before placing the contract.”

8.15 Contract Performance

(2010-01-11)

- (a) The management of a contract involves many activities to ensure fulfillment of that contract. Events can sometimes alter or disrupt the performance of a contract. For example, a contractor may default on contractual obligations, disputes may arise about contract conditions, or there may be a need to make amendments to the contract after it has been awarded.
- (b) Whenever the satisfactory fulfillment of a contract is jeopardized, contracting officers should take the necessary steps to serve and protect the interests of Canada. Contract disputes should be dealt with fairly, and as promptly as possible. Contracting officers should keep procurement files complete and up to date, to provide a record of actions taken.

8.20 Canada's Obligations

(2010-01-11)

In managing a contract, contracting officers must ensure strict adherence to all of Canada's obligations. A breach of such obligations could nullify a surety bond. Where responsibility lies with a client department, the contracting officer should ensure the client authority is aware of the obligations.

8.25 Contract Payments

(2010-01-11)

Work performed or goods received under a contract must be paid for in accordance with the government's policy on the payment of accounts providing for payment within 30 days. The payment period is measured from the date that the goods or services were received, in acceptable condition, at the location(s) specified in the contract, or the date that an invoice in proper form was received, whichever is later.

8.30 Progress Payments

(2010-01-11)

- (a) Progress payments need to be measured against milestones. A project progress monitoring system should be in place to provide an indication of when the work has been accomplished. Progress payments must include appropriate documentation that is retained on file.
- (b) When milestone progress payments are not appropriate, then payments may be made at set times during the contract period.

8.35 Claims for Progress Payment and Invoicing

(2010-01-11)

- (a) No payment, other than a progress payment, may be made under a contract unless a person authorized by the appropriate minister certifies that:
 - (i) the work has been performed;
 - (ii) the goods have been supplied or the services rendered as the case may be; and
 - (iii) the price charged is according to the contract or, if not specified by the contract, is reasonable.
- (b) When a payment must be made before the completion of the work, delivery of the goods or rendering of the service, the payment must be in accordance with the contract.

- (c) Claims for progress payment are normally routed, through the contracting officer, to the client for verification and authorization of payment. Contracting officers processing payment claims must act promptly. The standard due date for payment is 30 days, after invoicing or receipt of goods, whichever is later. Acceptable performance standards should be set by the sectors/regions to allow adequate time for the certification of the claim by an authorized representative of the client.
- (d) Claims for progress payment must include the completed form [PWGSC-TPSGC 1111](#), Claim for Progress Payment, which requires a certification of contract expenditures.
- (e) The contractor normally sends invoices directly to the client. A copy must also be sent to the contracting officer and kept on file.
- (f) Invoices that include billings for items not received are not considered due until all items are received. If a contractor wishes payment for a partial shipment, a revised invoice, if permitted by the contract, must be submitted.
- (g) Clients are required to notify contractors of any error or missing information in an invoice or supporting documentation, within 15 days of receipt. Clients should return, within 15 days, any invoice not in accordance with the terms of the contract, to the contractor for resubmission.

8.40 Claims for Exchange Rate Adjustment

(2010-01-11)

For contracts subject to the exchange rate fluctuation adjustment provision, the Conversion Factor (Initial) shown in Column 3 of the form [PWGSC-TPSGC 9411](#), Claim for Exchange Rate Adjustments, will establish the conversion rate against which claims for adjustment will be calculated, subject to the criteria set out in *Standard Acquisition Clauses and Conditions* (SACC) clauses [C3015C](#) (for payment on delivery), [C3020C](#) (for milestone payment) or [C3030C](#) (for progress payment). This conversion factor (initial) will normally be the same as the Bank of Canada rate, on the date of bid closing or any other date, as otherwise specified in the contract. (See [5.45.5](#).)

8.45 Interest

(2010-01-11)

- (a) Simple interest will be paid automatically on any amounts that are overdue, provided that Canada is responsible for the delay. The [general conditions](#) of the SACC Manual reflect this policy. The amount of interest will be shown separately on the cheque stub or accompanying remittance advice.
- (b) Interest will be calculated from the day after the due date to the day before the date that the payment is issued. However, interest will not be paid until the contract payment is made.
- (c) Interest is calculated according to the following formula:
$$\text{Interest} = \text{Amount owed} \times ([\text{that date's bank rate} + 3\%] \times [\text{number of days interest payable}/365])$$
- (d) The provisions for payment of interest on overdue accounts set out in the general conditions must be strictly adhered to, except in special cases where the client requisition and appropriate provisions in the contract specifies a payment period longer than 30 days, for example when extensive product evaluation, inspection or testing requirements are involved.

8.50 Overtime

(2010-01-11)

- (a) When a contractor performs overtime under a contract, added costs may be incurred by Canada in the form of overtime premiums. Recognition of the additional cost by Canada depends upon the attendant circumstances and the cause of the overtime. Work performed under contract to Canada should not attract higher overtime charges than would apply to similar commercial work.
- (b) Scheduled overtime premium costs included in a contractor's overhead account and applied to contracts are allowed, if contracts account for a pro rata share of the overtime.
- (c) Unscheduled overtime premium costs to specific contracts are allowable only, if the overtime is due to Public Works and Government Services Canada (PWGSC) or client demands for accelerated delivery, increased delivery quantities, or other reasons initiated by the client for which benefit to Canada can be demonstrated.
- (d) If the need for unscheduled overtime appears likely, the contracting officer should ensure that proper provisions concerning authorization, rates and dollar limits are included in the contract.
- (e) The contracting officer should consult with the cost analyst to ascertain whether the contractor's cost system includes overtime premium costs in the overhead account or as a direct charge to the particular contract.
- (f) When deciding to authorize unscheduled overtime, the contracting officer must:
 - (i) consult with the client and jointly determine that authorization and the need of overtime will result in benefit to Canada;
 - (ii) ensure that funds are available to reimburse the contractor;
 - (iii) determine the aggregate limits of time and costs of the overtime to be authorized;
 - (iv) determine what delegation of authority, if any, should be made to the client representative;
 - (v) ensure that provision for proper claiming and approval of overtime claimed, and overtime payments to the contractor, is included in the contract, and
 - (vi) ensure that the procurement file includes clear documentation of all elements included in the decision to authorize overtime.

8.55 Claims for Extra Payment

(2010-01-11)

- (a) From time to time, contractors submit claims for upward price revision of firm price contracts, based on changes caused by Canada. A firm price contract may not be amended to provide for upward price revision, without prior approval of Treasury Board (TB), unless either the contract contains an escalation clause, covering the adjustment requested or the contract conditions allowed for the adjustment requested.
- (b) The advice of Legal Services should be obtained to determine whether a proposed extra payment is considered an amendment to the contract or an "ex gratia" payment.
- (c) The approval of TB is required for all extra payment claims, irrespective of the dollar amount. As a general rule, TB will not approve claims for extra payments arising solely from the following causes:
 - (i) increases in labour or material costs;
 - (ii) changes in freight rates;
 - (iii) revisions in exchange rates;
 - (iv) delays caused by the contractor;
 - (v) errors on the part of the contractor; or
 - (vi) other difficulties that the contractor overlooked, but should have foreseen.

- (d) TB has granted full authority to deputy heads to make “ex gratia” payments, and to designate officials within the department to act on their behalf. See TB [Policy on Claims and Ex gratia Payments](#).

8.60 Services of Non-residents - Entry Requirements

(2010-01-11)

- (a) In the performance of a contract, a contractor may wish to use the services of a non-resident employee on a temporary basis. The determination of eligibility to enter Canada is the responsibility of Immigration Canada.
- (b) United States nationals may apply for employment authorization at the port of entry. All others must obtain authorization before the point of entry. To obtain the correct documentation and necessary authorizations, the applicant must contact the nearest Canadian embassy or consulate.
- (c) Canadian citizens residing outside Canada always have the right to work in Canada.
- (d) In cases of emergency service requirements, the client department (or Public Works and Government Services Canada) must provide the contractor with written notice, including details of the emergency. In some emergencies, this information may be provided by telephone to the appropriate immigration authorities.

8.65 Assignment of Monies

(2010-01-11)

- (a) Contracting officers may receive from contractors, banks, other financial institutions, or other sources, statements or documents showing that persons or companies, other than the contractor, claim to be entitled to receive monies under a contract with Public Works and Government Services Canada (PWGSC) or Canadian Commercial Corporation (CCC).
- (b) Payments to persons other than those named in the contract will only be made in cases of bankruptcy, the appointment of a receiver-manager, or an assignment of debt pursuant to [Part VII](#) of the *Financial Administration Act*.
- (c) This does not include those cases where the contractor owes a debt to Canada for tax arrears where Canada Revenue Agency has obtained Treasury Board (TB) approval to collect taxes due or has requested a deduction for taxes due to Canada.
- (d) If the claim relates to a bankruptcy or insolvency situation, see [8.120](#).
- (e) The contracting officer, immediately upon receipt of a notice of assignment of money under a contract with a request to pay the assignee of the Crown debt, should contact the Payment Standards Division, at 819-956-9328 or via e-mail at: lpdnp.dlpsd@tpsgc-pwgsc.gc.ca to obtain information on how to process an assignment of Crown debt.

8.65.1 Receipt and Deposit of Monies

(2010-01-11)

- (a) When contracting officers receive monies directly from contractors with respect to a particular claim by Canada, these monies must be sent, in compliance with TB Contracting Instrument “[Policy on Deposits](#)”, to the departmental accounting unit, as soon as possible. A memorandum must accompany the monies, with copies to the client and Cost Audit Group (CAG). The memorandum should include:

- (i) a brief description explaining why monies are being remitted;
 - (ii) the name of the client;
 - (iii) the PWGSC file/contract serial number; and
 - (iv) the name and telephone number of the contracting officer.
- (b) In the National Capital Region (NCR), the monies are sent to:

Finance Branch
Public Works and Government Services Canada
Portage III, 12B1
Gatineau, Quebec K1A 0S5

- (c) Outside NCR, the recipient is the appropriate PWGSC regional director's office.

8.65.5 Release of Contract Financial Security

(2010-01-11)

- (a) Surety bonds, according to their terms, automatically expire when the contractor has fulfilled all obligations under the contract. When the contract has been completed, surety bonds must be destroyed.
- (b) Where a contract, in respect of which a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit) was given, has been completed or terminated through no fault of the contractor, the security deposit must be returned to the contractor. The contracting officer must instruct the Finance Branch to requisition a cheque for the amount of a bill of exchange plus accumulated interest, or to request to arrange the release of bonds, letters of credit and other negotiable instruments deposited.

8.65.10 Financial Claims by Canada

(2010-01-11)

- (a) There are two general categories of claims by Canada as a result of contracting activities:
- (i) overpayments or overclaims, as may occur when reported as a result of audit, and
 - (ii) legal disputes, for example, termination for default, bankruptcy (only when the amount owing is actually known and final).
- Note:** *Either instance can only be determined when a contract has been completed or terminated.*
- (b) Where monies may be owing to Canada as a result of contracting activity, sectors/regions are to determine the liability and amount owing with assistance, as necessary, from Legal Services.
- (c) There are special procedures to be followed whenever there are suggestions of unreasonably high profits from any contract placed pursuant to the *Defence Production Act*, or from any contract other than a competitive firm priced contract. See [Annex 8.5](#) for details of these procedures.
- (d) The contracting officer should liaise with the contractor to get concurrence of the final amount owing. Once that amount has been established, the contracting officer, in accordance with TB Contracting Policy, must formally advise the client to establish an accounts receivable. The client must advise PWGSC that this has been done, and take collection action.
- (e) Many organizations have roles to play relating to these claims by Canada.

- (i) The contracting officer is responsible to:
 - (A) review the acceptability of contractor claimed amounts;
 - (B) respond to audit observations, as required;
 - (C) liaise with the client department as to concurrence on the final amount, and
 - (D) advise Contract Audit Group (CAG) of all settlements reached.
- (ii) Audit Services Canada (ASC) provides audit reports on specific contracts.
- (iii) Legal Services is responsible to:
 - (A) identify the potential risks and liability faced by Canada as a result of claims against the contractor;
 - (B) inform the contractor, when requested by the contracting officer, of Canada's claim, by way of a formal legal demand;
 - (C) initiate legal action against the contractor.
- (iv) Industrial Technologies Office of Industry Canada (IC) is responsible to:
 - (A) follow up on the disposition of all audit qualifications and/or observations raised by ASC, except for audit issues involving interpretation of the Contract Cost Principles [1031-2](#), which are a responsibility of PWGSC; and
 - (B) resolve issues and disputes in the case of joint Canadian Commercial Corporation and Industry Canada agreements.

8.65.15 Financial Security Issues related to Amendments

(2010-01-11)

- (a) Before authorizing any material changes in contract conditions, contracting officers should ensure that such changes do not invalidate security obligations by obtaining the consent of the surety company.

"Material changes" means any change to the contract, except a change which on the face of it and without further explanation or investigation, is clearly for the benefit of the surety. Examples of changes requiring the surety company's approval are: changes in the contract price; changes in the scope of the work; revision to the completion and/or delivery dates specified in the contract; and changes in the payment schedule."

- (b) When the change must be made via a contract amendment, a copy of the draft amendment should be sent to the surety company for concurrence. When the contract contains a provision for design or engineering changes within certain limits, it is not necessary to obtain the surety company's prior consent. In this case, the company only needs to be kept informed. If the limits must be changed, the surety company's consent is required.
- (c) In cases where the contract price is being increased, it may be advisable to increase the amount of security to reflect the revised contract price. The face amount of a contract support letter of credit may be increased or reduced commensurate with the change in risk that has occurred. It may be changed by an amendment to the letter of credit. Alternatively, the letter of credit may contain an express provision for a change by a specified or determinable amount or amounts on a specified date or dates or upon presentation of the document(s) specified for this purpose, such as an interim certificate of completion. Any new letter of credit, if applicable, should be received before the contract is amended.

- (d) If a security deposit exceeds the amount required due to changes in the contract price, the excess must be returned to the contractor (see [8.155.1.](#)) The face amount of a contract support letter of credit may be reduced commensurate with the change in risk that has occurred. The face amount may be changed by an amendment to the letter of credit. Alternatively, the letter of credit may contain an express provision for change by a specified or determinable amount or amounts on a specified date or dates or upon presentation of the document(s) specified for this purpose, such as an interim certificate of completion.

8.70 Contract Administration Considerations

8.70.1 Industrial Security

(2010-01-11)

The client department must ensure that the contractor has a valid security clearance for the entire duration of the contract. It is the responsibility of the client department to ensure that all persons accessing the work site(s) have the proper security clearances. The contracting officer must ensure that the organization security status, at time of contract award, is communicated to the client department. The contracting officer must also communicate to the client department any changes in security statuses during the contract period as identified by Canadian Industrial Security Directorate (CISD).

8.70.5 Amending Contracts

(2010-01-11)

- (a) Contract amendments are used to formally delete, modify, or introduce new conditions to the original contract. The need for an amendment may arise from continuing negotiations, changes in requirements, or to deal with an unforeseen circumstance. When amending a contract, Canada's best interest should be considered. Amendments are subject to agreement by both parties to the contract.
- (b) The amendment format will follow the form of the original contract. The amendment should identify, by using complete clauses, any changes, additions or deletions.
- (c) A single amendment may contain many individual changes.
- (d) To reduce administrative costs, contracting officers and client departments should combine as many individual changes as possible into each amendment. For example, multiple design changes or deviations can be amended together.
- (e) Amendments should receive the same distribution as the original contract.

8.70.10 Approval of Contract Amendments

(2010-01-11)

- (a) Amendments, which are making a significant change, must be approved at the appropriate authority level, except for options which are changes pre-approved or allowed for in the existing approval(s).
- (b) For more information on forms of amendment requests and the appropriate approval levels, see [Chapter 6.](#)

8.70.15 Exercising Options

(2010-01-11)

- (a) Before exercising a contract option, contracting officers must first verify if the option was pre-approved. If not, the appropriate approval authority must be sought before amending the contract.
- (b) Before exercising the option, the contacting officer should confirm that the prices for the option are still fair and reasonable. It may be appropriate to negotiate a lower price when market prices for such goods or services have dropped significantly since contract award.

8.70.20 Administration of Task Authorization Contracts

(2010-01-11)

- (a) The following paragraphs highlight some considerations regarding the administration of task authorizations. See [Annex 3.3](#) for the description and process of task authorization contracts.
- (b) A detailed and current record of all authorized tasks must be kept for each contract with a task authorization process. The contractor or the client department is responsible to create and update this record, as established in consultation with the client department during the procurement planning stage. This record may contain but is not limited to:
 - (i) the task number;
 - (ii) a title or brief description of each task;
 - (iii) the amounts committed and expended against each task;
 - (iv) start and completion date for each task;
 - (v) the active status of each task;
 - (vi) the total values committed and expended for all tasks, to date, and
 - (vii) the limitation expenditure for all tasks, as stated in the contract.
- (c) Before authorizing a task, the organization authorized to issue the task to the contractor (normally the client) must ensure that:
 - (i) the task can be completed on or before the expiry date of the task authorization contract. If it cannot be, the task authorization cannot be issued until after the contracting officer amends the period of the task authorization contract, and
 - (ii) the task authorization will not cause the exceeding of the contract limit placed on the cumulative value of task authorizations.
- (d) When a task is completed, the committed amount may be reduced to reflect the actual expenditure, and such changes must be reflected in the record of task authorizations.

8.70.25 Design Change or Deviation

(2010-01-11)

- (a) If there is no design change or deviation provision in the contract, the procedure may be instituted only after an authorization document is received from the client and is incorporated in the contract. Adequate funds should be authorized and set aside for changes. If additional funds are required, a requisition amendment is required.
- (b) Each design change or deviation request must have technical approval by the technical authority or project authority and, as specified in the contract, be approved by the contracting officer.
- (c) Whenever possible, a design change requiring a price adjustment should be negotiated before the change in work is made.

- (d) Design changes or deviations can result in upward, downward or nil adjustment to contract costs. After approval by the client, the contracting officer is responsible for prompt negotiation of price adjustments, and ensuring that these changes are reflected in the total contract price.
- (e) The form [PWGSC-TPSGC 9038](#), Design Change/Deviation, should support deviations and changes.
- (f) Surplus materiel resulting from an authorized design change or deviation must be accounted for and reported to the contracting officer.

8.70.25.1 Design Change or Deviation Procedure
(2010-01-11)

The following is an example of a design change or deviation procedure:

- (a) When it is necessary to depart, either temporarily or permanently, from the governing technical data in a contract, the technical authority or project authority or the contractor may originate a request for design change or deviation.
- (b) The contractor may initiate the design change or deviation process by completing section 1 of form [PWGSC-TPSGC 9038](#), including a ceiling price for the change, subject to negotiation, and sending three copies to the technical authority or project authority and one to the contracting officer. When required, copies of the supporting technical data should be submitted.
- (c) A subcontractor must submit the form through the contractor, who will ensure that all the information required is entered, before submission.
- (d) The technical authority or project authority, with the sole right to deny approval, will review the design change or deviation request, and either approves it, and forwards it to the contracting officer, or rejects it, and returns it to the contractor.
- (e) The technical authority or project authority may initiate the process by sending five copies of the form to the contractor. After providing the contractual information required, the contractor will retain one copy, and send three copies to the technical authority or project authority and one to the contracting officer.
- (f) Where equipment or stores affected by the change are being procured under more than one contract, a separate form is required for each contract, unless the technical authority or project authority has specifically authorized the use of one form for all contracts held by a single contractor. In all cases, the form should show all contract references, including the file number and the serial number assigned by the contracting officer.
- (g) The contracting officer will:
 - (i) negotiate a firm price, if possible, or another pricing basis that is consistent with the existing basis of payment in the contract;
 - (ii) provide contractual authority for the design change or deviation; and
 - (iii) sign the form and send a copy to the contractor and the technical authority or project authority. Upon receipt, the contractor will implement the change.
- (h) The contractor should direct enquiries regarding the design change or deviation procedure to the technical authority or project authority. The contracting officer or the technical authority or project authority will provide blank forms to the contractor, who will provide them to the subcontractors.

8.70.30 Loans of Department of National Defence Materiel

(2010-01-11)

- (a) When a contract does not provide for the loan of the Department of National Defence (DND) materiel, the contractor may request such a loan.
- (b) Such requests should be directed to DND, Director Disposal, Sales, Artefacts and Loans (DND/DDSAL).
- (c) Returns must be made:
 - (i) when the materiel is no longer required;
 - (ii) when repairs are beyond the capability of the contractor;
 - (iii) when recalled by DND/DDSAL, or
 - (iv) on completion of the contract.
- (d) The contractor must return the materiel, as directed by DND/DDSAL, and should request from DND/DDSAL, in writing, instructions for the disposition of the items to be returned. The request should include a description of the items, identification or NATO stock number, their condition, and the loan agreement number.
- (e) DND/DDSAL will issue disposition instructions, and inform all concerned. The contractor must arrange for the return of the items as directed and confirm action by returning a signed copy of the "Notice to Ship" to DND/DDSAL.
- (f) At their discretion, the local Canadian Forces Quality Assurance Representative will carry out inspection on issue and return of DND-loaned materiel.
- (g) The contractor must report lost, damaged or destroyed DND loaned materiel, in writing, to DND/DDSAL, which is responsible for coming to a resolution with the contractor.

8.70.35 Return of Special Test Equipment and Special Production Tooling

(2010-01-11)

- (a) Contractors must provide DND/DDSAL with at least 60 days written notice before the date when the production assets will no longer be required. The notice should identify the contract or loan agreement serial number under which the production assets were held, location of the equipment, a brief but adequate description of the surplus production assets and the total estimated value, if applicable.
- (b) A decision to retain production assets for future use should be supported by a cost/benefit analysis, which provides an estimate of the storage and transportation costs involved, the duration of the storage, the refurbishing/modification costs that may be required to re-activate the assets, including installation/set-up charges, if applicable, and the remaining operational use or life of the equipment.
- (c) DND/DDSAL will advise the contractor on the most appropriate method of retention and storage of the assets. DND/DDSAL will arrange for the transfer of production assets to another contractor, or a storage facility; or will prepare the appropriate documentation, declaring the items surplus, and forward it to Crown Assets Distribution Centre.

8.75 Administration of Standing Offers and Supply Arrangements

8.75.1 Reporting for Standing Offers and Supply Arrangements

(2010-01-11)

- (a) Contracting officers must ensure that the supplier fulfills all reporting requirements in the standing offer/supply arrangement, as applicable. Typically, suppliers must report on a quarterly basis on the call-up/contract activities. Such reports may contain, but are not limited to, the following information:
- (i) the standing offer/supply arrangement number;
 - (ii) the supplier name;
 - (iii) the reporting period;
 - (iv) the call-up/contract number for each call-up/contract, including amendments;
 - (v) the client department;
 - (vi) the contracting authority;
 - (vii) the date of the call-up/contract;
 - (viii) the call-up/contract period;
 - (ix) the line items acquired/services provided;
 - (x) the value of the call-up/contract, Goods or Services Tax/Harmonized Sales Tax included, as applicable.
- (b) Each standing offer/supply arrangement should clearly describe the reporting requirements for the supplier, as applicable, and must indicate the timeframe by which each report must be submitted after the reporting period. For that purpose, contracting officers must insert *Standard Acquisition Clauses and Conditions* Manual clauses [M7010C](#) in their standing offer and [S0010C](#) in their supply arrangement.

(c) Reporting Requirements for Client Departments

Contracting officers must ensure that client departments fulfill all reporting requirements as identified users of the standing offer/supply arrangement, as applicable, in a timely fashion. Client departments may be required to provide more detailed reports than those required of suppliers and include information regarding bid solicitation, supplier responses and selection of successful bidder(s). These reports provide contracting officers with valuable information on the effectiveness of these methods of supply.

8.75.5 Revisions to Standing Offers

(2010-01-11)

- (a) Standing offers are not contracts so cannot be amended or assigned. An offeror may revise their standing offer.
- (b) Standing offers typically have a provision that an offeror must provide 30 days written notice of its intent to withdraw its standing offer. The contracting officer would then issue a “Revision to the Standing Offer and Call-up Authority”, to notify all the identified users and the offeror of the effective date of the withdrawal. Call-ups received by the offeror before the effective withdrawal date are legally binding and must be honoured.

8.75.10 Managing Proportional Basis of Selection

(2010-01-11)

- (a) When proportional basis of selection is used for selecting the contractor among multiple standing offers, the contracting officer must ensure that identified users are aware of their obligation to award call-up activities, in accordance with the predetermined work distributions stated in the standing offer.
- (b) The offeror that is furthest under the ideal percentage in relation to work distributed to the other offerors will be selected for the next call-up. The ideal percentage is stated in the standing offer.

A spreadsheet is an acceptable method to track all call-ups and to maintain a cumulative total for each offeror.

- (c) For more information on the ranking methodology for multiple standing offers, see [4.10.20.5](#).

8.80 Employer-employee Relationship

(2010-01-11)

- (a) The client department is responsible for ensuring that an employer-employee relationship does not develop during the performance of the contract.
- (b) The contracting officer must ensure that descriptions of the work or changes to the work will not result in an employer-employee relationship. For more information on employer-employee relationships, see [2.55](#).

8.85 Subcontracting

(2010-01-11)

- (a) As stated in certain *Standard Acquisition Clauses and Conditions* (SACC) Manual general conditions (e.g. [2030](#)) forming part of the contract, a contractor must, in this case, obtain the consent of the contracting officer before subcontracting, by using form [PWGSC-TPSGC 1137](#), Permission to Subcontract. (**NOTE:** *Only government employees have access to the site.*) In this case, the contractor must certify that the proposed subcontract is subject to all of the same conditions as contained in the contract. The contracting officer will only consent if satisfied with the subcontractor and the proposed subcontract.
- (b) Any deviations are entirely at the risk of the contractor.
- (c) The award of a subcontract does not relieve the contractor of any contractual obligations, or impose any liability upon Canada in relation to the subcontractor.

8.90 Assignment of Contracts

(2010-01-11)

- (a) When a contractor assigns a contract, the responsibility for all or part of the performance is transferred to a third party. However, the assignment of a contract must not relieve the original contractor of any obligations under the contract or impose any liability on Canada, in relation to the assignee.
- (b) In order to protect Canada's interest, the transfer of the liabilities and rights under the original contract to the assignee, will be done so that the original contractor is ultimately liable for the performance of the contract.

An acceptable manner of protecting Canada's interest is to obtain the original contractor's guarantee of performance in the event that the assignee fails to perform.

- (c) When the contract contains security requirements, the contracting officer, with the assistance of the Canadian Industrial Security Directorate, must ensure that the assignee meets all security requirements specified in the contract.
- (d) Under the SACC Manual general conditions, the written permission of Public Works and Government Services Canada (PWGSC) is required before any contract assignment. All proposed assignments supported by a contracting officer must be referred to the cost analyst for review, and then, to Legal Services for drafting of the necessary legal documents.

- (e) The contracting officer will forward the assignment agreement to the appropriate PWGSC signing authority, with the reasons for the assignment, the number and value of contracts involved, and the financial condition of the assignee.
- (f) In the case of Canadian Commercial Corporation (CCC) contracts, a copy of the approved assignment should be forwarded to Cost Audit Group, in order to maintain data on supplier financial status, or to the appropriate vice-president of the CCC.

8.95 Financial Security and Contractor Difficulties

(2010-01-11)

If the contract contains financial security, and the contracting officer becomes aware that a contractor may have difficulty in successfully completing the contract, then the surety company should be informed immediately.

8.100 Bonding Companies

(2010-01-11)

Whenever a bonding company has failed to honour its undertakings, the matter must be referred to Legal Services for appropriate action, and to the Corporate Secretary who must notify Treasury Board (TB).

8.105 Protecting Canada's Goods

(2010-01-11)

- (a) If a contractor is delinquent in discharging its accrued liabilities, subcontractors or suppliers may attach liens to goods that Canada has taken title to through full or partial payment. Steps should be taken to protect Canada's interests.
- (b) This is not required for service contracts, and is generally not cost effective for goods contracts under \$25,000.
- (c) Where a contractor has given security under [section 427](#) of the *Bank Act*, a waiver must be obtained for the bank's priority over Canada's title to the goods. The contracting officer must consult with Legal Services.
- (d) If the contractor should change bank, and a new waiver is not obtained, or if the contractor fails to disclose that security was given, Canada's title could be affected.
- (e) To protect Canada's interest with potentially insolvent or bankrupt contractors, the contracting officer must obtain a waiver when a bank or other financial institution has a prior lien on the contractor's assets. If the waiver is unobtainable, consult with Legal Services, the cost analyst, and Cost Audit Group (CAG), to determine if the contractor's credit position warrants relieving the contractor of the contractual obligation relating to bank liens.
- (f) To preclude the attachment of liens, the contracting officer should check that the contractor has met payment obligations under the contract to its workmen, subcontractors and suppliers.
- (g) The contracting officer should promptly review all intimations of unpaid invoices or wages or unreasonable delays in the payment; and carry out a cost analysis, if appropriate, in cooperation with a cost analyst.
- (h) The frequency, scope and extent of checks will be determined and carried out by the contracting officer, based on cost/benefit, and the contractor's payment record, credit rating and financial strength.

- (i) When the financial analysis indicates potentially serious financial problems, a report should be sent to CAG, who will distribute copies to all procurement sectors/regions. The sectors/regions in turn should compile lists of all open contracts with the contractor involved, including the contract values and anticipated completions dates and return these lists to CAG.
- (j) CAG will then determine whether a discretionary verification should be carried out, and what would be the scope and extent of the verification.

Sectors/regions should only enter into new contracts with the contractor with due caution and proper justification.
- (k) A discretionary verification is carried out by qualified personnel and approved by CAG. Discretionary verifications may be commissioned only by CAG, and will be performed on a timely and prompt basis, so as to lessen potential risks to Canada.
- (l) If the total risk exposure is \$2,000,000 or over, a discretionary verification will normally be undertaken. A determination will be made, as to the protection provided to Canada by any security deposits (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit), performance bonds, labour and material payments bonds, or registration action taken or intended.
- (m) If the total risk exposure is under \$2,000,000, CAG will, in consultation with the sector/region involved, determine the need to commission a discretionary verification, after taking into account any financial security provision or registration action.
- (n) When the verification points to a breach of the contractor's specific contractual obligation to effect prompt payment to its workmen, subcontractors, or suppliers, CAG will provide written advice to the sectors/regions and senior financial officers of the client(s) holding the contracts in default.

8.110 Registering Notice of Interest in Goods

(2010-01-11)

- (a) In provinces other than Quebec, Canada can register notice of its interest in the goods with a view to protecting itself against the risk of liens. The registration requirements differ for each province. The contracting officer must consult with Legal Services.
- (b) In practical terms, because of the complexities involved, this action is appropriate only on high dollar value contracts.

8.120 Bankruptcy, Receivership, Insolvency

(2010-01-11)

- (a) The contracting officer must consult Legal Services when:
 - (i) a contractor proposes a settlement while in an impending or actual receivership, bankruptcy or insolvency condition;
 - (ii) the contract is secured by surety bond guarantees or other securities; or
 - (iii) a contractor has given security to a bank under [section 427](#) of the *Bank Act*.
- (b) Upon receipt of a bankruptcy, receivership or insolvency notice or when there is an indication of such, the contracting officer must:
 - (i) inform the relevant director;
 - (ii) develop a plan, in consultation with the client, for completion of the work; and
 - (iii) advise CAG and Legal Services.

- (c) When a contractor is in formal bankruptcy, the contracting officer must, in consultation with Legal Services, pursue the rights of Canada, including:
 - (i) realizing on any contractual securities;
 - (ii) proving title to any Canada property in the contractor's possession;
 - (iii) ensuring payment, if Canada is unsecured, in priority of other unsecured creditors; or
 - (iv) offsetting money payable to the contractor against any amount due to Canada.
- (d) After formal bankruptcy or receivership, monies due to the contractor must be sent to the trustee in bankruptcy or the receiver-manager, as applicable.

8.125 Goods or Services not in accordance with the Contract

(2010-01-11)

It is the responsibility of the client to inform the contractor, as specified in the contract, if the goods or services are not in accordance with the contract. Failure to do so may prejudice any subsequent claims by Canada.

8.130 Timely Performance

(2010-01-11)

- (a) Under SACC Manual general conditions, time is of the essence of the contract. If a contractor fails to deliver the goods or perform the services on time, the contracting officer should ascertain, in consultation with the client and Legal Services, the facts surrounding the delay. If the delay was caused by factors beyond the control and without the fault or negligence of the contractor, the contracting officer should extend the time of performance of the contract for a period equal to the length of the delay. Excusable delays are detailed in general conditions. In all other circumstances, the contractor is responsible for the delivery default. If the contractor is in default in carrying out the delivery commitments, the contracting officer may, upon giving notice in writing to the contractor, terminate the contract fully or partially.
- (b) Where the time of delivery is to be extended due to delays beyond the control of the contractor, and if the contract is secured by surety bonds, the contracting officer must:
 - (i) advise the surety company and obtain its concurrence before the completion dates specified in the contract are actually extended; and
 - (ii) advise the surety company and obtain its concurrence before adjusting the contract price, due to additional work requirements, if applicable.

8.135 Terminations

(2010-01-11)

To determine which type of termination might be involved, see [8.135.5](#), [8.135.15](#) and [8.135.20](#). For termination clauses, see [subsection 5-J](#) of the *Standard Acquisition Clauses and Conditions* (SACC) Manual.

8.135.1 Suspension of the Work - Stop Work Order

(2010-01-11)

When a client wishes to suspend the work under a contract rather than cancel it, SACC Manual clause [J0500C](#) or [J0502C](#) should be used. The suspension of the work allows the client to obtain a review of the contract status before deciding the type and extent of termination (including a termination for default). If a client wishes to reinstate a contract after a stop work order has been issued, the stop work order must be

cancelled (see clause [J0501C](#)). In this event, it may be necessary to adjust the delivery terms and/or contract price. It is the responsibility of the contracting officer to determine the reasonableness of all claims for additional costs that the contractor may make. Amendments to cover payment of such costs must be approved in accordance with the contract amendment approval and signing authorities. (See [Annex 8.3](#) for a detailed description of the termination for convenience process.)

8.135.5 Termination for Convenience of Canada

(2010-01-11)

- (a) Occasionally, Canada may terminate a contract for convenience in accordance with the termination for convenience provision of the general conditions applicable to the contract. See [Annex 8.3](#) for a detailed description of the termination process. This may be due to curtailment of funds, discontinuation of a government program, or other circumstances, which make the procurement of the good or service unnecessary. To protect the integrity of the bid solicitation process, Canada may also terminate a contract for convenience, if it is determined that it has been mistakenly awarded to other than the lowest-responsive bidder. Clauses related to the termination for convenience notices are in [subsection 5-J](#) of the SACC Manual (see clauses [J0001C](#), [J0002C](#), [J0003C](#), [J0006C](#)).
- (b) Termination for convenience applies when:
 - (i) the client has requested termination;
 - (ii) a termination for default cannot be considered because the contractor is not in default; and
 - (iii) a termination by mutual consent would not be more advantageous to Canada.

8.135.10 Involvement of the Termination Claims Officer

(2010-01-11)

The Termination Claims Officer (TCO), Policy, Risk, Integrity and Strategic Management Sector (PRISMS), should be involved immediately in the claim settlement process resulting from contracts that are partially or completely terminated for convenience. Accordingly, the contracting officer should contact the TCO, as soon as the notice of termination for convenience (see SACC Manual clauses [J0001C](#), [J0002C](#), [J0003C](#), [J0006C](#)) is issued, and should provide the TCO with a copy of the notice. The TCO's telephone number is 819-934-1382.

8.135.15 Termination for Default

(2010-01-11)

Termination for default applies when the contractor is in default in carrying out any of the obligations under the contract, usually through non-performance or delayed delivery. The section "Default by the Contractor" in the SACC Manual general conditions provides the basis for termination for default. For more information on termination for default, see [Annex 8.4](#).

8.135.20 Termination by Mutual Consent

(2010-01-11)

- (a) On rare occasions both parties may agree to termination without claims or penalties, usually where the client has requested full or partial termination of a contract, the contractor has incurred minor or no expenses and is willing to forego a claim, and the matter may be settled at no cost to Canada.
- (b) Termination by mutual consent does not apply when it is in Canada's interest to issue a termination for default or when the contractor claims additional costs following the reduction or cancellation of all or a portion of the contract.

- (c) On receiving the client's request for termination by mutual consent, the contracting officer should request the contractor to confirm that no claim is involved, and should refer the matter to Legal Services in accordance with [8.135.35](#).
- (d) Since no claim is made, the TCO is not involved in this process.

8.135.25 Request for Termination by the Contractor

(2010-01-11)

When a contractor requests a termination because of anticipated losses in performing the contract, consent will not be granted. Instead, the contractor should be instructed to carry out its obligations under the contract. The contractor may, on completion of the contract, request an "extra payment" for additional costs incurred or losses suffered, if some responsibility for the additional cost or for the loss can be ascribed to Canada. (See [8.135.1](#).)

If the contractor refuses to carry out the contractual obligations, the contract must be terminated for default.

8.135.30 Financial Security Issues Related to Terminations

(2010-01-11)

- (a) If the contract is secured by a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit), it should not be terminated without the prior advice of Legal Services.
- (b) If the contract is secured by surety bonds, it must not be terminated as this would also terminate the existing contractual relationship with the bonding company. When a contractor fails to perform a contract, or when a claim is received for non-payment of labour or material, and a payment bond is in place, contracting officers must immediately inform the surety company in writing, requesting that corrective action be taken. Contracting officers must not enter into negotiations with the contractor or claimant.

8.135.35 Involvement of Legal Services in Cases of Termination

(2010-01-11)

- (a) The following terminations must not be issued without a written legal opinion:
 - (i) all terminations for default;
 - (ii) terminations by mutual consent, and
 - (iii) terminations for convenience.
- (b) In seeking the opinion of Legal Services, the contracting officer should submit the procurement file with a chronological index of the documents forming the basis for the termination request, together with a short note outlining the events leading to termination. Based on this information, Legal Services will render an opinion and advise as to the appropriate method of termination.

8.135.40 Adjustment to Source Lists

(2010-01-11)

Terminations for convenience by Canada should not result in any adjustment of the source lists, while terminations by mutual consent may require correction of source lists. Terminations for default are usually the cause for the deletion or suspension of the contractor from the source list.

8.135.45 PWGSC Offices Outside Canada

(2010-01-11)

Termination procedures for contracts awarded by Public Works and Government Services Canada (PWGSC) offices outside Canada may differ from those for contracts issued in Canada; therefore, the termination procedures serve only as a general guide.

8.135.50 Signing Authority

(2010-01-11)

Stop work orders and notices of termination must be approved and signed by a contracting officer with the signing authority for the total contract value at the time of the termination.

8.140 Disputes

(2010-01-11)

- (a) Disputes must be handled expeditiously. All parties must meet their contractual obligations. Proper record keeping is vital for clarification, audit or termination purposes.
- (b) Consultation with Legal Services is recommended to ensure the protection of the interests of Canada.
- (c) If a contracting officer is unable to resolve a contract dispute, the matter should be brought to the attention of the contracting officer's immediate supervisor.
- (d) When any dispute associated with goods and services contracts cannot be resolved expeditiously through negotiation, the contractor should be advised, in writing, of the option to submit a formal claim to the Contracts Settlement Board. This claim must be delivered in writing to the Manager of Contract Conflict Management (CCM), within Departmental Oversight Branch.
- (e) When any dispute associated with architectural and engineering, construction, building and maintenance and leasing contracts cannot be resolved expeditiously through negotiation, the contractor or the consultant should be advised, in writing, of the option to submit a formal claim to the Contract Disputes Advisory Board. This claim is to be delivered in writing to the Manager of CCM.

8.140.1 Contract Dispute Resolution

(2010-01-11)

- (a) All enquiries, from contractors or contracting officers concerning the options for dispute resolution should be addressed to the Manager of CCM, Departmental Oversight Branch.
- (b) The CCM Office offers a range of options for managing conflict and resolving disputes, from providing advice and coaching in managing conflict, to facilitating processes such as discussion, negotiation, and mediation. Parties are required to attempt to reach a solution through discussion and negotiation before seeking more formal options. When discussion and negotiation fail to result in satisfactory agreement, parties may agree to enter into mediation. Mediation is a voluntary process – both parties must agree to participate.
- (c) Upon request, the CCM Office staff will provide advice and assistance concerning any of the matters falling within its purview to all persons seeking it, and is available to provide brief information and training sessions on conflict/dispute resolution. The expertise associated with lessons learned derived from previous cases may provide useful information to assist in the resolution of disputes.

- (d) If the parties cannot resolve the dispute through mediation, or they determine mediation is not appropriate, the CCM Office also administers two arbitration boards, which are non-binding on the supplier:
 - (i) the Contracts Settlement Board, which deals with disputes relating to goods and services contracts, and
 - (ii) the Contract Dispute Advisory Board, which deals with disputes relating to real property contracts.

A summary of these two processes follows.

8.145 Contract Settlement Board

(2010-01-11)

- (a) The Contract Settlement Board (CSB) is an independent process designed to provide for the prompt resolution of disputes arising from goods and services contracts, when discussion, negotiation, or mediation is not successful or appropriate. It is a simple, non-binding arbitration dispute resolution process for contractors. It is an opportunity for the contractor and Canada to benefit from an independent review of the claim and response.
- (b) Following the review process, CSB will take a decision, which is not binding on the contractor. Accordingly, if the contractor rejects the decision of the CSB, its rights at law are not compromised.

8.145.1 Contract Settlement Board - Procedures

(2010-01-11)

- (a) When any dispute arising from goods and services contracts cannot be resolved through discussion, negotiation, or mediation, the contractor may request a review by CSB. This request is made, in writing, to the Manager of CCM, Departmental Oversight Branch.
- (b) While the contractor may submit a claim at any time during or after the contract, normally a claim would not be submitted to the CSB until the contract has been completed, since in most cases an audit of the total contract will be required. The extent and nature of review process by CSB is at the discretion of the chairperson, (i.e., whether to convene a full board hearing, or whether the case is straightforward enough for a secretarial board).
- (c) The Contract Conflict Management (CCM) Office will inform the contractor, the contracting officer and the Chairperson of CSB of the receipt of the claim. The contracting officer will be requested to prepare Canada's submission to CSB.
- (d) Canada's submission, to be signed at the director level, must include a recommended settlement, as well as confirmation that funds are available for settlement under the encumbrance.
- (e) The Chairperson of CSB will advise the contractor in writing of the date of receipt of the submission from the contracting officer, and will, if necessary, arrange a meeting of the participants.
- (f) Depending on the complexity of the dispute, the contractor will be given the opportunity to appear in person, or to have selected company officials appear, and can be represented by legal counsel. The same opportunity will also be afforded to Public Works and Government Services Canada (PWGSC) and the client in relation to data or presentation against, or in support of the contractor's claim.

8.145.5 Contract Settlement Board - Meetings

(2010-01-11)

- (a) The Chairperson of CSB is responsible for ensuring that all participants, at any CSB meeting, are fully aware of the role and responsibilities of CSB, and the manner in which the proceedings will be conducted. The Chairperson will also determine the time necessary to permit a full and detailed discussion of the claim.
- (b) All copies of submissions to CSB, assemblies of data, memoranda and working papers of CSB, are for the sole use of the members of CSB, the Assistant Deputy Minister (ADM) of the Department Oversight Branch, the Deputy Minister and the Minister of PWGSC.
- (c) The Manager of CCM administers the CSB process on behalf of the ADM/Departmental Oversight Branch and the Chairperson, CSB.
- (d) Normally, the full CSB is only convened to review complex claims in excess of \$100,000. The Chairperson of CSB, one or more private sector consultants, an independent representative from the project authority, as well as the CSB's legal advisor, would attend such meetings. For claims with a value of \$100,000 or less, the review of the contractor's claim is normally conducted less formally and without incurring the expense of engaging any private sector consultants.
- (e) When deliberations are complete, the final conclusions and recommendations for settlement will be recorded in the minutes of proceedings.

8.145.10 Contract Settlement Board - Settlement Offer

(2010-01-11)

- (a) When the Chairperson of CSB concludes that a settlement offer must be made, CSB will officially advise the contractor of the recommended amount of settlement and will seek to obtain the contractor's written acceptance. A copy of CSB's letter of offer to the contractor will be sent to the client and the sector or the region for information.
- (b) If the settlement amount exceeds departmental approval authorities, the contractor will be advised that the settlement is subject to the approval of Treasury Board (TB). The contracting officer will prepare the necessary submission, and send it the Manager of CCM, for review, before the regular routing for submission to TB.
- (c) When the recommended payment is approved, the Chairperson of CSB will prepare, in collaboration with Legal Services, a settlement and release agreement that must contain an acceptance and release clause approved by Legal Services.
- (d) Copies of the settlement and release agreement must be distributed to all parties.

8.145.15 Contract Settlement Board - Non-acceptance of Settlement

(2010-01-11)

If the contractor does not accept CSB's ruling, the contractor may institute legal proceedings against Canada.

8.150 Contract Dispute Advisory Board

(2010-01-11)

- (a) The Contract Dispute Advisory Board (CDAB) is an independent process designed to provide for the prompt resolution of disputes arising from architectural and engineering, construction, building maintenance and leasing contracts. It is used when discussion, negotiation, or mediation is not

successful or appropriate. It is a simple, non-binding arbitration dispute resolution process for a contractor that involves the selection of a private sector arbitrator by both parties. It is an opportunity for the contractor and Canada to benefit from an independent review of the claim and response.

- (b) Following the review process, CDAB will take a decision, which is not binding on the contractor. Accordingly, if the contractor rejects the decision of CDAB, its rights at law are not compromised.

8.150.1 Contract Dispute Advisory Board - Procedures

(2010-01-11)

- (a) When any dispute arising from architectural and engineering, construction, building maintenance and leasing contracts cannot be resolved through discussion, negotiation, or mediation, the contractor or the contracting officer may request that a CDAB be convened. This request is made, in writing, to the Manager of Contract Conflict Management (CCM), Departmental Oversight Branch.
- (b) Detailed procedures and rules for CDAB arbitration are found in [subsection 5-R](#) of the *Standard Acquisition Clauses and Conditions* (SACC) Manual, and form part of real property contracts.
- (c) Briefly:
 - (i) Either party may submit a dispute to arbitration to the extent permitted under the contract, by giving notice in writing to the other party in accordance with the requirements of the contract. The notice must contain a brief description of the contract, a statement of the issue(s) in dispute, and a request that the dispute be referred to CDAB for arbitration. A copy of the notice must be given to the Manager of CCM, Departmental Oversight Branch, at the same time it is given to the other party.
 - (ii) The Manager of CCM, as “coordinator”, will appoint a private sector arbitrator or a tribunal acceptable to both parties. CDAB will be composed of a person or persons who have experience in the subject matter of the dispute and are independent of either party.
 - (iii) Specific time limitations for each step are detailed in the SACC Manual, with the goal of reaching a timely conclusion.
 - (iv) Communication with parties by CDAB will follow the same process and be carried out in the same manner (verbal, in writing) for each party.
 - (v) Each party will prepare and provide an agreed statement of facts, and will prove the facts relied upon to support its claim or defence. All such documents provided by one party must be made available to the other party.
 - (vi) The SACC Manual provides rules for dealing with issues of default with regard to the agreed rules.
 - (vii) Unless otherwise agreed to by the parties, CDAB will make the award no later than 30 days after completion of the arbitration hearings, unless that time period is extended for an express period by CDAB on written notice to each party, due to illness or other cause beyond CDAB’s control.

8.150.5 Contract Dispute Advisory Board - Non-acceptance of Settlement

(2010-01-11)

If the contractor does not accept CDAB’s ruling, the contractor may institute legal proceedings against Canada.

8.155 Final Payments

(2010-01-11)

- (a) The total time charged under a fixed rate contract should be verified for acceptability and accuracy of recording before the final claim is processed for payment. The findings of such verifications will be noted on the procurement file.
- (b) The contracting officer, or other qualified personnel designated by the sector/region concerned, should carry out the verification of time for acceptability.
- (c) Verification of time for accuracy of recording should be carried out by qualified personnel from the financial division or section in the directorate concerned, or other suitably qualified personnel with the prior approval of the director who is also responsible for setting the standards of verification for the accuracy of recording.

8.155.1 Refunds of Excess Profits

(2010-01-11)

As the result of an audit, or for various other reasons, it may be determined that a contractor has realized unreasonably high profits from a contract. On such occasion, a contractor may need to return excess profits to the department. The special procedures for dealing with these situations are in [Annex 8.5](#).

8.160 Cost Submissions Standards for Cost Reimbursable Contracts

(2010-01-11)

- (a) The contractor will be paid, in accordance with the contract, the cost reasonably and properly incurred in the performance of the work. Upon completion of the work, on all cost reimbursable contracts meeting the cost threshold, the contracting officer must place on the procurement file a certification to the effect that the final amount paid represents a reasonable price. This certification should be based on the findings of a cost audit, if one was done.
- (b) The agreed final price, after all reconciliations, is then formalized in a contract amendment, generally referred to as “finalization of cost amendment”, which adjusts the total contract price to reflect the final price. This amendment should also state that further claims cannot be submitted.
- (c) The audit provision in contracts valued over \$50,000 with Canadian contractors allows for the determination of the actual costs incurred, to determine the final contract cost of cost reimbursable contracts and the reasonableness of the price.
- (d) All cost reimbursable contracts require a cost submission upon the completion of the contract. All multi-year cost reimbursable contracts, except for repair and overhaul (R&O) services, will include a provision for an annual cost submission, as a mandatory deliverable item.

NOTE: For R&O service contracts, an annual cost submission is at the contracting officer and the audit agency's discretion.

8.165 Cost Audit

(2010-01-11)

- (a) The selection of cost reimbursable contracts for audit will be made by the contracting officer after consultation with the Cost Audit Group (CAG) within the Policy, Risk, Integrity and Strategic Management Sector, in accordance with the following:
 - (i) all contracts associated with Major Crown Projects (MCPs); and

- (ii) if risks of significant overpayment are apparent.
- (b) For those contracts selected for audit, the sectors/regions will supply to CAG a copy of the contract document, along with copies of all cost submissions received.
- (c) A copy of the audit report will be forwarded to the contracting officer, along with an audit notification form prepared by CAG detailing overpayments and/or comments requiring approval.
- (d) The contracting officer will establish a final price with the contractor based on the audit findings. Every effort will be made to do this within 90 days of the audit report being received. The contracting officer will notify CAG of the terms of the settlement and resolution of all audit issues raised in the contract audit.
- (e) When the contractor has agreed to the final price, the contracting officer must certify that the price charged is reasonable and in accordance with the contract.

8.165.1 Differences of Opinion or Interpretation

(2010-01-11)

On occasion, differences of opinion or interpretation may arise between the contracting officer and the auditor regarding the legitimacy of audit findings. The relevant director should resolve these differences of opinion or interpretation in concurrence with the Director, Acquisition Program Integrity Secretariat, before the Cost Audit Group will take close out action.

8.175 Contract End and Contract Close Out

(2010-01-11)

- (a) This section provides information on the end of contract activities such as ensuring that all of the necessary conditions are met. This should include the following activities:
 - (i) verify that the product or work has been completed satisfactorily;
 - (ii) ensure that the contractor has been paid;
 - (iii) commence administrative closure of the project; and
 - (iv) ensure the records are retained on a project file.
- (b) Contracting officers should ensure that procurement files are properly documented.

8.180 Vendor Performance Policy

8.180.1 Introduction

(2010-01-11)

The goal of the Vendor Performance Policy (VPP) is to improve client service, by preventing problems with vendors from arising. While it is never possible to ensure that there is no poor performance, vendors' performance can be improved by instituting the appropriate measures in the event of non-performance.

8.180.5 Principles

(2010-01-11)

Public Works and Government Services Canada (PWGSC) has the authority and the duty to take reasonable measures to ensure that it can rely on its contractors to perform their obligations. The Department, within the framework of its policy that procurement be open, accessible and fair, has the same right as other purchasers in the market to assess a vendor's performance, and may take action to prevent future problems, based on the vendor's past performance. The discretion to take such action

should be exercised in a fair and reasonable manner within the policy. Any measure taken should rationally relate to the nature and severity of the problem for which it is applied.

8.180.10 Definitions

(2010-01-11)

- (a) **Poor performance:** means anything less than full performance of a contract by a vendor.

While even minor instances of poor performance may be noted, action would normally only be taken against a vendor as the result of a major instance of poor performance on a contract, or a cumulative record of poor performance.

- (b) **Vendor:** includes subcontractors, owners, directors, officers, employees, agents, parent corporation or subsidiary of a vendor, which may be responsible for a vendor's poor performance.

While persons other than a contractor may be treated as "vendors" under the Policy, action against them can only be taken where they have been notified of the poor performance and of any proposed measures and given the same opportunity to respond that a contractor would have.

- (c) **Vendor Performance Corrective Measure (VPCM):** means a condition or limitation placed on a vendor's ability to contract with PWGSC on the basis of PWGSC's assessment of their reliability. A VPCM can be applied to a vendor overall or only in respect of certain goods or services. The three types of measures (Debarment, Suspension and Conditions) are defined and described in [8.180.15.10\(b\)](#).

8.180.15 Process

8.180.15.1 Monitoring

(2010-01-11)

- (a) Contracting officers should enforce the terms of contracts wherever possible. The same incident may support both enforcement of the remedies available under the contract and a VPCM. The contracting officer will document events that may be instances of poor vendor performance in the contract file.
- (b) When the terms of the contract are enforced by notice to the contractor of its poor performance, but no further action is taken, this should be noted in the contract and vendor files, together with the facts, which justify it. The intention of the contracting officer to commence an action to impose a VPCM on the vendor is not a reason to decline to enforce the terms of the contract.
- (c) The approval of the relevant director is required for noting an instance of poor performance for the vendor on the Vendor Information Management (VIM) system. A notation of poor performance on VIM will include the contract number, the subject of the contract, the nature of the poor performance, any remedial action taken by the vendor, its effects and the status or disposition of the problem.
- (d) The relevant director must inform the vendor of each instance of poor performance, the vendor will have ten days to respond before the notation will appear on VIM.
- (e) A vendor, which may be someone other than the contractor, who is responsible for the contractor's failure to fulfill the contract, should be notified each time a poor performance notation is made on VIM, and be informed that PWGSC will take past performance into account in its future dealings with vendors.

- (f) A vendor may respond to notification of the director's intention to have an instance of poor performance noted on VIM. The director will consider the input of the vendor in deciding whether to enter the information.
- (g) Outstanding performance of a vendor should also be noted, as it may be useful in making an overall assessment of a contractor's performance in the event corrective measures are required. A performance notation will generally remain on VIM for seven years. After that time, a vendor may request that it be removed. Performance, good or bad, more than seven years in the past will not ordinarily be relevant to a decision whether to impose a corrective measure.
- (h) Since the VPP limits itself to consideration of poor performance, being failure to fulfill a contract, contracting officers should make sure that their contracts cover all aspects of performance which they would want to consider in evaluating the vendor's performance on the contract.

8.180.15.5 Investigation for Vendor Performance Corrective Measures

(2010-01-11)

- (a) Formal corrective measures should be considered when there is evidence that continued contracting with a vendor may pose a greater risk to Canada than is acceptable. This may be as the result of a major instance of poor performance on a contract, or a cumulative record of poor performance. Sectors and regions may also set general or commodity-based standards, as the basis for consideration of Vendor Performance Corrective Measure. (See [8.180.30.](#))
- (b) In investigating whether corrective measures should be applied, the sector or region will:
 - (i) ensure a full review of contract file(s), and the record of the vendor in general;
 - (ii) notify all other sectors or regions and consult those which have a particular interest in the matter;
 - (iii) consult clients which have a particular interest in the matter, either as major purchasers of the vendor's product or as the initiator of the complaint; and
 - (iv) consult Legal Services, as to what evidence should be sought, and what process should be used, to ensure fairness in light of all the circumstances.
- (c) All components of an investigation and subsequent decision should be fully documented, with the disposition being noted on the vendor file in VIM.

8.180.15.10 Decision on Application of Vendor Performance Corrective Measures

(2010-01-11)

- (a) A decision to apply a Vendor Performance Corrective Measure (VPCM) should be made where, on the basis of the vendor's performance history, a prudent person acting on their own behalf would not continue to deal with the vendor, or would not continue to deal with the vendor without special conditions being attached.
- (b) The three types of VPCM are defined as follows:"
 - (i) Debarment is the refusal by PWGSC to do business with a vendor for a specified period or for a number of relevant procurements. Debarment would be used for problems of a criminal nature, or where there is poor performance, which demonstrates a lack of good faith effort on the part of the contractor to perform its various obligations. Since the vendor has demonstrated a lack of good faith effort, it would not be realistic to allow reinstatement on the satisfaction of some requirement. The period of debarment would generally not exceed three years.

- (ii) Suspension is the refusal by PWGSC to do business with a vendor pending the outcome of an investigation into serious or multiple instances of poor performance, or until the vendor meets conditions set for reinstatement, such as remedying a problem. Suspension would be imposed where doing business with a vendor before an investigation is complete or before the vendor has made changes would pose too great a risk that the vendor would not carry out its obligations under future contracts.
- (iii) Conditions can be imposed on vendors seeking to do business with PWGSC. Conditions would be used in the case of problems, which could be prevented by a less onerous means than a refusal to do business.

As part of a VPCM, the vendor may also be subject to probation when the measure ends. In such a case, if further instances of poor performance occur, the VPCM may be extended, or another applied.

- (c) When investigating to determine if a VPCM should be imposed, consideration should be given to the extent to which the VPCM will apply to the various elements of a vendor's organization and to related organizations. As the objective of this Policy is to prevent problems with vendors from arising, the breadth of the VPCM will depend on the nature and source of the poor performance for which the VPCM is being considered.
- (d) Examples:
 - (i) Where the source of the poor performance is dishonesty within the highest management of a vendor, then imposing the VPCM on the vendor as a whole would likely be appropriate.
 - (ii) Where the poor performance relates to problems with product quality in one of the vendor's several product lines, where there is no element of willful failure to produce a suitable product, this would likely be more appropriately dealt with by a VPCM limited to the product line with which problems have been experienced.
 - (iii) Where the poor performance was the result of safety problems that were the result of policy set for the subsidiary vendor by its parent corporation, it may be appropriate, provided proper notice has been given, to impose a VPCM to the parent corporation and all its subsidiaries with which similar safety issues might arise. These examples are provided solely for illustration. Actual cases will depend on their particular situations.
- (e) When, on the basis of the investigation, a director general believes that one of these measures should be applied, the Sector or Region will notify the vendor of the VPCM imposed together with the reasons for it, and give the vendor a reasonable opportunity (including a reasonable period of time) to respond.
- (f) What constitutes a "reasonable opportunity" will vary with the circumstances, and could range from an exchange of correspondence, to formal consultations. A vendor will be given access to documents relevant to its performance on the same basis, as these would be available in a contract dispute. In determining whether to provide a particular document to the vendor, it should be kept in mind that if absence of that document means the vendor is not in a position to address the allegations made against it, this may allow successful court challenge of a subsequent decision to impose a VPCM.
- (g) The file containing the decision to apply a VPCM and the notice to the vendor must both include, in addition to the type of measure being applied, the following:

- (i) a list of the instances of poor performance, which form the basis for the proposed VPCM sufficient to identify them;
 - (ii) the reasons why the vendor's performance record merits the proposed VPCM;
 - (iii) the procurements for which the vendor is declared ineligible to bid or contract, that is, whether the VPCM will be across-the-board (affecting all aspects of the vendor's operations) or limited by product, division, geographic division, type of contract (such as urgent delivery requirement) or some other factor;
 - (iv) when and how the VPCM will end;
 - (v) whether the vendor will be subject to a formal period of probation following the end of the VPCM, and who will determine if the probation has been breached;
 - (vi) in the case of a VPCM that can end when the vendor satisfies conditions, who will decide if the conditions have been satisfied.
- (h) If, after considering the vendor's response, the director general still believes the proposed VPCM, or some less severe measure, should be imposed, that measure will be imposed. If it is intended, after reviewing the vendor's response, to impose a more severe measure than originally proposed, the vendor should be notified, and given a reasonable opportunity to respond to that change.

8.180.15.15 Review
(2010-01-11)

Except where there is an approved sector program (see [8.180.30](#)), the Assistant Deputy Minister, Acquisitions Branch (ADM/AB) will review all decisions to impose a VPCM, and any additional representations made by the vendor, and may decide to vary the decision. If the ADM/AB intends to impose a more severe VPCM, the vendor must be notified, and given a reasonable opportunity to respond to that change.

8.180.15.20 Enforcement
(2010-01-11)

- (a) When a VPCM is imposed, the ADM/AB (or appropriate director general, where there is a sector program) will inform the vendor of the decision. All sectors and regions, and clients who have a particular interest in the matter, will also be informed.
- (b) A notice advising that a vendor is subject to a VPCM may be published on the Government Electronic Tendering Service, together with the particulars of the measure, but not the reasons. This notice may continue to be published while the measure is in effect.
- (c) A debarment or suspension renders a vendor ineligible to bid on or receive contracts related to certain types of procurements. Where a vendor is subject to conditions and does not meet the conditions of a particular procurement, the vendor is declared ineligible.
- (d) A debarred or suspended vendor will be removed from relevant source lists, automated vendor rotation systems, and standing offers. Bids received from vendors debarred or suspended from doing any business with PWGSC will not be considered for evaluation. Bids from vendors who are debarred or suspended in part will not be considered for evaluation, if the bids pertain to procurements from which the vendor has been debarred or suspended. Where a vendor is subject to special conditions, any bid from that vendor which does not conform to the conditions will not be considered for evaluation.

- (e) A VPCM does not affect existing contracts, though it does affect amendments. If a current VPCM imposed on a vendor would have been relevant to the award of the contract had the VPCM been in effect at the time, or is relevant to the subject matter of the amendment, then the amendment requires the approval of the relevant director general as an exception to the VPCM. Information on a VPCM will only be entered into VIM by Policy, Risk, Integrity and Strategic Sector, which is responsible for maintenance of the information (including removal of notice where a VPCM has ended). This information will be accessible to anyone who has access to Automated Buyer Environment (ABE).
- (f) When a measure ends, the sector or region that initiated it is responsible for promptly notifying the vendor.

8.180.20 Suspensions in Cases of Emergency

(2010-01-11)

When a problem with a vendor is particularly serious (e.g., involving negligence or willful misconduct, or carrying health or safety implications), the Assistant Deputy Minister of Acquisitions Branch (ADM/AB) may apply an immediate suspension on the advice of a director general, before a complete investigation. The suspension will remain in effect until measures have been taken to remove any unacceptable risk to Canada or public. The vendor will immediately be notified, and given the same opportunity to respond as in a normal VPCM action.

8.180.25 Exceptions

(2010-01-11)

In cases of emergency, or great urgency in procurement, a director general may make an exception to a VPCM. In such cases, special care should be taken to protect Canada. Where an exception is made, the reason should be recorded on the contract file and the vendor file. The fact that a vendor subject to a VPCM is lowest-responsive bidder is not enough reason to make an exception.

8.180.30 Sector or Regional Programs

(2010-01-11)

- (a) A sector or region may establish a program for evaluating vendor performance and determining appropriate measures to apply within that sector or region. Where such a program has the approval of the ADM/AB, it is not necessary that the ADM/AB review each case. The decision can be made by the persons delegated that authority under the program.
- (b) The performance standards and the measures to be imposed should be established on a commodity basis, and other areas of the department, which may be affected by the proposed program, should be consulted. This is to prevent differing standards for the same commodities, in different sectors or regions. Once established, a program is administered by the sector or region, in accordance with the provisions of the Vendor Performance Policy.

Annex 8.1: Guidelines on File Organization and Make-up

(2010-01-11)

1. Overview

- (a) This guideline is intended to help procurement staff in organizing their procurement files. Consistent filing methods allow for a more organized approach to procurement and ensure that anyone reviewing the file is able to locate documents with minimal effort. The importance of proper filing techniques is more evident when, for example, information is needed quickly for audits, Access to Information requests, Canadian International Trade Tribunal complaints, or when a contracting officer takes over file responsibility and needs to determine the status of the procurement process, etc.
- (b) As a general rule, documents should be filed in chronological order. A proposed format for file organization is set out below. The list of documents is not intended to be comprehensive and is subject to the professional opinion of the contracting officers. All the documents may not be applicable in all cases. Furthermore, file organization and the required documents may vary in accordance with regional/sectoral procedures and guidelines.

2. Documents proposed for the left-hand side of the file jacket:

- (a) requisition and any requisition amendments;
- (b) final version of the statement of work, plus any documents that alter the requirement, that is, approved design changes, etc;
- (c) Security Requirements Check List (SRCL);
- (d) Procurement Strategy Committee (PSC) - Detail Document;
- (e) PSC Record of Decision;
- (f) signed bid solicitation checklist;
- (g) signed original Procurement Plan;
- (h) signed original Contract Planning & Advance Approval (CPAA) form;
- (i) Notice of Proposed Procurement (NPP);
- (j) Advance Contract Award Notice (ACAN);
- (k) approved Contract Summary/Request;
- (l) approved Contract Amendment Summary/Request;
- (m) signed original Treasury Board submissions/approvals;
- (n) signed original contract/contract amendment document;
- (o) signed contract/contract acknowledgment amendment copy (as signed by contractor);
- (p) letters of authority;
- (q) Formal Legal Agreements;
- (r) formal notifications (that is, termination);
- (s) copy of any relevant acting authority memos;
- (t) procurement summary;
- (u) Record of Extract and Part Files ([PWGSC TPSGC 1015](#)) (**Note:** Only government employees have access to the site.);
- (v) copies of extract file contracts and their contract amendments;
- (w) Request for Additional Funds ([PWGSC TPSGC 329](#)) (**Note:** Only government employees have access to the site.).

For Canadian Commercial Corporation files: CCC 747 and amendment to CCC74.

3. Documents proposed for the right-hand side of the file jacket:

- (a) acknowledgment of requisition;
- (b) request for distribution of technical data;
- (c) file index, if more than one volume exists;

- (d) original solicitation document, plus document updates or amendments;
- (e) letters of interest;
- (f) minutes of bidder's conferences;
- (g) bidder's questions and answers;
- (h) bids received (or can be put in a separate volume);
- (i) bid evaluation, including tabulation sheets;
- (j) technical evaluation report;
- (k) financial evaluation report;
- (l) price certification;
- (m) price support;
- (n) transportation analysis;
- (o) legal opinions;
- (p) policy opinions;
- (q) documentation on environmental considerations, impacts, and mitigation;
- (r) any comments provided by quality assurance reviews;
- (s) contract award notices;
- (t) supplier correspondence;
- (u) client department correspondence;
- (v) relevant e-mail messages;
- (w) notes to file (see below).

NOTE:

Procurement files should tell a story from beginning to end, and notes to file are an important part of this process. Notes to file can provide a file history; provide an explanation of problems encountered; and act as reminders to contracting officers.

Notes to file should be legible, clear, complete and concise. They should state the subject matter along with what was discussed, any action taken, date, name of person, and company name or client department, phone number, and the name of the person making the note.

The use of self-stick notes, phone message slips, and small scraps of paper, etc, should be avoided since they may be easily lost or overlooked.

Annex 8.2: Contract Management Early Warning Indicators
(2010-01-11)

The following factors, if present with a particular procurement, indicate there may be problems with the file. These factors should warrant further investigation and consideration and, in some cases, referral to more senior levels of authority.

1. Before Contract Award

(a) Requirement early warning indicators:

- (i) requisition transferred several times;
- (ii) receipt of a requisition for a stand alone procurement when an existing procurement instrument (such as a standing offer) already exists;
- (iii) urgent requirements without adequate rationale for urgency;
- (iv) potential situation for employee/employer relationship;
- (v) sole source or no substitute requirements without adequate rationale;
- (vi) contracts with former public servants outside of guidelines;
- (vii) unclear/vague description of work/requirement;
- (viii) indications that the "deal is already cut";
- (ix) complex or innovative requirements requiring the development of new methodology;
- (x) work already under way and requiring confirmation and backdating;
- (xi) unrealistic time frames;
- (xii) lack of responsiveness from contractor during negotiations;
- (xiii) indication of requirement splitting;
- (xiv) weak financial capacity of contractor.

(b) Sensitive files early warning indicators:

- (i) sensitive requirements that may be of interest to various interest or stakeholder groups;
- (ii) highly visible requirements, especially ones of interest to the media;
- (iii) contentious requirements that may result in aggressive competition.

2. After Contract Award

(a) Performance/management early warning indicators:

- (i) unusual number and value of amendments without clear rationale;
- (ii) unexpected/unclear subcontracting activities;
- (iii) PWGSC excluded from meetings between contractor and client department;
- (iv) missed deadlines/reports/meetings;
- (v) quality of performance/deliverables below expectations;
- (vi) excessive warranty claim;
- (vii) excessive maintenance services;
- (viii) invoices for out of scope items;
- (ix) frequent and unexplained turn over of contractor staff;
- (x) request for amendments for out of scope work;
- (xi) disputes and difficulty with resolution of issues.

(b) Financial early warning indicators:

- (i) contract cost not in line with forecasts;
- (ii) outstanding claims/invoices;
- (iii) poor and irregular billing/invoicing practices;
- (iv) reluctance to submit copies of claims/invoices;

- (v) reluctance to supply supporting financial information;
- (vi) difficulty conducting audits;
- (vii) indication that business practices are deviating from the policies.

Annex 8.3: Termination for Convenience Process
(2010-01-11)

1. Overview

- (a) Policy, Risk, Integrity and Strategic Management Sector (PRISMS) was designated to provide termination settlement services associated with goods and services contracts terminated for convenience by Canada. PRISMS sector was also designated to handle claims arising from United States and Canadian Commercial Corporation (U.S./CCC) contracts that are terminated for the convenience of the U.S. government. For terminations involving U.S./CCC contracts, the Director General (DG), PRISMS, will ensure compliance with the certification and termination settlement functions that are required to conform with the U.S. Department of Defense and Department of National Defence Letter of Agreement (see U.S. Defense Federal Acquisition Regulation Supplements [225.870-6](#) and [249.7000](#)). The DG/PRISMS will also be responsive to requests by the U.S. government for arranging for audits of U.S. government contracts or subcontracts placed directly with Canadian-based suppliers that are terminated for convenience.
- (b) The contracting officer and the Termination Claims Officer (TCO) are responsible for the following termination activities:

Termination Activities	Contracting Officer	Termination Claims Officer
Issue Stop Work Order and Notices of Termination	X	
Administration of the non-terminated portion of the contract	X	
Assess the contractor's request for any upward adjustment of the contract price for the non-terminated portion of the contract		X
Request claim from contractor and forward claim forms	X	
Assist contractor with preparation of claim		X
Ensure acceptability of claim		X
Determine if audit is required		X
Define audit requirements and arrange audit		X
Arrange for inventory verification and screening by client	X	
Negotiate final settlement with contractor		X
Preparation of settlement and release document		X
Disposal of surplus inventory	X	
Forward settlement and release document to contractor for acceptance		X
Obtain invoice from contractor		X
Process invoice through client department	X	
Distribute settlement and release document	X	

- (c) Occasionally, the client will require a status report before making a decision to cancel a contract. In this event, the client will inform PWGSC of its intention to reduce or cancel a contract by issuing a "Notice of Intent to Cancel" either by telephone or in writing. The client will usually

request all or part of the following contract status information before making a final decision to terminate:

- (i) quantity of stores produced against the contract;
 - (ii) quantity of stores in production;
 - (iii) value of raw materials and/or components acquired by the contractor to carry out the specific contract;
 - (iv) the position with respect to tooling and capital equipment, especially where the contractor had to tool-up to carry out the contract;
 - (v) status of subcontracts;
 - (vi) the most economical point at which to effect termination; and
 - (vii) the approximate amount of termination claims, if known.
- (d) The contracting officer must immediately request the information from the contractor and closely follow up to ensure that it is received as soon as possible. When the information is received, the contracting officer will forward it, together with any recommendations, to the client. Normally, the client's first request will be to cancel all or a portion of a contract, in which case the contracting officer should immediately issue a stop work order. A stop work order is a safeguard to ensure a halt in the work and remove the possibility of further expense being generated by the contractor. To terminate the contract, a stop work order must be followed by the issuance of a notice of termination.

2. Stop Work – Notice of Termination

On receiving the client's initial written instructions to cancel all or part of a contract for the convenience of Canada (see [8.135.5](#)), the contracting officer should immediately issue a stop work order to advise the contractor to "stop work" (see the *Standard Acquisitions Clauses and Conditions* [SACC] Manual clauses [J0500C](#) and [J0502C](#).) The notice of termination ([J0001C](#), [J0002C](#), [J0003C](#), [J0006C](#)) cannot be issued until the formal requisition amendment is received, and a legal opinion has been sought. The contracting officer should also contact and provide the Termination Claims Officer (TCO) with a copy of the stop work order and notice of termination.

3. No Claim is Involved

When a contractor advises the contracting officer that a claim will not be submitted following the receipt of a notice of termination, the contracting officer must eliminate the funding for the terminated items. Since no claim is made, the TCO is not involved in this process.

4. Client's Decision

- (a) It is the client's responsibility to decide at what stage a full or partial termination should take place. Formal amendments to the requisition, confirming the decision to terminate, must be provided, as quickly as possible.
- (b) The contracting officer must not issue a notice of termination for convenience until an amendment to the client's requisition has been received.
- (c) The contracting officer should ensure that sufficient funds remain in the amended requisition to cover the estimated claim costs and costs resulting from post-termination activity carried out by the contractor. This includes the cost of producing the claim, segregation, packing, secured storage or residual inventory of material, parts assemblies, tools, equipment, etc., before disposal procedure.

5. Notice of Termination

- (a) As soon as the requisition amendment is received, the contracting officer will prepare the notice of termination or partial termination by using the clauses provided in [subsection 5-J](#), of the SACC Manual, and on advice from Legal Services will send the notice to the contractor.
- (b) After the notice of termination or partial termination is issued, the contracting officer must immediately send one copy of the notice to the TCO.

In order to avoid further costs to Canada and hardship to the contractor, a notice of termination must be issued as promptly as possible to finalize the implications of a stop work order.

6. Adjustment of Funds

The funds in the contract must not be adjusted when the notice of termination is issued. The contract funds are adjusted only after a settlement offer has been made to a contractor.

The funding will be adjusted by the TCO at the time that the settlement and release document is prepared for the approval and signature of the DG/PRISMS.

7. Adjustment to the Price of the Non-terminated Portion of the Contract

Whenever a contractor requests an upward adjustment to the cost or unit price of the non-terminated portion of a contract, the resulting claim for adjustment should be referred to the TCO for review, before reaching any agreement with the contractor, concerning such upward cost or price adjustment.

8. Termination File

- (a) For non-complex, fully terminated contracts, the contracting officer should transfer the complete procurement file to the TCO, if a claim is involved.
- (b) For complex procurements or partial terminations, where the non-terminated portion of the file is still active, the contracting officer will prepare a termination case file; including copies of the contract, amendments, specifications, pricing details, documents, correspondence and any other information relevant to the termination, and send it to the TCO.

9. Informing the Contractor

- (a) If a claim is involved, the contracting officer should forward two sets of PWGSC prime contractor termination claim forms and the *Procedures Manual on Termination of Contracts*, to the contractor.
- (b) The following claim forms may be obtained from the TCO. Each set includes:

SPMS -1	Settlement Proposal for Fixed Price Contracts
SPMS-1A	Inventory Schedule A for Inventory of Metals in Mill Product Form
SPMS-1B	Inventory Schedule B for Inventory of Raw Materials, Finished Product, Purchased Parts, Plant Equipment, Finished Components, etc.
SPMS-1C	Inventory Schedule C for Inventory of Work in Process
SPMS-1D	Inventory Schedule D for Inventory of Special Tooling and Test Equipment
SPMS -2	Schedule of Accounting Information
SPMS-3	Application for Partial Payment

- (c) The accompanying letter to the contractor should contain the following instructions:

"In the event subcontractors are involved with this termination, please advise of the number of subcontractors who will require termination claim forms. Please arrange to complete all sections of the claim in as much detail as possible. After signature by your executive authority, return the original and one (1) copy to this office.

You are hereby requested to forward your completed claim within a two-month period from the date of this letter. In order to assist you in meeting that date, we would be pleased to provide guidance and explanations necessary to ensure that your company takes proper action and that the correct information is included in the forms.

Please note that all communications and documents with respect to your claim should be directed to: _____. (Insert appropriate name and address of the responsible contracting officer.)"

- (d) After the termination claim forms are forwarded, the contractor should be contacted by telephone to ensure that the forms have been received and that the necessary action is being taken on the contractor's part to submit a claim. If the contractor has any questions concerning the presentation of the claim, or the details of the termination settlement procedures, the contracting officer may advise the contractor to contact the TCO directly. When the contractor has completed the forms, the signed original and one copy are returned to the contracting officer. On receipt of the contractor's claim, one copy should be forwarded promptly to the TCO, who should then become responsible for the resolution of the claim.

10. Audit of Claims

- (a) Upon receipt of a claim, the TCO will determine the need for an audit. If the TCO concludes that an audit is required, the TCO will prepare the terms of reference for the audit and arrange for its completion by Audit Services Canada.
- (b) When an audit is performed, the TCO reviews the cost factors reported by the auditor, and reconciles the contractor's claim with the auditor's report and the Inventory Verification Report form (SPMS-50). The cost implications of any inventory adjustments should be discussed with the auditor, as well as with the contractor.

11. Inventories

- (a) If the claim from a termination for convenience involves inventory that is rendered surplus by the termination, the contracting officer should send copies of the termination inventory schedules to the client in order to obtain instructions as to disposition, which will be either:
- (i) Arranging for the verification and shipment of all, or any part, of the inventories to a recipient designated by the client. The costs associated with packaging, routing, shipping, etc., are a proper post termination charge to be added to the contractor's claim.
- The contracting officer, with the Inspection Authority of the client, should arrange inventory verification, and a copy of the Inventory Verification Report should be provided to the TCO, so that the settlement offer may be adjusted to reflect any inventory discrepancies.
- (ii) Arranging for the disposal of the residual inventory by the Crown Assets Distribution Centre (CADC). In this case, the contracting officer should prepare the form [PWGSC-TPSGC 11001](#), Report of Surplus (materiel and equipment). (**NOTE:** Only government employees have access to the site.)

- (b) The Report of Surplus form should be signed by the director general or director concerned, to certify that: the inventories are reasonable in relation to the requirements of the terminated portion of the relevant contract; that their use is not required for other existing PWGSC contracts, due to the nature of the goods; and consequently, that disposal is recommended. The contracting officer will forward the signed form to CADC.
- (c) In due course, the contracting officer receives a Final Inventory Certificate (FIC) from CADC, signed by the CADC inspector or assessor and the contractor.

By signing the FIC, the contractor agrees to the final quantities for disposal and, at the same time, agrees to retain and be responsible for the residual inventories for (nine days, at no cost, on behalf of CADC). At the time of receipt of the FIC, the contracting officer is relieved of the responsibility for the residual inventory. Any proceeds realized from the sale of the surplus inventory are credited, on behalf of the client, to the Consolidated Revenue Fund or to the revolving fund, as applicable.

12. Settlement Offer

- (a) Upon receipt of the audit report, the TCO will prepare a proposed settlement offer. This offer informs the contractor of the amount of settlement the TCO is prepared to recommend to the Director General, Policy, Risk, Integrity and Strategic Management (DG/PRISM) Sector for approval.
- (b) If the contractor accepts the proposed settlement offer, the TCO will prepare the settlement and release form, and submit it to Legal Services for review, to the DG/PRISM for approval and signature, and then to the contractor for acceptance. When the contractor's written acknowledgement is received, the original is placed on the PRISM file, and a copy forwarded to the contracting officer for the procurement file.
- (c) If the contractor rejects the proposed settlement, the TCO will advise the contractor to submit the case directly, in writing, to the Chairman, Contract Claims Resolution Board (CCRB), so that the case may be handled in accordance with CCRB's procedures for handling disputes (see [8.170](#)).

13. Contract Termination Claims

When an interim payment or final settlement on a contract terminated or partially terminated for the convenience of Canada is approved and signed by the DG/PRISM, the TCO will place the original of the completed document on the PRISM file, and make arrangements to implement the approved settlement payment.

Annex 8.4: Termination for Default

(2010-01-11)

(a) The decision to terminate a contract for default should be made only after all other possible solutions have been explored. In all cases, the advice of Legal Services must be obtained at an early stage, to ensure that any proposed action will not prejudice Canada's legal position and that the termination is legally enforceable.

(b) Failure to take action may prejudice Canada's interests.

If a contract is secured by surety bonds, termination of the contract may change the existing contractual relationship with the bonding company.

(c) Canada has the right to terminate all or any part of the contract for default if:

(i) The contractor fails to make progress, so as to endanger performance of the contract.

(A) The contracting officer may provide the contractor in writing with a reasonable period of time, normally ten days, to rectify the situation. If this period must be longer, the contracting officer may require the contractor, within ten days, to show evidence of corrective action.

(B) If the contractor does not rectify the situation, the contracting officer may, subject to the limitations in the default clause, initiate action to terminate the contract for default.

(ii) The contractor fails to perform any provision of the contract.

If the contractor does not rectify such a defect within ten days of receipt of a notice from the contracting officer, the contracting officer may, within the limitations set forth in the default clause, initiate action to terminate the contract in whole or in part for default.

(iii) The contractor fails to deliver the goods or perform the services within the time specified in the contract.

(A) In the absence of excusable delays, Canada has the right to terminate the contract immediately, regardless of how slight the delay may be. This includes the right to accept or reject goods shipped, but not yet delivered. In addition, if the contractor does make timely delivery, but delivers defective goods or improperly performs services, and is unable to take corrective action within the unexpired delivery schedule period, Canada also has the right to terminate for default.

(B) Whenever a contracting officer contemplates termination of a contract for failure to deliver on time, the contractor must be so advised, as soon as possible, after the default occurs. Failure to take such action may prejudice Canada's position.

(C) When there is reasonable assurance that delivery will be made, even though late, it may be desirable to discuss extension of the delivery time with the client. If the delivery date is extended, negotiation for a reduction in the contract price may be appropriate.

This situation would arise when delivery would be further delayed by terminating and placing the contract elsewhere.

- (iv) the contractor becomes bankrupt or insolvent.

Upon receipt of a notice of bankruptcy or insolvency, the settlement procedure outlined in [8.155](#) should be followed.

Action to Recover Loss or Damage

- (a) After termination, the contracting officer will determine the actual amount or best estimate of loss or damage suffered by Canada, and the distribution of the damages to be recovered from the contractor.

Estimates of loss or damage should include any amount in excess of the contract price, which Canada may be obliged to pay in procuring the goods or services elsewhere.

- (b) The contracting officer must refer claims to Legal Services when a contract is secured by a security deposit (government guaranteed bonds, bills of exchange, irrevocable standby letters of credit), or when Canada has a claim against a contractor that is related to a work package for which, the contractor has a claim against Canada.
- (c) In all other cases, the contracting officer will attempt to negotiate a settlement. When a satisfactory settlement cannot be reached, the claim will be referred to Legal Services for action.
- (d) When a contractor agrees with the proposed settlement, the recommendation to recover monies will be submitted to Cost Audit Group (CAG), or, in the case of a Canadian Commercial Corporation (CCC) contract, the Director, Finance and Resources Administration (FRA). CAG or the Director, FRA, will issue an invoice to the contractor for the monetary recovery.
- (e) If payment is not received within 60 days of the date of issue of the invoice, then CAG or the Director, FRA, will advise the contracting officer to take appropriate follow-up action with the contractor. When normal follow-up procedures have not been successful, the matter must be referred to Legal Services.
- (f) Claims must not be removed from departmental records until satisfied by payment or a properly authorized deletion action.

Contract Payment under Surety Bond

When a surety bond is being enforced, payments will be issued as follows:

- (i) *Performance bond:* Upon completion of the contract to the satisfaction of Canada, the bonding company may be paid all amounts to which the contractor would be entitled under the terms of the contract;
- (ii) *Payment bond:* The bonding company must not be reimbursed for the payment of creditors from any funds held by Canada until the work is complete, and the surety company has fully discharged its obligations under the bond.

Annex 8.5: Refunds of Excess Profits Earned on PWGSC Contracts

(2010-01-11)

- (a) All indications from any source of unreasonably high profits realized from any contract placed pursuant to the *Defence Production Act*, or from any contract other than competitive firm price awarded pursuant to the *Department of Public Works and Government Services Act* should be reviewed in consultation with the Director, Acquisition Program Integrity Secretariat (APIS).
- (b) Negotiated Refunds:
- (i) Normally, the first step in negotiating a refund is for the contracting officer and APIS to review the evidence available, and decide whether the profits realized by the contractor can be recommended for acceptance or are in excess of what is considered to be fair and reasonable. In the event that the evidence is incomplete or inconclusive, consideration should be given as to whether the contractor will be approached for a statement of its position or whether a request will be forwarded to Audit Services Canada for additional verification. When all the evidence necessary is assembled, a final review will be made to determine what, if any, amount should be refunded, and the method of payment.
 - (ii) In an attempt to ensure that suppliers are being treated consistently throughout Public Works and Government Services Canada (PWGSC), the Cost Audit Group (CAG) will distribute to the members of the Contract Audit Review Committee the proposed action plan of the contracting officer in respect to a contractor's excess profit, identified through audit. Any comments or concerns with the action plan should be communicated to CAG within ten working days. CAG will consolidate the input and forward it to the lead contracting authority for consideration.
 - (iii) In some cases it will be in order to recover excess profits by deduction from current claims, or a part recovery may be affected through an assignment of income tax refunds. Ordinarily, however, the contractor will be expected to remit the full amount by cheque. If it appears that this action will create an unreasonable hardship, extended terms of payment may be considered.
 - (iv) The agreed upon amount to be refunded and the terms of settlement will be set out in a letter to the contractor, approved by Legal Service, and signed by the responsible officer of the sector/region. Copies of this letter are to be sent to the Director, Acquisition Program Integrity Secretariat (APIS).
 - (v) After settlement is completed, it may be desirable to release the contractor from further obligation by detailing, in a formal agreement, the contract to which the settlement relates. Legal Services should draft this agreement.
 - (vi) Cheques forwarded by the contractor should be made payable to the Receiver General and mailed to the contracting officer. The contracting officer will pass them to CAG who will forward them to the Chief Financial Officer of the client.
- (c) Voluntary Refunds:
- (i) Where a contracting officer receives notice from a contractor that they desire to return excess profits, or if a contractor voluntarily forwards a cheque in refund of such profits, the contracting officer should request a statement showing:
 - (A) a summary of the excess profits by contracts; and

- (B) an explanation of the principal reasons, which accounts for the excess and how the amount was arrived at.
 - (ii) Pending an appraisal of the information given by the contractor and of the particular circumstances of the case, any cheques received should be sent immediately to the Director, APIS, accompanied where possible, by a statement, showing the distribution of the refund over the contracts affected. The Director, APIS, will then forward the cheques to the Chief Financial Officer for the client.
 - (iii) In deciding how extensive a review should be carried out in each case, the determining factors will be:
 - (A) the value of the contracts affected, and the total amount of the contracts let to the contractor;
 - (B) the explanations given by the contractor, as to the procedure followed in arriving at the amount of the refund;
 - (C) the capacity known to the contractor for assembly and interpretation of costs in accordance with Contract Cost Principles [1031-2](#), if applicable.
 - (iv) If there is doubt as to the accuracy of the contractor's computations or if it appears that there may be other excess profits which have not been declared, then a full inquiry must be instituted;
 - (v) A final decision will be agreed upon by consultation between the sector/region concerned and the Director, APIS, and this conclusion will be communicated to the Chief Financial Officer of the appropriate client department.
- (d) Refunds from Subcontractors:

Refunds from subcontractors should be handled in accordance with the above procedures. In addition, however, it will be necessary for PWGSC to keep the prime contractor informed of its negotiations with the subcontractor, and in some cases, it will be preferable to deal with the subcontractor through the prime contractor. If the refund results from a contractual provision in effect between the prime contractor and the subcontractor, then the refund should be effected by the prime contractor. If the refund arises from circumstances not envisaged in the subcontractor's contractual arrangements with the prime contractor, then the refund should be effected by PWGSC, and should not result in a windfall being realized by the prime contractor.

(e) Assignment of Income Tax Refund:

- (i) In the event that a settlement from the contractor must be financed partly from the proceeds of its income tax refund, the sector/region concerned will endeavour to obtain a voluntary assignment of the income tax refund in the following terms:

*"Receiver General of Canada
Ottawa, Ontario*

(Company) _____ of the City of _____ in the Province of _____ does hereby authorize and direct that any amounts presently due or accruing due to it in the future from the Canada Revenue Agency, be applied in reduction of its debt to Her Majesty the Queen in right of Canada in the amount of \$ _____ on account of _____".

- (ii) In the case of a corporation, the direction should be under the seal of the Corporation and the signature of duly authorized officers. The form, which should be a separate document and not embodied in a letter, should then be passed by the sector/region to the Director General, Finance, Corporate Services, for processing in accordance with normal government practice. Treasury Board authorization is not required.

- (iii) Whether the assignment is voluntary or pursuant to [section 155](#) (Deduction and set-off) of the *Financial Administration Act*, the Finance Sector assumes the responsibility of notifying Canada Revenue Agency (CRA) of the assignment. The manner in which money is transferred from CRA to PWGSC, or to the Department of National Defence (in the case of refunds to its own votes) is a matter for decision by the Finance Sector. However, the transfer will be made either by means of a Receiver General cheque or an interdepartmental Journal Voucher. Under either method, the transfer advice will be passed to the sector/region concerned who will forward it to the Director General, Finance Sector.