
SECTION 13

**CONTRACT SERVICES,
CONDITIONAL GRANTS
AND FUNDING AGREEMENTS**

13.01 INTRODUCTION

AUTHORITY: DEPARTMENT OF FINANCE
TREASURY BOARD SECRETARIAT

ADMINISTRATION: DEPARTMENT OF FINANCE
TREASURY BOARD SECRETARIAT

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13.01 INTRODUCTION

(1) PURPOSE

The purpose of this policy is to provide information that will be of assistance to departments and agencies when they are required to obtain the services of individuals and corporations to perform some function on behalf of Government. This section is especially useful as a guide for the total process, from requesting proposals to accountability of the contractor through the use of a formal contract, more particularly:

- contractor selection principles;
- requests for proposals;
- evaluation of proposals;
- selection methods (competitive/non-competitive process);
- contract format; and
- statistical reporting format.

It is intended that the policies, procedures and guidelines set out in this section and the provision of standard contract formats will streamline contract administration and assist Government in obtaining uniform, responsible contract services and outputs in the most effective and economical manner.

It is difficult to identify all the situations where the use of service contracts is appropriate, however, a contract should be executed whenever one party wants another party to provide some service (OFFER), which the second agreed to provide (ACCEPTANCE), for some consideration (PAYMENT). Factors to be considered are:

- complexity of request;
- length of contract;
- amount of consideration;
- consequence of error; and
- potential liability.

(2) APPLICATION

The application of this policy is referenced to the schedules of the *Financial Administration Act* (FAA) and applies as follows:

- Schedule “A” - Departments except the Legislative Assembly
- Schedule “B” - Crown corporations
- Schedule “C” - Education Authorities
- Schedule “D” - Commissions

except to the extent that their enabling legislation may incorporate alternate requirements such as Ministerial or Board Authority.

While this policy **does not apply** to the Legislative Assembly or Reporting Entities subject to alternate legislation, the **spirit and intent** of the policy should serve as a **guideline** for these entities in developing their own policies. Reporting Entities that develop policies differing from Treasury Board policy require approval of Treasury Board.

(3) DEFINITIONS

For the purpose of this policy, the following definitions shall apply:

- (a) **“Agreements”** means all types of arrangements between parties where funds are granted for a specific purpose and/or where the recipient is required to meet certain conditions.
- (b) **“Bidder”** means a corporation, organization, partnership or individual who submits a tender or proposal to carry out work for a department(s).
- (c) **“Board”** means Treasury Board.
- (d) **“Competitive Bidding Process”** means a procurement process used to acquire services through a solicitation for bid submissions that is open to more than one supplier and includes an invitation to tender or a request for proposals.
- (e) **“Conditional Grants”** are payments made to a recipient for which Government receives no goods or services but stipulates that certain conditions must be met by the recipient. Such payments are subject to audit and in some cases, subject to program criteria and guidelines.
- (f) **“Contract”** means an agreement creating an obligation, in which there must be competent parties, subject-matter, legal consideration, mutuality of agreement and mutuality of obligation. The agreement must not be so vague or uncertain that terms are not ascertainable.
- (g) **“Contract Services”** means contracts for obtaining various services but excludes the acquisition of goods.
- (h) **“Contract Value”** means:
 - (i) the estimated maximum cost, including renewal periods, of all fees, allowances, remuneration and reimbursable expenses, before HST, associated with a contract and/or an assignment, including travel and other expenses;
 - (ii) in cases where more than one department is involved, the sum of all provincial payments included in the contract. “Contract Splitting” by one or more departments to avoid the approval process is not consistent with this policy;
 - (iii) the total gross expenditure of department(s) on the contract agreement and not the net cost after offsetting revenues from a third party; and
 - (iv) retainer fees specific to a project or proposal are to be included as part of the total contract price.

- (i) “**Contractor**” means a corporation, organization, partnership or individual who enters into an agreement or professional services contract with a department(s).
- (j) “**Department(s)**” includes departments, Crown corporations, agencies and reporting entities as set out in the Schedules to the *Financial Administration Act*.
- (k) “**Deputy Head**” means the Deputy Minister of a department or the Chief Executive Officer of a Crown corporation, agency or commission.
- (l) “**FAA**” means the *Financial Administration Act*.
- (m) “**Federal/Provincial Agreement**” means an agreement between Government and the Federal Government where the Federal Government will contribute some portion (up to 100%) of a program/project cost.
- (n) “**Fee for Service Contract**” means a contract to provide some form of professional service such as, but not limited to medical, legal or accounting on an ongoing basis for a period of time rather than on a project-by-project basis.
- (o) “**Forgivable Performance Loans or (FPL)**” means loans given to an applicant but not required to be repaid, if certain conditions are met.
- (p) “**Funding Agreement**” means a legal document that outlines the terms, conditions and obligations of funding, service delivery and accountability for both the department and the funded organization.
- (q) “**Guidelines**” are instructions which are not mandatory, but should be followed in essence. Guidelines are intended to assist departments in dealing with special situations in an efficient manner.
- (r) “**Interprovincial Agreement**” means an agreement between Government and another province or territory.
- (s) “**Limited Competitive Bidding Process**” means a competitive bidding process that is limited in some aspect when bid submissions are solicited.
- (t) “**Operating Grant**” means payments made to a Crown corporation or an organization funded substantially by Government for the purpose of funding operating costs.
- (u) “**Open Competitive Bidding Process**” means a competitive bidding process open to all bidders, in which bid submissions are solicited by public advertisement.
- (v) “**Unconditional Grants**” are payments made to a recipient for which Government receives no goods or services and no constraints are put on how the money is spent. Unconditional grants do not require a funding agreement as there are no terms or conditions.

- (w) **“Professional Services Contracts”** means contracts for services provided by firms/individuals which have a high level of capability or expertise in a professional, scientific, technical and/or managerial field.
- (x) **“Service Contract”** means a contract for specific services such as maintenance security, cleaning, etc.
- (y) **“Standing Offer”** means a contractual arrangement from a potential supplier to supply goods, services or both, on an “as-required” basis. The contract normally includes the pricing formula and the terms and conditions under which the goods and/or services will be supplied. It is intended to be open for acceptance by means of call-ups by the Government for specific quantities during a specific period.
- (z) **“Variable Price Contract”** means a contract having a cost that varies according to the volume of services provided (e.g., legal services). In Variable Price Contracts, it is sometimes difficult to know in advance what the total cost of the contract will be. Departments will be required to request Treasury Board or Executive Council approval as soon as the Department is aware that the contract will exceed its approved limit.

(4) INTERPRETATION

In cases where an interpretation is required, such should be referred to the Secretary to Treasury Board, or their delegated officer, who will make the interpretation or refer the matter to Treasury Board, if a Board decision is deemed necessary.