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**SECTION 13**

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

**13.03 EMPLOYER/EMPLOYEE RELATIONSHIP**

**AUTHORITY:** DEPARTMENT OF FINANCE  
TREASURY BOARD SECRETARIAT

**ADMINISTRATION:** DEPARTMENT OF FINANCE  
TREASURY BOARD SECRETARIAT

**EFFECTIVE DATE:** JUNE 2024

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### 13.03 EMPLOYER/EMPLOYEE RELATIONSHIP

#### (1) PURPOSE

In engaging the services of an individual, partnership, organization or corporation under a contract, it is essential to distinguish between a contract services arrangement on the one hand, and an arrangement which establishes an employer/employee relationship (employment contract) on the other.

Service contracts should avoid the creation of an employment relationship between the parties. The distinction between an employee and an independent contractor is of considerable importance, as the Government's obligations to an independent contractor are limited to those expressed in the contract. The Government is precluded from liability for actions of an independent contractor while engaged in performance of work under a properly worded contract.

It should be noted that the existence of a service contract may not, of itself, be sufficient to preclude the creation of an employment relationship. If the circumstances suggest that an employment relationship exists, then such a relationship will be found to exist in law notwithstanding the contractual arrangement between the parties.

This policy should serve only as a guide for service contract relationships within Government.

#### (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 to 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) GUIDELINES/CRITERIA

Given the wide variety of needs and situations where services are required on a contractual basis, it is very difficult to establish criteria with respect to contractual relationships that are sufficiently specific to address all situations.

The contractor's relationship with the Government as created by the Agreement should be that of an "**independent contractor**" for all legal purposes. It is intended that the Consultant has general control and direction over the manner in which its services are to be provided to the Government under the Agreement. Nothing contained in the Agreement should permit it to be construed as creating any relationship between the parties other than as an independent contractor. The actual working arrangement between the parties should be consistent with the relationship set out in the contract.

The final determination of the relationship must be made by management and, if in doubt, advice from Legal Services and/or Treasury Board Secretariat staff should be requested. The following guidelines/criteria are included to assist in the process of determining the contractual relationship:

- (a) Generally, an employee/employer relationship exists if:
  - (i) the Government retains control over the work and how it is to be done; or
  - (ii) the Contractor and the Contractor's work forms an integral part of the structure of a department; or
  - (iii) the Contractor is economically dependent on the Government.
- (b) The presence of some or all of the following factors would generally mean that the relationship is with an independent contractor:
  - (i) Specificity of the Work:
    - contract includes one or more clearly identifiable tasks;
    - quantity of work or size of task defined;
  - (ii) Control of the Work:
    - the Government does not exercise direct supervisory control over the manner in which the work is carried out;
  - (iii) Equipment/Facilities:
    - the necessary equipment and facilities to perform the work are provided by the Contractor;
  - (iv) Chance of Profit or Risk of Loss:
    - the Contractor has made a financial investment;
    - the Contractor retains the right under the contract to make a profit or suffer a loss;
  - (v) Subcontracting:
    - the contractor may subcontract or hire others under their supervision to perform the work;

(vi) Integral Work:

- contractor (or work) is not an integral part of the Government's organizational structure;

(vii) Economic Independence:

- a contractor who is an individual and works solely for the Government, or who works for the Government and others, but is economically dependent on the Government will usually be found to be an employee and not an independent contractor.

**(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 Treasury Board decision is deemed necessary.