

# Non-Public Property Contracting Policy

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## APPLICATION

1. This policy applies to all employees of the Staff of the Non-Public Funds, members of the Canadian Armed Forces (CAF) and employees of the Department of National Defence (DND) involved in Non-Public Property (NPP) contracting activities.
2. A number of programs that are a Public responsibility are delivered by NPP with subsequent reimbursement to NPP by Public funds. Where the delivery of these programs involves the commercial acquisition of goods and/or services, and the contractor is paid with Non-Public Funds (NPF), the contract arrangements for those goods and/or services shall be in accordance with this policy.
3. This policy applies to all expenditures of NPF for the acquisition of goods and/or services for NPP organizations, including the acquisition of goods for re-sale by CANEX, Messes and other NPP organizations.
4. This policy is to be read in conjunction with the *Chief of the Defence Staff Delegation of Authorities for Financial Administration of Non-Public Property* (Reference A) and the *NPP Contracting Guidelines* (Reference D).

## APPROVAL AUTHORITY

5. This policy is issued under the authority of the Chief of the Defence Staff (CDS).

## ENQUIRIES

6. Enquiries should be directed to the respective Canadian Forces Morale and Welfare (CFMWS) Division Contracting Representatives, the NPP Procurement and Contracts Officer or the CFMWS Vice President Corporate Services (VP Corp Svcs).

## DEFINITIONS

7. **Authority to Contract.** The authority to contract is the authority provided by the CDS to persons occupying specific positions within non-public property organizations, the CAF or DND, or fulfilling specific organizational functions, to enter into contracts on behalf of an NPP organization and in the name of Her Majesty the Queen in right of Canada as represented by the CDS or a Base/Wing or Unit Commander acting in his/her NPP capacity.
8. **Bid Solicitation:** a formal competitive procurement process such as a Request for Proposals (RFP), a Request for Quotations (RFQ) or a Request for Tenders (RFT) or other request for procurement.
9. **Bid or Tender:** an offer received from a supplier, consultant or contractor for the supply of Goods/Services, in response to an RFP, the acceptance of which will result in the formation of a formal Agreement and/or a Purchase Order.
10. **Contract.** A contract is a legally binding agreement between a contracting authority and another legally separate party or parties to provide goods or to perform services in exchange

for valuable consideration.

11. **Competitive Contract.** A competitive contract is a contract where the process used for the solicitation of bids enhances access, competition and fairness and ensures that a reasonable and representative number of suppliers are given an opportunity to bid in accordance with this policy.
12. **Contract for Services.** A contract for services exists when an individual, or firm, is retained to achieve a prescribed objective with no day-to-day supervision by the contracting authority or the contracting authority's agent(s) and where the independent contractor decides how to achieve the specified work.
13. **Directed Contract.** Directed contracts are also referred to as "sole source" contracts. A directed contract is a contract awarded to a pre-selected contractor in circumstances where the contracting authority has justifiably set aside the requirement to solicit bids under the provision of one or more of the exceptions to competitive solicitation as specified in this policy.
14. **Non-competitive Contract.** A non-competitive contract is any contract for which bids were not solicited or, if bids were solicited, the circumstances for a competitive contract were not met. All contracts should be competed, or directed if the sole source criteria are met, and documented.
15. **Non-Public Property.** As defined in Section 2 of the National Defence Act (NDA), "NPP" means:
  - a. all money and property, other than issues of materiel, received for or administered by or through messes, institutes or canteens of the CAF;
  - b. all money and property contributed to or by officers, non-commissioned members, units or other elements of the CAF for the collective benefit and welfare of those officers, non-commissioned members, units or other elements;
  - c. by-products and refuse and the proceeds of the sale thereof to the extent prescribed under subsection 39(2) of the NDA; and
  - d. all money and property derived from, purchased out of the proceeds of the sale of, or received in exchange for money and property described in paragraphs a to c."
16. **Proposal:** an offer received from a proponent for the supply of goods and / or services, in response to an RFP / RFQ, acceptance of which may be subject to further negotiation.
17. **Quotation:** an offer received from a selected supplier, consultant or contractor for the supply of specific goods and/or services, in response to a Request for Formal Quotations.
18. **Transfer of Goods and Services.** A Transfer of Goods and Services describes the arrangement governing the acquisition of goods and services between NPP entities and between NPP and the Crown Public.

## CONTRACTING AUTHORITY

19. Reference A authorizes incumbents of designated positions to make financial commitments and to enter into contracts. The NPP delegation instrument is distinct from that used under the Public accountability framework.
20. All NPP contracts must have a Contracting Authority (CA) assigned who is responsible for the contract. Before entering into a contract the CA must:
  - a. have a valid certification for one of the two NPP certification courses for the financial administration of NPP;
  - b. complete and sign the NPP Delegation of Authority (DOA) Form, at Annex C to Reference A; and
  - c. be satisfied that the contract falls under the NPP Accountability Framework and that he

/ she has the requisite delegated contracting authority.

## POLICY OBJECTIVE

21. NPP contracting requirements shall be consistent with the Values and Ethics Code for the Public Sector and NPF Values and Ethics Policy and where **feasible, should be in the spirit or principles of contracting** in the Public Sector, while respecting and being responsive to the unique nature and requirements of NPP organizations.

## GUIDING PRINCIPLES

22. The NPP Contracting Policy is based on a set of principles, rather than detailed regulations and procedures that attempt to prescribe every conceivable contracting circumstance. The objective is to contract in a manner that enhances access, competition and fairness and results in best value. It is **important** that the CA treats all bidders fairly and equitably throughout the contracting process. In the context of competition, the four basic guiding principles for contracting are **openness, fairness, transparency and ethical behaviour**:
  - a. Openness:
    - i. a competitive process is the norm ensuring that a fair, reasonable and representative number of suppliers have been given the opportunity to bid; and
    - ii. exceptions to competition have been substantiated and documented and filed by the Contract Authority.
  - b. Fairness:
    - i. everyone is treated equitably and honestly;
    - ii. all information on the contracting process is made available to all potential bidders in the same format at the same time; and
    - iii. the contracting process is not manipulated to ensure the outcome.
  - c. Transparency :
    - i. each contract process involves the full, accurate, and timely disclosure of information;
    - ii. all contracting principles are adhere to; and
    - iii. senior management is apprised of any wrong-doings.
  - d. Ethical behaviour:
    - i. the contracting process meets organizational obligations to integrity, loyalty, courage, honesty, fairness and responsibility.

## POLICY REQUIREMENTS

23. Applying this policy to maximum effect requires that CFMWS institutes procedures to ensure that:
  - a. The policy is widely communicated and readily accessible so that all personnel conducting contracting activities are aware of this policy;
  - b. Authorized personnel have successfully completed, and have a valid certification for, one of the two NPP certification courses within the last three years;
  - c. The Contracting Policy, tools, guidance and advice are readily available to contracting authorities;

- d. There is an approved requirement and sufficient unencumbered cash balance available to discharge any financial obligation resulting from the purchase / project, in an approved budget for which the approving authority is responsible;
  - e. A contract reporting mechanism is in place to document exceptional approvals in accordance with the provisions of this policy; and
  - f. A compliance-monitoring program is in place for contracting activities.
24. When tendering NPP contracts, CAs shall:
- a. award contracts on a competitive basis. A competitive tender normally involves obtaining a minimum of three bids / quotes. If there are only two potential suppliers, contracting documentation shall be annotated accordingly to explain why only two bids / quotes were obtained. All documentation, including quotes, must be maintained and available to give evidence of competitive process for compliance/audit reviews. Documentation is not required for both directed and competitive contracts for goods valued up \$1,000, exclusive of taxes. Exceptions to awarding contracts on a competitive basis are described below under the heading "Circumstances Where Competitive Tendering May Not Be Required;"
  - b. assign primary importance to meeting operational requirements of NPP programs and activities in providing benefit to serving and former CF personnel and their families;
  - c. follow the guiding principles stated in paragraph 22 of this policy;
  - d. reflect best business practices;
  - e. provide value for money (where value is determined on both a cost and performance basis); and
  - f. not derive personal benefit of any kind whatsoever, either directly or indirectly, to any person involved in the contracting process on behalf of NPP.

## **CIRCUMSTANCES WHERE COMPETITIVE TENDERING MAY NOT BE REQUIRED (DIRECTED CONTRACT)**

25. The overarching NPP contracting approach is that NPP contracts are to be competitively tendered. However, competitive tendering may not be required when one or more of the following circumstances applies:
- a. The need is of pressing emergency / urgency and delay would prevent the contracting authority from meeting operational requirements of NPP programs and activities;
  - b. The nature of the work is such that the solicitation of bids would not reflect best business practices, including industry standard practices, for all NPP re-sale activities and CANEX concession arrangements;
  - c. There is only one supplier capable of providing the required goods and services or capable of performing the work; and
  - d. The competitive tendering process would not result in obtaining the best value for money.
26. A CA may enter into a directed contract if at least one of the four circumstances for directed contracts, as shown in paragraph 25 above is met. If the contract:
- a. is within the CA's delegated financial authority, as shown in paragraph 27 below, then the CA must complete and sign the form at Annex A to this policy and place it in the contract file before proceeding; or
  - b. exceeds the CA's delegated financial authority, as shown in paragraph 27 below, then the CA must have the form at Annex A to this policy signed by the delegated authority

that has the appropriate financial authority and must place the form in the contract file before proceeding:

27. Delegated Financial Authorities (excluding taxes):
  - a. Up to \$10K: Delegated authorities;
  - b. Up to \$50K: Base / Wing, Ship and Small Unit Commanders and CFMWS Division Heads;
  - c. Up to \$500K: COO; or
  - d. Up to \$5M: Managing Director NPP.
28. If none of the four circumstances for directed contracts, as shown in paragraph 25 above, is met then a competitive tender or prior written approval by Managing Director NPP is required.
29. The provisions in paragraphs 25 to 28 do not apply to the resale of goods and services in NPP outlets such as CANEX, CANEX concessions, messes, deployed operations and specialty interest activities (SIA). The spirit and intent of the policy should be respected where appropriate.
30. In all cases when a contract is not competed Annex A must be completed and inserted in the contract file. Even in these circumstances, the contracting authority must be satisfied that the contracting process reflects the guiding principles, as stated in paragraph 22 of this policy, and the requirement to provide best value for money.

## VARIANCE FROM APPROVED CONTRACT AMOUNT

31. For all contracts a variance of no more than 10% between the approved contract amount and actual cost is permitted. For a variance greater than 10%, approval by the appropriate authority is required.

## CONTRACTS REQUIRING CFMWS HQ APPROVAL OR MANAGEMENT

32. Procurement of IM/IT equipment and software. Unless pre-approved for local purchase, the Managing Director NPP, COO and CFMWS CIO are the only approving authorities for IM/IT procurement using NPF. **Refer to Reference E.**
33. Multimedia Production and Graphic Design Contracts. All current and future CFMWS HQ contracts with the private sector for media production and graphic design are to be managed by the **Creative Director at CFMWS HQ**. This position falls under the responsibility of the VP Corp Svcs. This direction excludes Bases and Wings.
34. Translation Service Contracts. All CFMWS HQ contracts with the private sector for translation services are to be managed through the Manager Translation Services at CFMWS HQ. This position falls under the responsibility of the VP Corp Svcs. This direction excludes Bases & Wings.

## LIABILITY INSURANCE

35. Contractors shall obtain, and maintain until termination of a contract, Commercial General Liability Insurance issued for an amount not less than \$2M per occurrence. The level of coverage required can be increased to \$5M or more by the contract approval authority when circumstances dictate. CFMWS Division Heads and Base / Wing Commanders may authorize a reduction or elimination of this requirement for low value / low risk contracts. These exceptions are to be reported to the Consolidated Insurance Program (CIP) Manager. When in doubt, legal advice should be sought from Canadian Forces Legal Advisor (CFLA).

## CERTIFICATE OF INSURANCE

36. CA may request a certificate of insurance to verify that an insurance policy is in place and that the service being provided and/or terms of agreement are covered by the insurer. When a higher risk exists, the contracting authority may request that “Her Majesty the Queen in her Non-Public capacity” be included as an “Additional Insured” to the coverage provided by the policy.

## ACQUISITION OF GOODS AND SERVICES FROM OTHER NPP ORGANIZATIONS

37. The acquisition of Goods and Services from other NPP organizations is also referred to as a Transfer of Goods and Services. Transfers of Goods and Services are not contracts and are internally accounted for utilizing merchandise requisitions or other appropriate internal arrangements.

## DEALINGS WITH OTHER CROWN ENTITIES

38. Contracts are not used between Crown entities. Instead other arrangements are used to assist NPP with its delivery of programs and services or to deliver publicly-funded MW programs and services between Crown entities. These other arrangements include Transfer of Goods and Services, as mentioned above, Service Level Agreements (SLA) and Memorandum of Understanding (MOU). They are non-contractual, non-legally enforceable bilateral or multilateral arrangements between two or more parties.

## CANEX RIGHT OF FIRST REFUSAL

39. CANEX has the first right of refusal for any new NPP re-sale activities contemplated at any CAF Base or Wing that are not excluded in accordance with the provisions of paragraphs 62 and 65 of Chapter 3 of A-PS-110-001/AG-002. As well, at the request of a CO, CANEX is authorized to consider a concession arrangement for resale outlets in Messes and Specialty Interest Activities.

## REQUIREMENT TO ACQUIRE GOODS FROM CANEX

40. CANEX has considerable expertise in contracting for goods from the private sector and in obtaining the best value for the NPP dollar.
41. Accordingly, whenever practicable, NPP programs and activities shall obtain goods for re-sale by messes and other NPP organizations through CANEX. In addition, NPP organizations should, whenever practicable, acquire goods not for re-sale from/through CANEX.

## BUSINESS RELATIONSHIPS

42. When an NPP organization identifies a requirement for a contract for services, the manager with the appropriate financial authority must ensure that the independent contractor or self-employed individual will be operating under “business relationship” conditions as defined by CRA (refer to reference C) and not under an employment relationship (employer / employee). See the *NPP Contracting Guidelines* (reference D) for details.

## RATIFICATION OF UNAUTHORIZED CONTRACTS

43. When it has been determined that a representative did not have proper or adequate delegated authority to enter into a contract on behalf of Her Majesty or to authorize a “directed contract” (also known as sole source), special procedures are required in order to correct and record the situation. Whether or not the contracted goods or services have been delivered, the representative is required to submit a request for ratification, through the Chain of Command, to the person holding the appropriate delegated authority.
  
44. Each request requires detailed information in memorandum format about the contract, including:
  - a. the statement of work;
  - b. how the firm was selected;
  - c. the quotation or proposal from the selected contractor;
  - d. a record of payments and applicable invoices; and
  - e. the action taken to avoid a recurrence of the situation.
  
45. Administrative and disciplinary action may be taken for contracting without proper authority, including temporary and permanent withdrawal of delegated financial authorities. All instances of improper contracting must be reported to the CFMWS VP Corp Svcs.

## AUTHORITIES

46. The following identifies the authorities responsible for implementing this policy:
  - a. The Managing Director of NPP, administers the policy on contracting and issues instructions to implement the policy;
  - b. CFMWS VP Corp Svcs develops contracting policy and instructions and provides interpretation and advice concerning this policy;
  - c. The NPP Contracting Committee at CFMWS HQ provides contracting oversight, ensuring the NPP Contracting Policy is understood and adhered to;
  - d. CA approve contracts in accordance with Reference A, and subject to any restrictions or constraints on the exercise of contracting authority that may be imposed by the chain of command;
  - e. CFMWS CFO ensures that procedures are in place to issue payments and implements a compliance plan to advise senior management within CFMWS and Base /Wing Commanders on inconsistencies with established contracting policies and guidelines. To ensure that the Finance Division can effect payment, a copy of all contract must be submitted to the local NPP accounting office. The local NPP accounting office will maintain copies of the contracts as supporting documentation. In addition, managers shall ensure that they can provide evidence that three bids were requested; and
  - f. ADM(RS) develops and implements an internal audit plan on NPP contracting activities.

## REFERENCES

The following legislation and regulations are relevant to the content of this policy:

- A. [Chief of the Defence Staff Delegation of Authorities for Financial Administration of Non-Public Property](#)
- B. [A-PS-110-001/AG-002](#)
- C. [Canada Revenue Agency \(CRA\)](#)
- D. [NPP Contracting Guidelines](#)
- E. [NPP IM/IT Procurement Policy](#)

The following documents should be read and used in conjunction with this policy:

- F. [Values and Ethics Code for the Public Sector](#)
- G. [NPF Values and Ethics Policy](#)

## ANNEXES:

Annex A: [Approval Authority for Directed Contracts](#)