



Part: **Financial Management and Administration**
 Section: **Treasury Board's General Management Policies**
 Subsection: **Goods and Services**
 Policy: **Contracts for Services**

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Contracts for Services

- Objective** *The objective is to outline the policy and procedures for managing service contracts.*
- Authority** *The Financial Administration Act, 1993, clause 5(a) and subsection 10(2)*
- Applicability** This policy applies to ministries.
- Definition** A **contract** is an agreement between two or more parties. A contract is considered binding when an offer to provide goods or services, at a price, is accepted.
- Treasury Board Policy**
- .01 Ministries are responsible for contract management and for letting contracts only in accordance with relevant legislation, regulations and Treasury Board policy.
 - .02 Contracts not under [The Purchasing Act, 2004](#) must be signed on behalf of the Government of Saskatchewan by the minister or deputy minister. Delegation of authority by the minister or deputy minister is allowable. Specific provisions in governing legislation may also provide for delegation.
 - .03 A copy of a properly completed contract must be supplied to the Provincial Comptroller upon request or in accordance with Provincial Comptroller's directives.
 - .04 Where a payment is to be made before completion of the work under a contract, the contract must specifically provide for partial (or advance) payments.
- Provincial Comptroller Directives**
- .05 [The Government Organization Act](#) speaks to entering contracts. Related requirements must be adhered to.
 - .06 Guidance related to contracting for services can be obtained by contacting the Purchasing Branch, Ministry of Government Services.
 - .07 Ministries are responsible for ensuring services are acquired in the fairest and most equitable manner and that contracts are awarded through open competition.



.08 Ministries are responsible to ensure that the various trade agreements are complied with for service contracts that exceed specified thresholds. For details on each, visit the websites listed:

- New West Partnership - \$75,000:
<http://www.newwestpartnershiptrade.ca/>
- Agreement on Internal Trade - \$100,000:
<http://www.ic.gc.ca/eic/site/ait-aci.nsf/eng/Home>
- Canada-US Agreement on Government Procurement – 355,000 SDR (contact Purchasing Branch, Government Services for the most recent Canadian currency equivalent):
<http://www.international.gc.ca/trade-agreements-accords-commerciaux/fo/gp.aspx?lang=eng>

.09 Where the service procurement is above \$75,000, the opportunity must be advertised on the SaskTenders website (www.sasktenders.gov.sk.ca) administered by the Purchasing Branch.

.10 Ministries are responsible for ensuring that all policies and procedures related to contracting for specific services as outlined in this manual are followed (e.g., Section 4525 Communications (Advertising) regarding advertising).

.11 Ministries must be cautious to not create an employer/employee relationship (i.e., a personal service contract) where one is not intended. See [Section 4210 Personal Service Contracts](#) for details. An employee/employer relationship is not created when services are provided by an independent contractor who undertakes to produce a given result, but in the actual execution of the work, is not under the order or control of the receiver. Payment is for results received.

Selecting a Contractor

.12 There are several methods for selecting a contractor.

Formal Processes

.13 A formal tender or an invitation to bid are used when the exact requirements for a contract are known, and price is, therefore, the primary determinant of the award. A tender is normally advertised. An invitation to bid is used when there are a limited number of candidates with the required skill or that have expressed interest. Written bids are requested.



- .14 A Request for Proposal (RFP) is used when the requirements for the contract are general. In this situation, the bidder proposes a solution to meet the general requirements. Price, along with an assessment of the proposed solution, determines the award. Written proposals are requested.
- .15 When employing a formal process (i.e., formal tender, invitation to bid or RFP), the following guidelines should be considered:
- Request bids from a sufficient number of contractors to ensure there is competitive bidding. The number of bids will vary with the kind of service. Ideally, all qualified contractors should have the opportunity to bid.
 - Provide identical information to all bidders (e.g., specifications and requirements, a description of the process, a firm closing date and time, the method of evaluation, evaluation criteria such as cost and delivery requirements, disposition of taxes, and content and format guidelines which will be used to determine which bids are complete enough to evaluate).
 - Provide specifications based on need and describe the needs in generic terms.
 - Provide sufficient time for bidders to prepare a bid. Reasonable notice should be provided for all addenda to original requests for bids.

Informal Process

- .16 Situations where an informal process may be used are limited to the following:
- There is insufficient time to conduct a bidding process (i.e., an emergency).
 - A fair price can be determined and the total cost of the services is immaterial (relative to the service being provided).
 - Only one contractor is known with the required skills.
 - The requirement for the resources must be kept confidential.
 - Professional services are being acquired which do not facilitate a tendering or RFP process (e.g., some legal and medical contracts).

Ideally, written bids or proposals should still be obtained.



.17 Selection in the informal process may be based on the following:

- past experience with the contractor;
- the contractor's reputation (based on references);
- the limited availability of contractors.

Bid Evaluation

General

.18 Ministries should establish an internal process for bid evaluation and selection that ensures all required parties within the ministry approve the contractor selected. Legally, the method used to evaluate bids must reflect the original specifications sent to potential bidders.

.19 The contract should be awarded on a timely basis. All respondents requesting bid results must be advised of the outcome. Caution should be used in order to not share sensitive competitive information.

.20 The goal in selecting a contractor is to receive value for money (i.e., a combination of service and price). All things being equal, the contract should be awarded to the lowest compliant bidder. Considerations other than price include the following:

- the completeness and quality of the bid or proposal;
- the deadline by which the services must be completed; and
- the reputation of the bidder (based on references) and/or past experience with the bidder.

.21 Work should not be started before a contract is in place. If this is impossible, ministries should consider creating a letter of intent to protect the ministry's interests until a contract is in place.

Contract Formation

.22 Advice from legal counsel should be obtained when drafting a contract due to the potential for legal implications.

.23 Contract terms should include all of the following:

- the parties to the contract;
- the term of the contract, including all delivery dates, progress review dates and termination provisions;



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- a detailed description of the services to be provided, including performance criteria and product/result acceptance criteria;
 - the price for the services, as well as rates that will be referenced during the term of the contract (e.g., hourly or per diem rates); and
 - the terms of payment (i.e., legal billing name, payment due dates, payment amounts, discount terms, holdback terms, delayed payments, etc.).
- .24 Terms of payment must reflect the Government's payment policy. See [Section 3150 Timing of Supplier Payments](#) for details.
- .25 Generally, contracts should not provide for payment in advance of work being completed unless the policy conditions in .04 above are in place. Payments should be subject to any holdbacks.
- .26 Documentation, outlining all relevant terms and conditions, must take one of the following formats:
- a formal written contract;
 - a memorandum of understanding or agreement;
 - a fee schedule; or
 - a detailed written estimate.
- .27 Written documentation of contract terms and conditions is always preferred. It ensures the contractor understands the expectations and conditions of the contract. It also protects the Government if the contractor does not deliver the service as agreed upon.
- .28 Considerations when determining the appropriate contract format are the following:
- typical business practice in an industry;
 - the complexity of the service;
 - the dollar amount of the transaction; and
 - previous experience with the contractor.



.29 Formal written contracts are recommended in any of the following situations:

- The life of the contract is expected to exceed one year.
- Progress payments are required.
- The service to be provided is complex or is to be delivered in stages.
- More than one ministry is affected by the service to be provided.
- Significant legal concerns exist (e.g., copyrights for systems software).
- A ministry wishes to protect itself legally when dealing with an unknown supplier.

Verbal Contracts

.30 Verbal contracts are discouraged. However, when a written agreement is impractical (e.g., in an emergency situation), a verbal agreement will be accepted if the dollar amount of the contract is less than \$5,000 over the life of the contract. The arrangements, including all relevant terms and conditions must be noted on file and signed by a ministry official with delegated authority to enter into contracts. If the total amount of the contract is less than \$500 over the life of the contract, and the invoice details the transaction, all that is required is the appropriate delegate's signature on the invoice.

Monitoring Contracts

.31 A process to monitor contract performance must be established to ensure the contractor meets the terms of the contract. To be effective, the monitoring process should ensure the following:

- Progress is monitored on a timely and regular basis.
- Deviations from agreed to deadlines and costs are explained.
- Unacceptable work is immediately identified and addressed with the contractor, preferably in writing.
- Contract disputes are handled with minimum of delay.

To protect the ministry, good file documentation regarding contracts is necessary.

Overall Evaluation

.32 Managers should evaluate their contract management processes on an ongoing basis to determine whether the processes can be made more effective.



- Invoices** .33 Invoices related to service contracts must contain sufficient detail to readily reveal the nature of the service or work, and must reference the relevant contract (or indicate on the invoice that it is a verbal contract).
- Equipment Rental** .34 **Other Contract Considerations**
 Ministries should consider the following when renting equipment:
- Based on a cost/benefit analysis, determine if renting the equipment is the best option.
 - When equipment is rented for more than one month, use a formal written contract.
 - Lessees are responsible for fulfilling the terms of any and all leases.
 - If the lease is a capital lease, refer to [Section 2150 Capital Assets Accounting and Reporting](#) for more information, including the accounting for capital leases.
- Legal Services** .35 Contracting for private legal services by ministries must be done in consultation with the Ministry of Justice.
- Workers' Compensation Considerations** .36 Ministries are to ensure that the contract outlines the party responsible for assessments under [The Workers' Compensation Act, 1979](#). Pursuant to sections 132 and 133, anyone employed by a contractor or subcontractor is considered to be a worker of the principal (i.e., the Government of Saskatchewan) and assessed under this Act, unless the contractor or subcontractor is assessed as the employer or is individually liable for payment of the compensation.
- .37 Ministries entering contracts are to immediately notify the Workers' Compensation Board (Board) of the name and address of the contractor and the nature and amount of the contract where applicable.
- .38 Ministries must ensure the contractor provides written evidence from the Board that the contractor's obligations are complete and there are no arrears before settling payments under a contract.
- Non-resident Contractors** .39 Ministries should be aware that there may be implications for contracts as they relate to the collection of PST (e.g., if a non-resident business doesn't collect PST at the time of sale, the



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customer is required to self assess and remit the tax to the Revenue Division of the Ministry of Finance). See <http://www.finance.gov.sk.ca/taxes/businesses> for details regarding possible implications or contact the Revenue Division of the Ministry of Finance.

The Builders' Lien Act .40 Ministries are to ensure that the documentation of terms for construction contracts outline that the contract and its performance are subject to applicable provisions of *The Builders' Lien Act*. Form C1 is found within the Regulations and can be utilized to request certification of substantial performance of the contract.

References

[2150 Capital Assets Accounting and Reporting](#)
[3101 GRF Payment Responsibilities](#)
[3154 Purchase Cards](#)
[4125 Insurance](#)
[4210 Personal Service Contracts](#)
[4500 Goods and Services](#)
[4505 Purchases of Goods](#)
[4520 Travel Agency Selection](#)
[4525 Communications \(Advertising\)](#)
[4530 Transportation of Goods](#)
[4535 Rent of an Aircraft and Executive Aircraft](#)
[4540 Primary Research](#)

CICA Handbook

[Accommodation Manual – A Guide for Clients](#)

[The Builders Lien Act](#)

[The Purchasing Act, 2004](#)

[The Workers' Compensation Act, 1979](#)