

NPP Contracting Guidelines

DATE OF ISSUE:

REVISION DATE: August 2017



GENERAL

1. NPP has developed an Accountability Framework that is distinct from the Public's. The NPP Accountability Framework provides authorized personnel with the necessary flexibility to complete assigned tasks. The NPP Contracting policy applies to the procurement of goods and services in the NPP Accountability Framework. In order to preserve the integrity of this framework NPP policies are to be adhered to.
2. This document is to be read in conjunction with:
 - a. the *NPP Contracting Policy*; and
 - b. the *Chief of the Defence Staff Delegation of Authorities for Financial Administration of Non-Public Property*.

DEFINITIONS

3. It is important to understand the following definitions when involved in the Competitive Bid Solicitation Process:

Agreement: a binding contract between the Crown and one or more other parties, which has been duly authorized and executed in accordance with this Policy.

Award: means the acceptance of a bid, in accordance with the NPP Contracting Policy, as amended from time to time.

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.

Bidder: The person or company that responds to a bid solicitation document. A Successful Bidder is the supplier, consultant or contractor that has been successful in the award of a bid solicitation and thereby agrees to supply the goods/services under the terms of the bid solicitation and is undertaking the Work as identified in the Contract.

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.

Canadian Construction Documents Contract (or CCDC): a standard Canadian construction contract, prepared by the Canadian Construction Documents Committee, which provides standardization for bidding and contracting procedures.

Capital Expenditure Request (CER): The CER serves as the request for approval to procure major items under the NPP Accountability Framework. When endorsed by the appropriate approving authority, the CER provides approval to proceed with the acquisition, project or renovation.

Change Order: a written order issued by a Contracting Authority or Project Manager that

changes the scope or specifications of the Work.

Competition: rivalry between two or more businesses striving for the same customer or market. Note that not all potential bidders are equal, after all it is intended to have a winner of the solicitation, which implies that one is the best for the requirement.

Compliant Bid: the bid of a responsive and responsible bidder who has fully complied with all of the call for bid requirements and whose past performance, reputation and financial capability is deemed acceptable.

Concession Agreement: a negotiated contract between a company and a government that gives the company the right to operate a specific business within the government's jurisdiction, subject to certain conditions. A standard concession agreement can be found in A-PS-110.

Consultant: the provider of a Service who, by virtue of his/her professional expertise, is contracted to undertake a specific task or assignment. Examples include a planner completing a specific study; an architect or engineer drawing plans and managing construction for a particular building or project; a lawyer, representing the Crown for a particular legal matter and an appraiser providing an opinion of value on an asset.

Contract: a legally binding agreement between a Contracting Authority and another legally separate party or parties to provide goods or perform services in exchange for valuable consideration.

Contractor: See Vendor below.

Contracting Authority (CA): is the person responsible for all matters related to the procurement and all contractual matters arising from any contracts issued. The CA must have been given formal delegated authority and have a valid certification for one of the two NPP Certification Courses for the financial administration of NPP.

Contract Documents: include the bid solicitation document (such as the RFP or RFQ), all attachments and appendices (such as studies, drawings, technical specifications, instructional material and permits), any addenda, the Contract and the successful bidder's bid solicitation submission.

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.

Indemnity. A Common or Civil Law clause stating that the Crown will only be liable for its employees' actions or omissions. The Crown cannot be liable for the actions or omissions of a third party.

Project Manager: the NPP employee, contractor or such other officer as may be authorized to manage a particular NPP project on behalf of the Crown.

Goods and/or Services: means any one or more of supplies, personal property, construction materials and services, insurance, employee benefits and maintenance and service contracts.

Procurement: the obtaining of Goods and/or Services for use, whether on a permanent or on a temporary basis. The procurement process begins with the identification of a requirement and the approved funding, includes all associated contracting, contract management and financial activities required to satisfy that requirement and ends when the procurement files, including associated contracting and financial activities, are closed.

Project Scope: the project scope describes in detail the work to be performed by the vendor, supplier, consultant or contractor. It should contain any milestones, reports, deliverables (with timeline) and end products that are expected to be provided.

Proposal: an offer received from a Proponent for the supply of Goods/Services, in response to a Request for Proposals, acceptance of which may be subject to further negotiation.

Purchase Order: a written acceptance by the Crown of an offer to procure goods and/or services.

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.

Request for Information (or RFI): a non-binding solicitation of input from interested parties with respect to a possible future procurement process. This is a common procurement practice used to obtain product/service details, comments, feedback or reactions from potential suppliers or contractors prior to the issuing of a call for bid. A firm price or cost information is not required. Feedback may include best practices, industry standards, technology issues and so forth. An RFI is used when the CA knows what he / she wants but needs more information from the vendors. It will typically be followed by an RFQ or RFP.

Request for Proposals (or RFP): a form of Bid Solicitation whereby the Crown invites potential contractors, vendors or suppliers, often through an open advertisement, to submit business proposals for the procurement of a commodity or service or valuable asset without publishing the specifications, terms, conditions and details concerning the proposed contract that might ultimately be entered into.

Request for Formal Quotations (or RFQ): a form of Bid Solicitation whereby the Crown publishes the specifications, terms, conditions and details of the proposed contract and invites selected suppliers to submit a sealed Bid, as opposed to an open advertisement, in response to detailed specifications.

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.

Statement of Requirement (SOR): is a formal document that communicates the characteristics of the operational requirement to technical and procurement staffs and contains the critical performance criteria necessary for evaluating options.

Statement of Work (SOW): a SOW is a formal document that provides a complete description of the nature and scope of the procurement and defines the work to be carried out (scope of work), the objectives to be obtained (deliverables), the pricing and the timeframe, including estimated completion date, a vendor, supplier, consultant or contractor must execute in performance of specified work for a client. The SOW must identify the specific stages of the work, their sequence, their relationship to the overall work and, when known, the quantity of the goods and services to be procured and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials. The SOW accompanies the RFP.

Technical or Project Authority: The Technical or Project Authority is the person responsible for the technical content of the work required under the contract.

Work/Project: the Goods/Services supplied by the successful Bidder pursuant to the Contract, and including all labour, materials, equipment and any other items, which are required to execute the Contract.

Vendor or Supplier or Contractor: a person or company from whom the Crown may purchase or lease goods/and or services; or who performs services; or manufactures, produces, or provides goods to the Crown.

PRE-CONTRACTING REQUIREMENTS

4. Prior to entering into contracts it is important to be aware of the following requirements:
 - a. Delegated Authority. Only personnel with delegated signing authority, in accordance with the *Chief of the Defence Staff Delegation of Authorities for Financial Administration of Non-Public Property*, may make financial commitments or enter into contracts. And even then they can only enter into contracts for the particular type of goods and/or services for which they are authorized to arrange or purchase as indicated in the accompanying tables of the above document;
 - b. Contracting Authority. All NPP contracts require that a Contracting Authority (CA) be assigned who will be responsible for the contract. The CA must have a valid certification for one of the two NPP Certification Courses for the financial administration of NPP and have an NPP Delegation of Authority (DOA) Form signed by the appropriate authority;
 - c. Authorized Programs, Services, and Activities. A CA must confirm that the requirement can be met through the NPP Accountability Framework and that a contract is the best way to obtain the required goods and/or services; and
 - d. Availability of Funds. Approving authorities shall only make commitments, contracts or other arrangements that result in the expenditure of NPP in circumstances where there is both an approved requirement and an unencumbered balance available to discharge any valid obligation resulting from that commitment, contract or arrangement.

COMPETITIVE BID SOLICITATION / PROCUREMENT PROCESS

5. The procurement process begins with the identification of a requirement, includes all associated contracting, contract management and financial records and ends when the procurement files, including associated contracting and financial activities, are closed. A Procurement Process Flowchart is shown at Annex D.
6. Contracting is a sub-process of procurement. The contracting process begins with the release of the RFP / RFQ and ends when all the goods/services are delivered, the invoices are paid and the contract file is closed. There can be multiple contracts involved in the procurement of a service, good, or facility.
7. For simple procurement activities, such as the acquisition of say a \$1,200 lawnmower (goods) or a \$250 plumbing service contract (service), authorized personnel simply need to obtain three quotes before proceeding with the activity. The invoice submitted by the supplier or contractor is the contract that will be used to effect payment and conduct any compliance review. Note: documentation is not required for both directed and competitive contracts for goods valued up to \$1,000, exclusive of taxes.
8. For more complex procurement activities, authorized personnel need to precisely define their requirement by preparing a statement of work and formally seeking bids through an RFP or RFQ. A number of templates are available on the CFMWS web site.
9. The steps of the NPP Procurement Process are provided below to assist personnel in competitive bid solicitation:
 - a. Prepare a Statement of Requirements
 - (1) For large or more complex projects it is recommended that a Statement of Requirements (SOR) be prepared to quantify the operational requirements. It will determine the specific need for a service, product, facility, etc; and
 - (2) An SOR is an internal document that is prepared during the early stages of project planning.

b. Assess the Need for a Contract

- (1) Identify what goods or services are needed and how they will benefit NPP beneficiaries. Consider a range of alternatives to determine how the services can best be provided (internal resources, temporary help, contract, and so forth); and
- (2) Ensure that funding is available and that the Contract Authority's certification has not expired.

c. Prepare the Project Scope

- (1) A project scope is normally crafted during the early stages of project planning in discussion with the Technical Authority (TA) and/or Project Authority (PA), if applicable. The project scope forms part of the Statement of Work (SOW); and
- (2) Once the activity / project has gone out to tender any changes to the scope of work prior to contract award can only be confirmed by the issuance of a written addendum to the solicitation document and must be provided to all bidders. Changes to the scope of work after the contract has been awarded require contract amendments (change orders) be issued by the Contracting Authority.

d. Prepare the Statement of Work (SOW)

- (1) A SOW describes the goods or services to be procured in sufficient detail to allow prospective consultants and contractors to determine if they are capable of providing the service. It will also include any services that will be required after the initial delivery of the goods or services, such as post project operational support for the product, training on the use of equipment, and so forth. The SOW is the most important part of the procurement process, leading to a written contract. It must be written by the CA and not by the contractor;
- (2) Criteria to objectively evaluate how potential contractors can meet the needs of NPP must be included in the SOW. The evaluation criteria and related scoring guide used to evaluate proposals must be clearly stated in order to enable the evaluation team to measure the competence of the resources offered and the value of the bidder's proposal in a fair, unbiased manner. All criteria must be relevant to the requirement and be clearly described so as to avoid different interpretation by each member of the evaluation team; and
- (3) The SOW forms part of either:
 - (a) an RFP / RFQ; or
 - (b) the tender package (including drawings and specifications) when inviting construction tenders.

e. Prepare the RFP or RFQ

- (1) An RFP or RFQ informs potential contractors/suppliers that an organization is looking to procure and encourages them to make their best effort. It alerts them that the selection process is competitive;

- (2) An RFP or RFQ is expected to follow a structured evaluation and selection procedure in order to demonstrate impartiality, a crucial factor in government procurements. It should include the bid evaluation criteria and the bid evaluation marking template; and
- (3) The SOW and a copy of a “model” resulting contract (ie example contract) should be included with the RFP or RFQ.

f. Select the Contractor

- (1) Objectively select the contractor that represents the “best value” for NPP based on the criteria listed in the RFP. All proposals meeting the mandatory requirements must be evaluated and assigned points according to the point rated criteria specified in the solicitation document; and
- (2) Ensure that there are no employee or organizational conflicts of interest related to the selected contractor.

g. Write the Contract

- (1) A contract is usually drafted to protect the party who is holding the pen. For this reason the contract is to be written by the NPP Contract or Project Authority and not by the contractor or supplier. The contract clearly defines roles, responsibilities, and performance expectations of the contractor and how he /she is expected to coordinate work with NPP employees and other contractors;
- (2) Identify how the contract and contractor performance will be monitored (see paragraph 9.i. below);
- (3) Link payment to the satisfactory completion of specific contract tasks or services, which should be spread throughout the life of the contract; and
- (4) Address the extent to which NPP owns the final product (if applicable).

h. Execute the Contract

- (1) Ensure that approvals are in accordance with the Chief of the Defence Staff Delegation of Authorities for Financial Administration of Non-Public Property; and
- (2) Obtain all necessary signatures on the contract before work begins.

i. Monitor the Contract

- (1) The key to contract management is implementing an effective monitoring system for tracking the costing and scheduling of deliverables and contractor performance;
- (2) Periodically evaluate the progress of the contract and determine if it is prudent to continue; and
- (3) Follow up on results of monitoring reviews, audits, and investigations;

j. Close the Contract

- (1) Ensure that all deliverables are satisfactorily completed before making final payment;
- (2) Evaluate the contractor's performance and make written comments available for other NPP organizations and clients;
- (3) Document the process and the results of the contract; and
- (4) Use the final work product as intended.

IMPORTANT CONSIDERATIONS WHEN PROCURING GOODS AND SERVICES

10. The following points are important when procuring goods and services:

- a. Good financial stewardship. Each contract must provide a useful product that ultimately serves the needs of the NPP beneficiaries;
- b. Best Value. To ensure that the "best value" for Non-Public Funds is obtained, price and other factors such as quality of the work, timelines, risks, and contractor performance should be considered;
- c. Competitive process. While it may be more "convenient" to skip this step, experience has clearly shown that the competitive process is the most effective way to ensure that NPP is getting the best value for money;
- d. Clarity of expectations. The work required must be clearly documented to ensure that the contractor understands what is expected (quality, timelines, coordination with other contractors);
- e. Contractor accountability. The contractor must be held accountable, under reasonable working conditions, for providing the requested services at an acceptable level of quality within the given timeframes. It must be remembered that the contracting firm must not be told, directly or indirectly, who to hire or to assign to a given task;
- f. Arrangements between NPP and the Public. The Crown cannot contract with the Public, therefore NPP cannot enter into contracts with the Public. Thus, neither the CDS / COs in their non-public capacity nor NPP organizations can legally enter into enforceable agreements or contracts with DND. They can, and do, enter into arrangements that are not contractual in nature, such as Transfers of Goods and Services, Occupancy Instruments (OI), Memorandum of Understanding (MOU) and Service Level Agreements (SLA), usually to assist the Department with its delivery of programs and services in support of operational readiness and effectiveness, or to deliver publicly-funded MW programs and services;
- g. Payment. To ensure that the Finance Division can effect payment, a copy of all contracts exceeding \$50K must be submitted to the local NPP Accounting Office. The local NPP accounting office will maintain a copy of the contract as supporting documentation;
- h. Audit trail. Managers should ensure that contracts are in writing (for the reasons stated in paragraph 15 below) and that working files are annotated with evidence that three quotes or three bids were sought and that the documentation is retained in accordance with NPP financial administration instructions to facilitate the audit of contracting activities and transactions (e.g. rationale for non-competitive contract, log of quotes received, and so forth). For credit card and petty cash purchases, legible receipts must be kept. If a directed contract (also known as sole source contract) is used then a copy of the signed "Directed Contract" form must be kept in the contract file. This form is available on the CFMWS web site; and

- i. DND Public Standing Offers (SOs) or Supply Arrangements (SAs). When the price and quality of the goods / work is competitive, NPP can ask suppliers to extend the terms and conditions of DND SOs and SAs to activities taking place in the NPP AF.

BUSINESS RELATIONSHIPS

11. Hiring an independent consultant or self-employed individual can be an excellent option to help an organization effectively address a short-term need; however, the manager with the appropriate financial authority must ensure that he/she will be operating under “business relationship” conditions as defined by [Canada Revenue Agency \(CRA\)](#) and not under an employment relationship (employer / employee). As per CRA definitions, these conditions are:
 - the level of control the payer has over the worker's activities;
 - whether the worker provides the tools and equipment;
 - whether the worker can subcontract the work or hire assistants;
 - the degree of financial risk the worker takes;
 - the degree of responsibility for investment and management the worker holds;
 - the worker's opportunity for profit; and
 - any other relevant factors, such as written contracts.
12. For more detailed information on the criteria, please consult CRA at http://www.cra-arc.gc.ca/E/pub/tg/rc4110/rc4110-e.html#employee_selfemployed
13. CRA conditions or guidelines will take precedence over any conditions or guidelines listed in this NPP Contracting Guidelines under Business Relationships.
14. Business relationship contracts for services must have a reasonable end date depending on the operational circumstances.

WRITTEN CONTRACTS

15. A written contract is particularly useful when the service to be provided is complex or over a long duration and/or the potential legal, financial or political ramifications could be problematic. Consider the points below when deciding if you should use a written contract:
 - a. Contracts provide a description of responsibilities. Rather than suffer through the confusion of wondering what each party’s responsibilities are, you’re better to have everything in writing. This will help avoid confusion or disagreement;
 - b. Contracts bind parties to their duties. It is incredibly disruptive if one party attempts to back out of an agreement. A contract will bind the parties to the previously-defined description of duties eliminating this problem;
 - c. Contracts can establish a time frame for duties. If you need work performed and performed within a certain time frame a contract binds the party to that timeframe;
 - d. Contracts can secure payment. No one likes to be stiffed for work performed. A binding contract provides a written legal document establishing an agreement to be paid for services rendered; and
 - e. Contracts provide recourse when the relationship falters. If the relationship between the contracted parties deteriorates, a contract outlines the previously-agreed upon steps required for dissolving the relationship without punitive measures.

16. After reviewing the above explanation if it is determined that a contract is not required then a minimum of three quotes is still required. The exception to this requirement is for the purchase of goods valued up to \$1,000, exclusive of taxes.

COMMON PITFALLS WITH CONTRACT DOCUMENTATION

17. Over the years, compliance reviews and audits have revealed a number of common mistakes that can easily be avoided. The following is a list of observations related to the documentation prepared by DND/NPF employees or signed by NPP managers:
 - a. Improperly naming the Contract Authority. Managers and supervisors are incorrectly using their name as contracting authority. All contracts must clearly state that the contract is being entered on behalf of the NPP organization and in the name of “Her Majesty the Queen in Right of Canada as represented by the CDS (or Base/Wing Commander or Unit Commander) in their Non-Public Capacity;”
 - b. Inadequate definition of costs and services in the contract. Managers and supervisors are unable to determine the validity of invoices for each specific service or good provided. The invoice must include a breakdown of the costs for each specific service outlined in the contract;
 - c. Lack of “hold harmless” clauses. These clauses transfer the risks to the other party and they must be inserted into NPP contracts;
 - d. Not using an RFP or RFQ. Personnel may not properly think through and document all the requirements and constraints. This may occur when complex services are contracted or when sophisticated equipment and systems are procured without input from subject matter experts;
 - e. Not giving CANEX first right of refusal before contracting with a third party. CANEX has the management expertise and experience to deal with the private sector and shall have the first right of refusal for 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.
 - f. Not signing concession agreements. Standard concession agreement templates have been developed and need to be used to provide clarity, facilitate the resolution of common issues and ultimately protect NPP;
 - g. Not specifying an end date in the contract. Contracts need to have end dates to ensure that requirements are re-evaluated from time to time and that a Request for Proposal process is used to ensure that the price paid for goods and services is competitive;
 - h. Telling the contractor who to hire or how to do the work. It must be remembered that the contracting firm must not be told, directly or indirectly, who to hire or to assign to a given task or how to execute the work; and
 - i. Not carefully reviewing a contract provided by the supplier. Contracts may be biased towards one party - often the party responsible for writing the contract. If you didn't write the contract, you should take steps to eliminate these biases. When in doubt, seek legal advice from CFLA through VP Corporate Services.

COMMON PITFALLS WITH CONTRACT MANAGEMENT

18. The following is a list of weaknesses related to the management of contracts:
- a. Using an expired contract. Managers should ensure that expiring contracts are competed and renewed. The incumbent contractor should not continue his work at the existing or new price without a new contract in place;
 - b. Approving payments that are not in accordance with the terms of the contract. For example, it has been found that managers:
 - (1) Authorized payments in excess of the amounts specified in the contract for which no written addendums were ratified to properly document the changes in scope of work or reasons for increased amounts paid;
 - (2) Failed to collect any, or the full amount of, NPP's share of the revenues generated by a concessionaire for services delivered on a Base or Wing; and
 - (3) Authorized payments in excess of the inflation rates specified in the contract without an addendum approved by the delegated officer stipulating the agreed inflation rate for each upcoming year.
 - c. Not following up to receive financial statements. When a contract specifies that the contractor shall remit a portion of revenues to NPP, managers must ensure that they are provided with financial statement to confirm that the contractor has been remitting the correct amount;
 - d. Not following up to receive proof of insurance from the contractors. When a contract stipulates that the contractor shall provide a certificate of insurance against stipulated perils, managers must ensure that the document is submitted, prior to the work commencing;
 - e. Fixed asset verifications not up to date at entities managed by a concessionaire. Fixed asset verifications must be completed in accordance with regulations, particularly if the concessionaire is experiencing financial difficulties;
 - f. Giving a vendor the Right of First Refusal. Contractual language granting a "right of first refusal" in favour of the Vendor in a contract that NPP wants to terminate is problematic and potentially expensive for the organization. Essentially, the NPP CA agrees to contractual terms that grant the contractor the right to match another future providers' bid upon expiration of the contract. These 'right of first refusal' clauses are sometimes unlimited in time which means that for an unlimited period of time, this vendor will be permitted to match any offer for similar services that NPP decides to contract out, regardless of whether or not NPP wishes to continue doing business with that vendor. This type of provision is extremely onerous. It drastically "ties the hands" of the organization when it comes to planning for the future or making alternate arrangements to better serve the needs of the people that NPP organizations are set up to serve;
 - g. Accepting Automatic Renewals. Language allowing a contract to renew automatically should be avoided, especially when the oversight of these contracts is not particularly vigilant. The renewal periods (if any) should be of a short duration (for example from month to month or for a one-year term). Additionally, all contracts should have exit clauses or terminology allowing the contract to be terminated for convenience;
 - h. Not having the Authority to Contract. Contracts continue to be signed by personnel who do not have the authority to bind Her Majesty in her NPP capacity and who do not understand the legal implications for NPP. Anyone with insufficient contracting knowledge should not be in a position to bind the Crown NPP;

- i. Signing local agreements that are in conflict with national agreements. A number of national agreements, such as the Canadian Defence Community Banking Program, have been negotiated for the benefit all NPP beneficiaries. Managers at Bases / Wings need to be aware of the national agreements that are in place so they do not enter into local arrangements that conflict with these national ones; and
- j. Indemnity and authority to grant indemnities. The MND has limited authority to grant a contractual indemnity (see definition). Accordingly, NPP contract authorities cannot grant an indemnity on behalf of HMQ or the CDS for the actions or omissions of a third party.

TEMPLATES AND LINKS

19. A number of templates are available on the CFMWS web site to assist authorized personnel prepare documentation to contract out the procurement of these more complex requirements. These documents include:
 - a. Statement of Work (SOW). A template for a NPP Statement of Work is attached as **Annex A**;
 - b. Request for Proposal (RFP). A template for a NPP Request for Proposal is attached as **Annex B**;
 - c. Contract for Services. A template for a NPP Contract for Services is attached as **Annex C**; and
 - d. Procurement Process Flowchart. A flowchart of the NPP procurement process is attached as **Annex D**.

SUMMARY

20. The NPP Contracting Policy is one of the key elements of the NPP Accountability Framework which has been developed to ensure the effective exercise of the CDS' and commanding officers' fiduciary responsibilities over the management of all aspects of Non-Public Property.
21. Applying the principles of this document and the NPP Contracting Policy will ensure the integrity of the procurement and contracting process while simultaneously providing sufficient flexibility to meet operational requirements.

ANNEXES

Annex A: [Template - Statement of Work \(SOW\)](#)

Annex B: [Template – Request for Proposal \(RFP\)](#)

Annex C: [Template - NPP Contract for Services](#)

Annex D: Procurement Process Flowchart