



IMPROVEMENTS TO THE PWGSC CONTRACT COSTING AND AUDIT PROGRAM

Canadian Association of Defence and Security Industries

**ADVISORY GROUP ON CONTRACT COSTING
WITH THE FEDERAL GOVERNMENT**

November 20, 2013



This report was commissioned by the Canadian Association of Defence and Security Industries (CADSI) on behalf of its member companies.

CADSI hired Centre-Arch Inc., a consulting firm expert in contract costing and related activities, to interview a sample of CADSI member companies to elicit their views on the substance and administration of the government's contract costing and audit program.

The report summarizes that research and makes recommendations to government to improve the contract costing policy consistent with those findings.

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1.0 INTRODUCTION

In response to concerns expressed by its member companies on how the Public Works and Government Services Canada (PWGSC) contract costing and audit program (the Program) is being conducted, CADSI launched a study to identify the perceived and real concerns with the program and to propose solutions to improve it for the benefit of government and industry.

For this purpose CADSI established a Costing Advisory Group (CAG) of 12 companies drawn from its membership and engaged a consulting company with significant experience related to contract costing and related activities within a government environment, Centre-Arch Inc., to help CADSI and the Costing Advisory Group carry out the study.

The industry members who form the Costing Advisory Group are experts in the application of the Canadian government contract costing principles and the associated Cost and Audit Assurance Program (and often of similar programs in other countries). They also have significant practical experience in both the program's operations and its impacts on defence and security companies. This report is based on their knowledge, expertise and experience in contract costing, supplemented by the results and comments provided in an open survey of CADSI members on the contract costing and audit program. Annex A provides a description of the results of the survey of CADSI members.

2.0 THE ROLE OF THE PWGSC CONTRACT COSTING AND PROFIT PROGRAM IN DEFENCE AND SECURITY PROCUREMENT

The PWGSC mandate is to serve as a common service agency for the Government of Canada's various departments, agencies and boards, to help enable them to deliver their respective programs and services to Canadians. Its activities include providing common procurement services, common IT services, real property services, pension administration, Receiver General functions and accounting services.

In addition to its centralized purchasing agent function across government, the PWGSC Minister exercises additional broad authorities with respect to defence procurement. The *Defence Production Act* (DPA) gives the Minister of PWGSC the exclusive authority to buy or otherwise acquire defence supplies and construct defence projects required by the Department of National Defence. Inter alia, the DPA requires contractors to maintain detailed accounts and records of the cost of carrying out defence contract work and to produce such records to any person authorized by the Minister. It further empowers the PWGSC Minister to reduce the total amount paid or payable under a contract to such amount as the Minister may deem reasonable in cases where:

“the Minister is satisfied, either before or after the performance, in whole or in part, of a defence contract, that the total amount paid or payable there under to any person is in excess of the fair and reasonable cost of performing the contract together with a fair and reasonable profit”.

The PWGSC Cost and Profit Assurance Program has a mandate to assist contracting officers in safeguarding the Crown from overpaying on major contracts. The activities of the Contract Cost Analysis group include the development of costing policy, cost & price analysis of bids and

proposals, contract cost estimation and profit negotiations, the development of contract basis of payment and method of payment provisions, as well as cost verification, systems reviews and audit. Other cost related services include the analysis and assessment of bidder's financial capability and negotiation of company labour and overhead costing rates.

Annex B provides further background on the PWGSC mandate and the operation of the contract costing and audit program.

3.0 KEY FINDINGS

The CAG recognized the importance of the contract costing and audit program in helping the government to secure value for money in its military contracting, and in helping companies to pursue commercial opportunities in the United States (US). The CAG further recognized the diligence that PWGSC applies in securing the objectives of the Program. However, the CAG also developed a consensus this excessive diligence tended to create unintended policy and procedural difficulties within the contract costing and audit program that could and does negatively impact the effectiveness of the program in meeting its objectives, in an optimal manner. It concluded that these zealous practices often weaken the ability of the government to achieve its overall objectives for military procurement, including deriving sustainable industrial and economic benefits and growth in new, high quality jobs for Canada. Further, it tends to create an adversarial relationship between the Crown and its Defence Industrial Base, which did not reflect PWGSC's well regarded "Smart Procurement" initiative.

The key findings of the study and a sampling of survey comments are:

- A. PWGSC's management of the Program is interpreted by Industry as overly aggressive, which results in similarly combative behaviour from the Supply Base, which leads to less than fair and reasonable outcomes, for either party. More importantly, this "Buyer/Seller friction" does not well serve the objectives the government in seeking to increase sustainable industrial, economic and employment benefits for Canada from military procurement. Similarly, the immediate objective, for the companies and government to increase the effectiveness and efficiency of the procurement process in serving the primary client, DND, is impeded. Companies in the defence and security industry recognize that the government needs to be assured that it is receiving good value for money and that costs in sole sourced contracts are fair and reasonable. Industry is convinced that these objectives can be best realized in a collaborative, not combative environment, and would thus seek to reset the current adversarial environment with PWGSC in this domain.
- B. Industry has concluded that much of the current lack of collaboration in this area can be attributed to the fact that neither party fully comprehends the realities and circumstances faced by the other. From a supplier viewpoint, PWGSC administers the Program in a manner that does not recognize business realities. The norm in Industry is to focus on providing "Best Value" to its client base, because that is the reality of the global defence market. PWGSC appears to operate in a "Lowest Cost, at any Cost" mode, which can provide short-term gain, at the expense of long-term pain, as eventually the Defence Industrial Base will erode to an unsustainable level, as the business world does not invest in industries that do not provide equitable returns. If negotiated costs and profits are continuously ratcheted down to the point where profit margins do not provide a suitable return on the full economic costs that a company incurs, then the outcomes are obvious and inevitable. Here again, Industry finds PWGSC's diligent management of the Program inconsistent with the Crown's more strategic thrusts, as captured in both Emerson and Jenkins

initiatives, and thus unlikely to yield the globally competitive Key Industries Capabilities, that we all seek.

- C. As a result of B above, at the personnel level, the negotiation tone and approach between buyer and seller has become somewhat more adversarial and less flexible, eroding respect between the parties. This is a very dangerous place to be, as, irrespective of how hard the negotiation, respect for the other party is an essential ingredient to a successful outcome. Industry respects the Crown's over-arching objective in securing fair and reasonable costing and pricing levels, however, the route to that may not be unending pressure on reducing costs and profits, irrespective of business realities. This somewhat dogmatic approach from PWGSC is a contributor to this erosion of respect, once again, making smart and efficient procurement a less attainable goal.

- D. From an Industry viewpoint, the Program invokes the requirements of the Defence Production Act, more often than would appear warranted. The Act was conceived in dire times, and served the nation well in that period, and endured well in the cold war period. Its authors could have had no concept of today's economic reality, and thus we should be sparing in using a tool for a purpose for which it was not designed. If PWGSC feels the need to use the DPA when negotiating with the Defence Industrial Base, then this is a further indication that we have lost the art of fair and respectful negotiation. This is something we should address with some urgency, rather than look for bigger hammers in our tool-boxes.

- E. Industry finds that the pace at which PWGSC resolves matters within the Program are inconsistent with the current pace of commerce. We recognize that government is driven by different imperatives; however, unwarranted and unpredictable delays in rate negotiations and the like have significant cost and administrative impact on the efficiency of the supply chain. This, once again, comes back to the issue of being informed and considerate of the constraints faced by the other party in the negotiation, and affording it all due respect in such matters. Industry strongly supports the Smart Procurement approaches being spearheaded by PWGSC, and would greatly appreciate such thinking being migrated to the Program. This, it believes, would eliminate excessive delay in agreement of Annual rates, which, in turn would avoid multiple revisions to the detailed rate negotiation proposals. By example, our members have made the following observations: When new rates are finally agreed, suppliers must resubmit invoices, modify their internal accounts and determine the impact upon the external financial accounting reports. These realities create uncertainty, delays and unnecessary costs to industry, as well as to government. By example, in one case, a supplier received approval of 2011 costing rates in the fall of 2013. In a related case, previously approved 2012 rates, were retroactively rescinded. Such actions create uncertainty and mistrust, which tends to be counter-productive.

- F. The mechanics of the Program fail to make best use of state of the art IT technologies. This results in unnecessary administrative burden on suppliers, which adds to the general non-value added costs, and is particularly punitive on the SME community, who are less well equipped to absorb this burden. Elsewhere, PWGSC is demonstrating innovation in invoking streamlined, user-friendly processes, a skill that would well serve the Program. In our view, this would significantly reduce the delays and inconsistencies we observe, viewing from the supplier-side of the relationship.

- G. Even in the best of Buyer/Seller relationships, there will be honest disputes. They need to be analyzed and resolved in a transparent, thorough and objective manner. The Program appears to lack such a mechanism, as viewed from the supplier vantage point. It would be in the best interest of both parties to correct this. Currently, the Industry option is to complain to senior government management to seek a reversal to an unfair practice by negotiating staff. This is unsatisfactory, and can be another contributory factor in eroding mutual respect as detailed above.

- H. For reasons various, the Program policies have not been subject to a significant review for pertinence, accuracy, and currency for some extended period. They therefore fail to reflect current business realities, which serves neither party well. The Crown is forced to defend positions that are not representative of current conditions, and are inconsistent with terms it accepts in other procurements. Conversely, suppliers become frustrated by this “back to the future” situation, and become intransigent on such matters. For example, the last substantial modifications to the Profit

Policy were in the early 1980s – over 30 years ago. The analyses of return on fixed and working capital use interest rates that do not match the true cost of capital to suppliers. Companies cannot borrow money at rates provided for in the Profit Policy. Several costs that are currently disallowed were identified by survey respondents as relevant in the today’s business environment.

- I. All of the above circumstances create a discouraging environment within which suppliers make decisions that relate to investments in productivity and innovation. Canada already lags its contemporaries here, and both Emerson and Jenkins have issued sound recommendations as to how this may be corrected. Current Program policies are not assistive in this regard, and are likely in conflict with the broader, strategic intent of the Crown. By example, the Program costing policy resists recognition of incremental costs to a company for various R&D, international business development activities, and legitimate expenses associated with Industrial & Regional Benefit (IRB) projects, all of which are intended to advance our Defence Industrial Base, in accordance with the above referenced studies.

4.0 RECOMMENDED IMPROVEMENTS

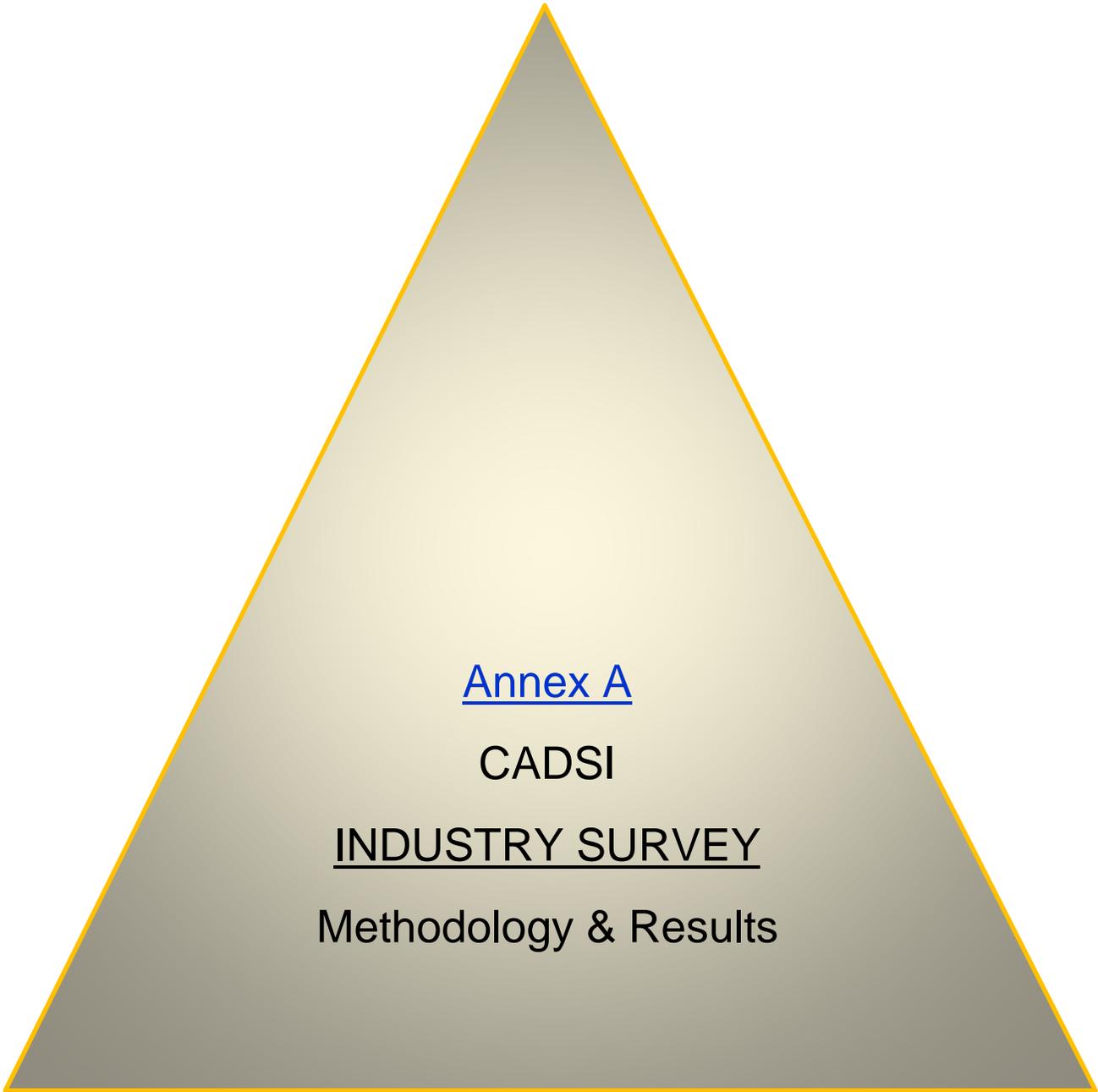
From the foregoing, it is obvious that the CAG has identified a significant breach in the efficient communication between the Crown and its Supply Base in this domain. This serves neither the public nor private sectors to best advantage. To dwell on the origins of this breach is probably non-productive, and we would be best employed in focusing on securing timely and effective solutions to the shortcomings observed. Above, the CAG has introduced concepts that may be useful in resolving this situation. Industry makes no claim to knowing all the answers here, but is most interested in exploring mechanisms, in conjunction with the Crown, to find a way to make our procurement policies and procedures that will yield outcomes in our best strategic national interests. We therefore offer the following list of recommendations as a template suitable for the Crown's consideration, and potential future discussion. In preparing this list, we have sought to ensure that the supply chain has the ability to recover fair and reasonable costs and profits in government contracts, while also recognizing the role of the supply chain in supporting the government's overall objectives for military procurement and economic growth. Our recommendations are as follows:

Dialog. There is no doubt that both Buyer and Seller are in places they do not desire to be. We suggest that regular (quarterly?) forums be established, where issues of interest and concern may be discussed, in a non-binding manner, in order to facilitate exchanges of ideas and opinions. CADSI is well equipped to host such meetings, if required. This should be complemented by a formal, annual consultation process with the defence and security industry, modeled on the CRA Roundtable consultations, to identify issues and ideas related to the contract costing and audit function, which allow for issues previously discussed and resolved informally to be rendered into practice.

- 1. Policy Update.** As noted above, many of the rules we operate under were conceived in previous eras. We therefore suggest that the Crown undertake a review and update program policies, including the Profit Policy, to take modern business realities into account, achieve fair and reasonable costs and profits, and support the broader economic objectives of maintaining job growth, while creating sustainable high quality jobs and ensuring good value for the Crown. Industry is prepared to participate in this review to the extent that the Crown thinks appropriate.
- 2. Coherence & Consistency.** As a sub-set of item #2 above, Industry would emphasize the need to establish processes that can be implemented fairly, throughout the procurement process, without deviation, where the origins of same are solid. Industry believes the removal of this uncertainty factor will significantly streamline this element of the entire process.

- 3. Resource Allocation.** Industry is confident that the concepts proposed herein will significantly reduce PWGSC's administrative burden, however, we would be remiss in not identifying that the program office is currently under-staffed with requisite skills and experience to address the work-load for this class of business. This needs to be addressed.
- 4. Streamlined Documentation.** Reducing the administrative burden would serve both parties well, as compared to what Industry considers continuing and unreasonable requests for additional materials that result in unnecessarily protracted negotiations. Here, other approaches could be developed to provide the required level of confidence, including reliance on new, more detailed, business-relevant program guidelines, on certifications from company accounting firms, and especially, on the business acumen of program staff. This would seem to be a much more effective and efficient approach.
- 5. Dispute Resolution.** Here the creation of an objective third-party office, or the use of the Office of the Procurement Ombudsman, to establish and maintain a process for effective and timely resolution of issues, would be highly valuable in facilitating a fair and consistent approach to contract costing.
- 6. Continuous Education.** In any business transaction/negotiation, the most useful outcomes are to be obtained when both parties are skilled in the matters under discussion. Here both buyer and seller can and should do a better job. Here we propose that the bar be raised, to increase the level of business acumen of all key personnel. Where practical, newly inducted personnel should have significant relevant business experience and professional qualifications in business cost accounting and finance. As an immediate interim measure, a series of regular quarterly discussion sessions between defence and security business experts and program staff should be initiated to discuss particular costing, profit and business realities. This will be an intensive education-oriented initiative with benefits to industry as well as government staff, and a precursor to the annual consultations on issues and ideas suggested above.
- 7. Immediate Corrective Actions.** The above suggestions embody a significant time-line for implementation. In the interim, we propose that important guidelines be given serious consideration, as follows:
 - (a) establish shorter timeframes for completing rate negotiations;
 - (b) institute acceptable ranges of profit rates and stable costing methodologies with acceptable escalation rates applicable to long-term contracts;

- (c) set specific guidelines and ranges for the allocation of corporate expenses to procurement projects;
- (d) invite departmental (DND) technical representatives to rate negotiations;
- (e) undertake prior consultations with the respective government team (contracting officer, cost analyst and client department technical reps) to ensure this team is ready and prepared to conduct meaningful negotiations; and,
- (f) consult closely and openly with industry in making these changes.



CADSI INDUSTRY SURVEY - METHODOLOGY AND RESULTS

The survey approved by the CADSI Advisory Group asked a total of 46 questions that solicited the following member input:

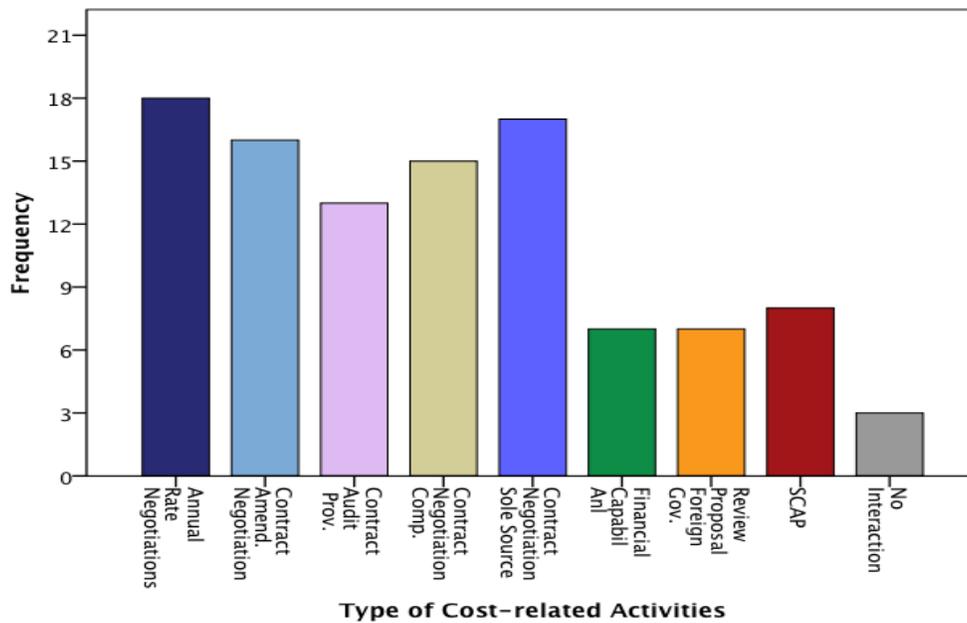
- The characteristics of the CADSI company respondents;
- The nature and extent of their interactions with the program;
- Factual information pertaining to the negotiating and audit processes under the program:
- Views from companies on the appropriateness of contract costing and profit policies to current defence and security industry realities; and,
- Views from companies on the fairness and effectiveness of the negotiating processes under the program.

The survey was placed on the CADSI web site and companies were made aware of the study via email and invited to fill in the questionnaire.

This Annex provides an overview of the results of the survey. Appendix A provides a complete listing of all the survey questions and statistical information on the responses. Note that respondents to a given question were asked to choose from a list of response options. The statistics on responses are characterized by frequencies with which a particular response was chosen when multiple responses were possible, and percentages when only one choice was possible. Respondents were invited to provide written comments on the subject matter of many of the questions, and these responses were incorporated into the preparation of findings and recommendations by the Costing Advisory Group.

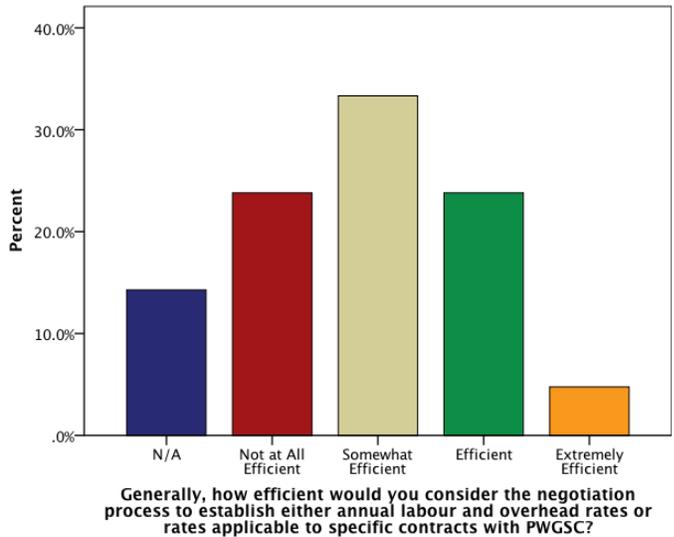
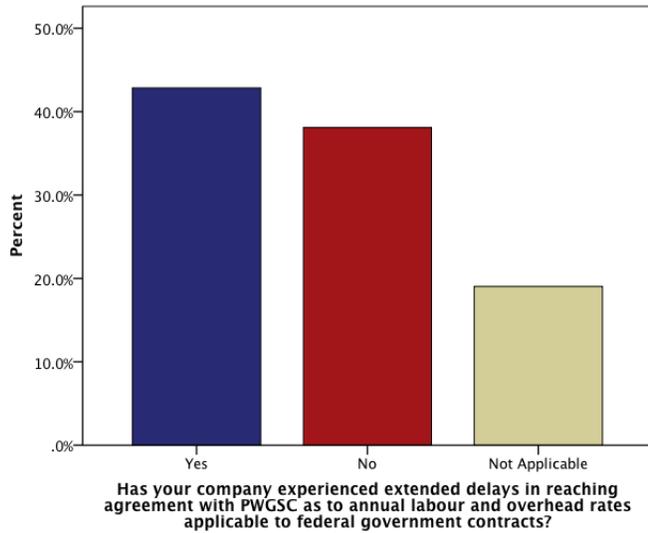
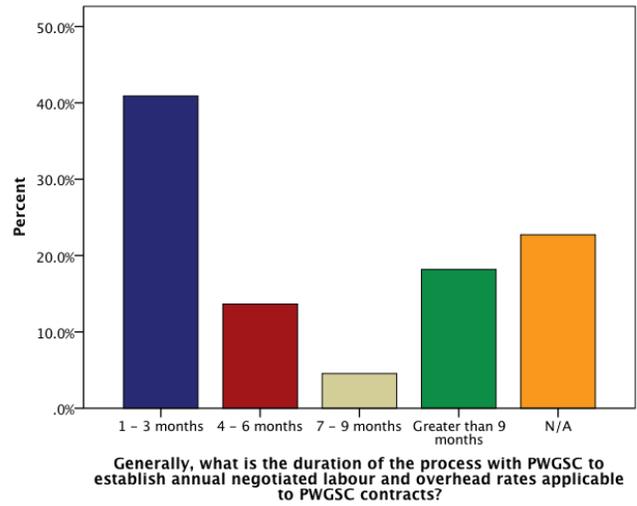
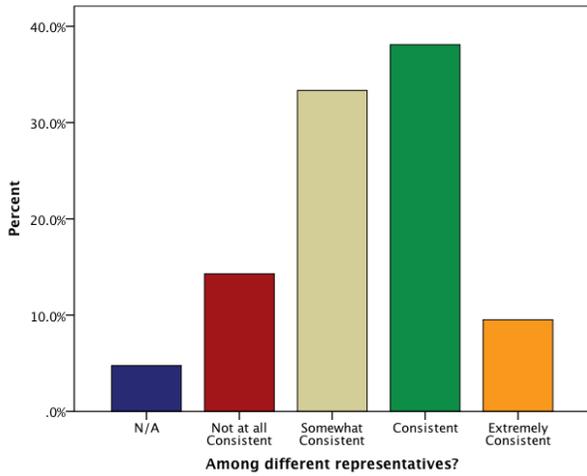
The majority of respondents were medium (100-499 employees) or large companies (>500 employees), and the dominant sectors were aerospace and marine.

Respondents participated in the full range of types of negotiations under the program and were quite knowledgeable on contract costing policies and procedures.

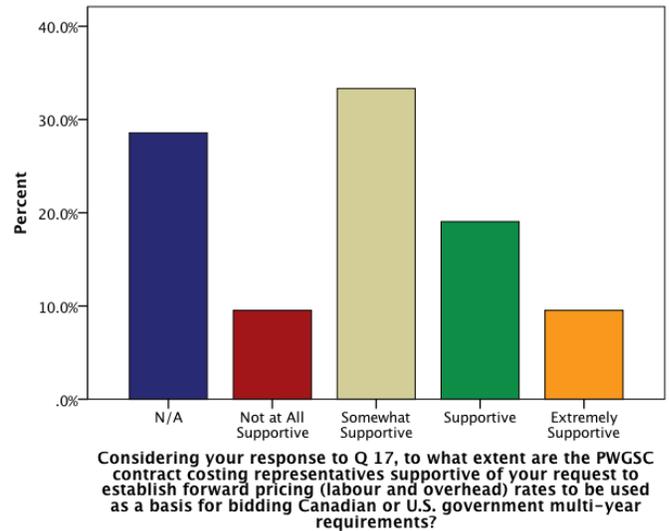
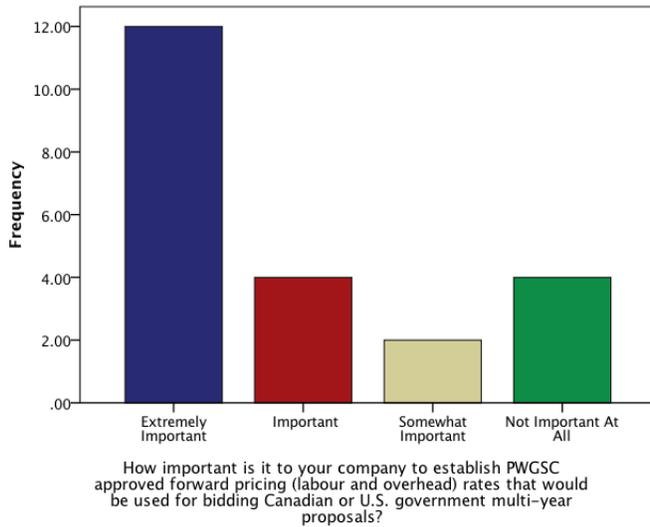


They also had a range of different experiences in their negotiations with PWGSC program officials. Overall, some appeared to be satisfied with the policies and procedures of the program. Others thought that policies and procedures required significant updating and reform to be more relevant to current business realities in the defence and security industry. Some were satisfied with their negotiation experiences with program officials, while others expressed considerable frustration with the current negotiation process.

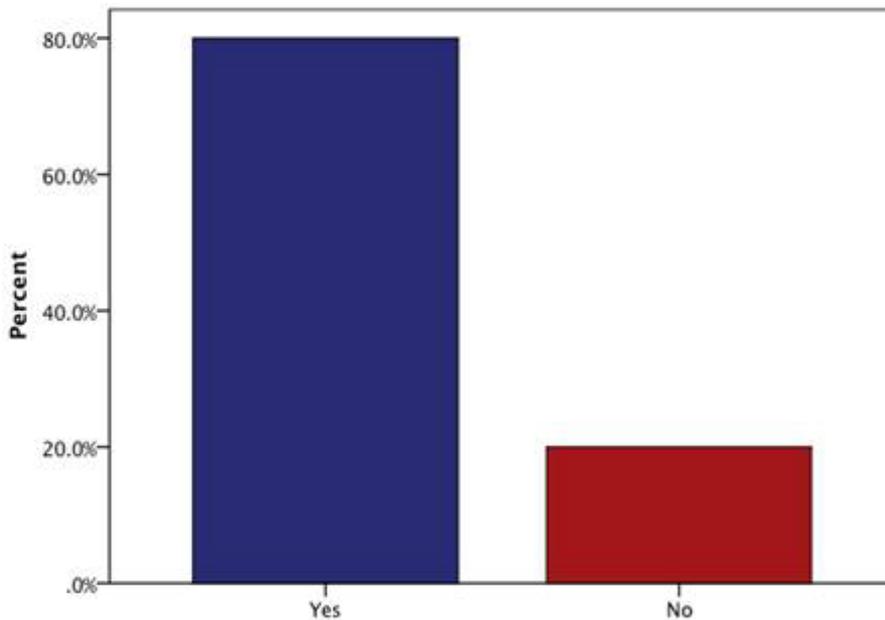
Approximately half believed that program officials were consistent in their application of policies and committed to timely negotiations, and more than half were able to conclude their rate negotiations in less than six months. However a significant proportion of respondents expressed frustration with inconsistencies in the negotiations and about 20% said the rate negotiation process took longer than nine months. Over 40% experienced extended delays in these negotiations. And 60% of respondents consider the negotiation process to be not efficient or somewhat efficient. Relative to the general statistics shown in the charts below, there were higher proportions of large companies and higher proportions of companies in the aerospace sector that identified more delays in rate negotiations.



Sixty percent of companies indicated that negotiating forward pricing rates was very important to their company, but sixty percent said that PWGSC was 'not at all supportive' or 'somewhat supportive' of this request.

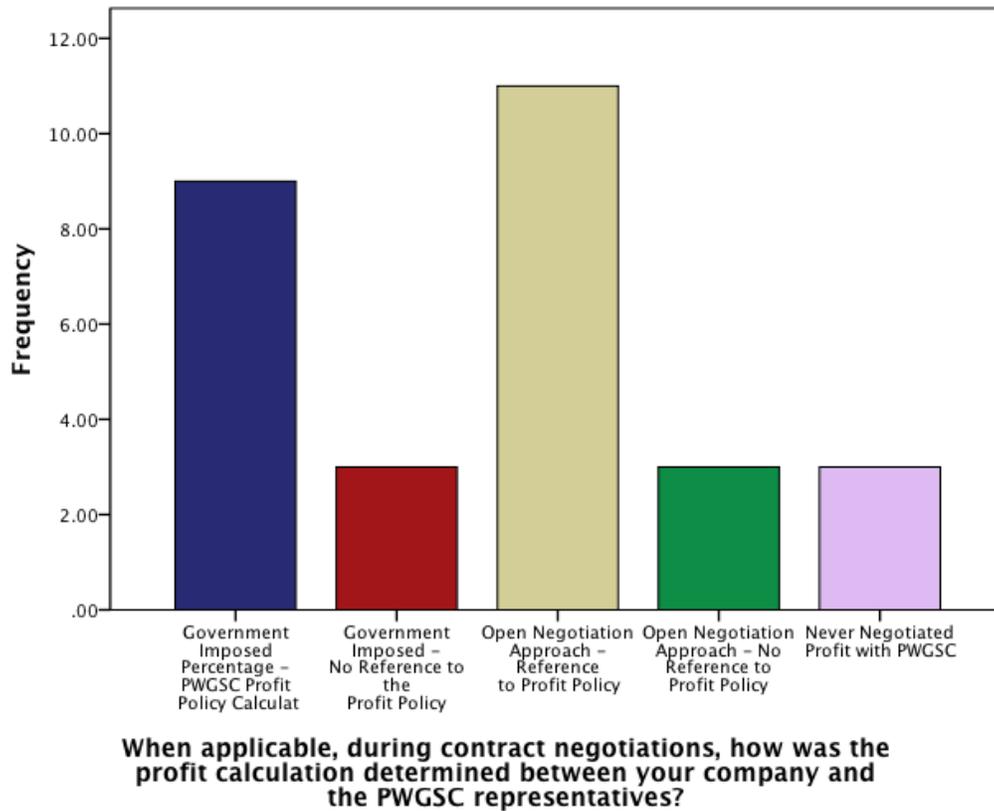


Respondents were overwhelmingly of the opinion that a number of the exclusions in the costing policy PWGSC 1031-2 should be removed based on current business realities in the defence and security industry.

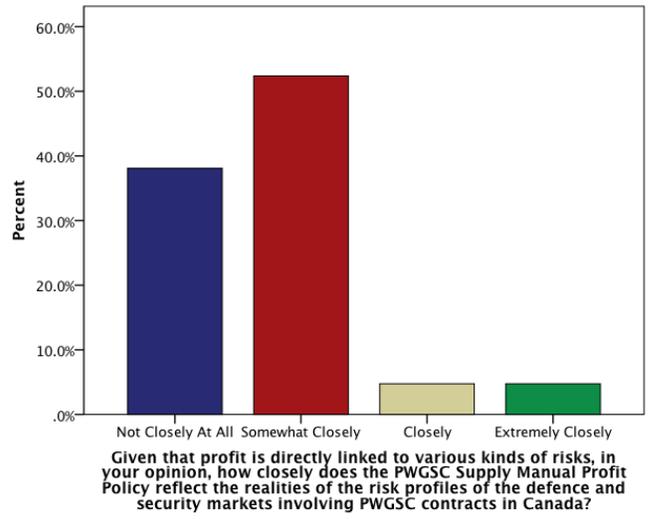
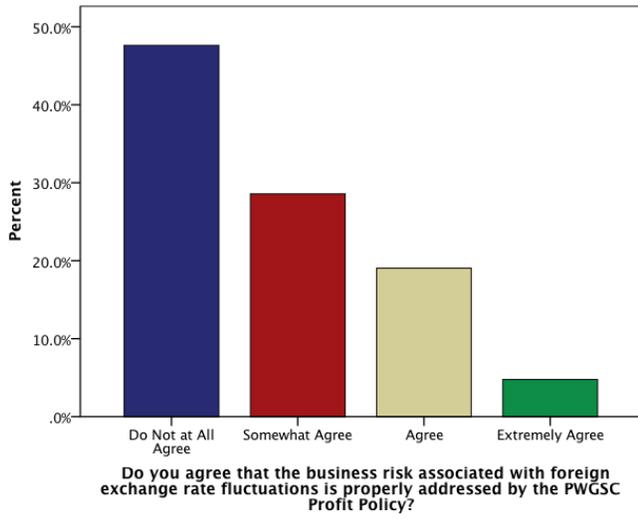


PWGSC costing policies (PWGSC 10312) list 20 different categories of cost as being non-applicable to government contracts. Given that some of these cost categories have not been reviewed or modified in over 45 years, in your opinion, should any of these be considered to be applicable costs, given the current business environment?

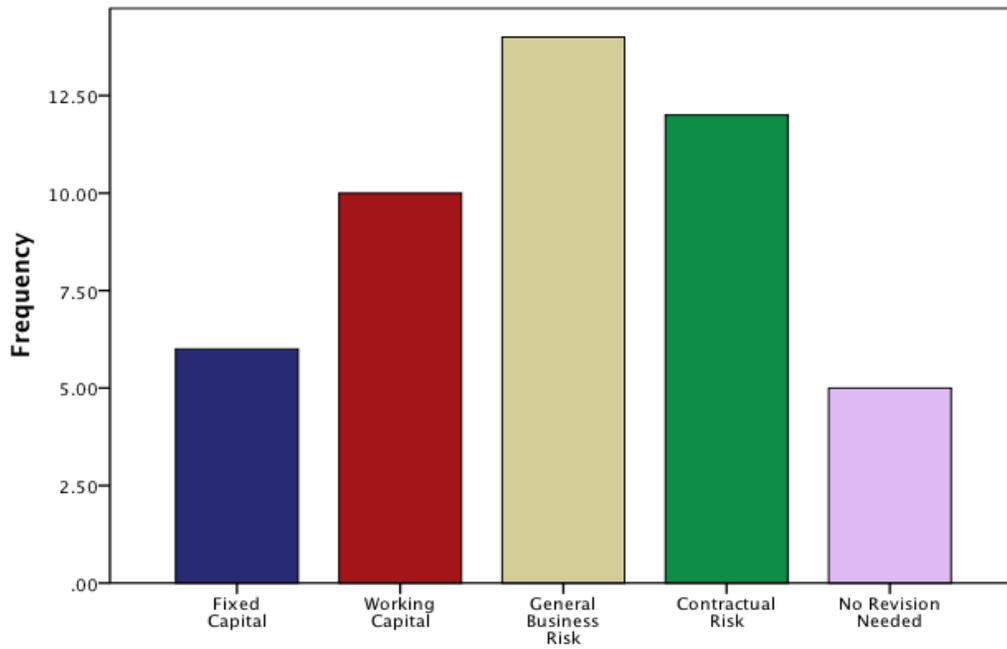
Almost half of the respondents who negotiated profit rates reported that in their experience the cost analyst or contracting officer did not negotiate the profit rates in an environment of give-and-take but instead imposed a rate based on the profit policy or by invoking the Minister’s rights under the DPA.



Almost half of respondents did not agree at all that the business risk associated with foreign exchange rate fluctuations is properly addressed by the PWGSC profit policy. And more broadly, almost 40% indicated that the PWGSC Supply Manual Profit Policy did not reflect the realities of the risk profiles of the defence and security markets.

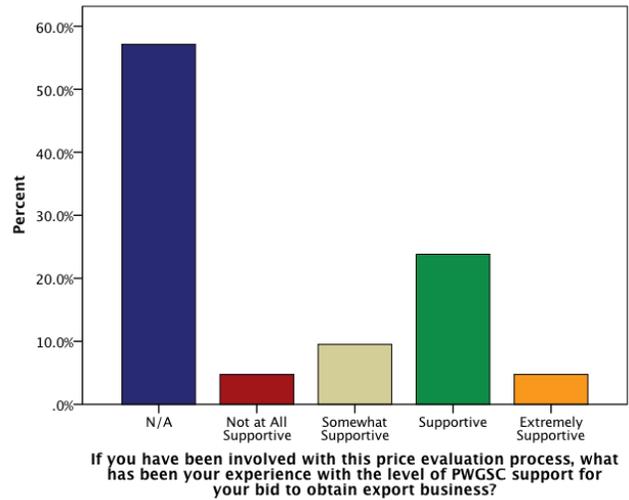
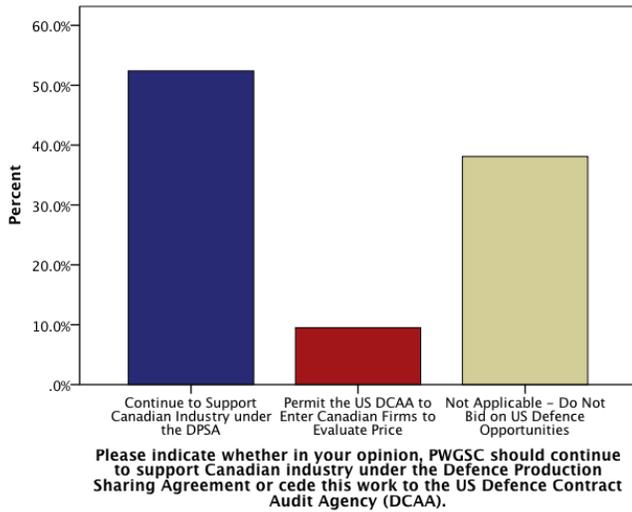


Respondents identified that all four elements of the profit policy needed revision in order to better reflect a fair and reasonable profit.



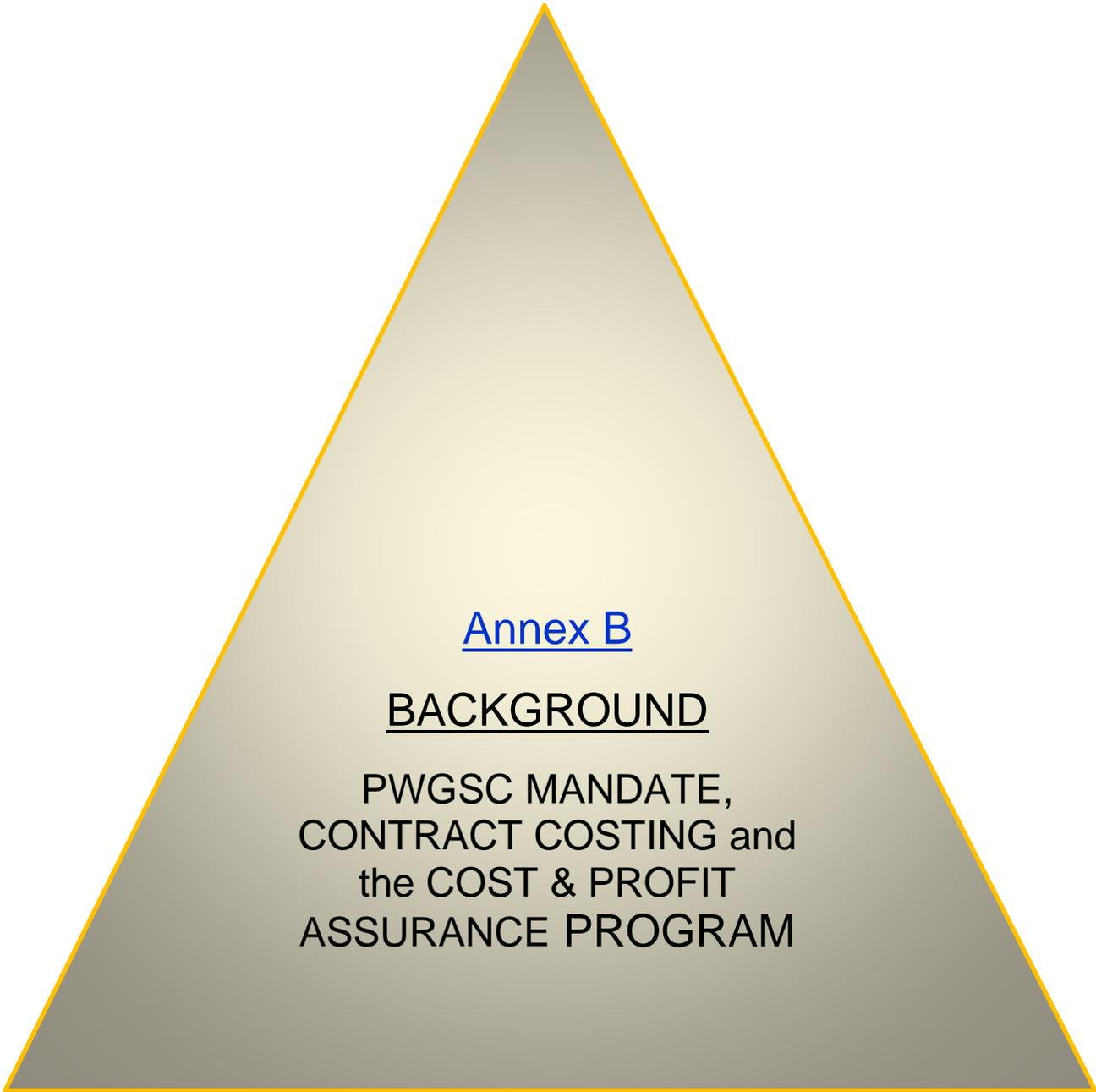
Please indicate which elements of the PWGSC Profit Policy should be revised to have the policy better reflect a fair and reasonable profit, given the risk profiles and the current market conditions of the defence and security sectors ?

Over 80% of implicated respondents indicated that PWGSC should continue to support Canadian industry under the Defence Production Sharing Agreement rather than cede this work to the US Defence Contract Audit Agency. Two thirds of those responding indicated that PWGSC was supportive or extremely supportive of their bid to obtain export business. Of the remaining one third who indicated PWGSC was not at all supportive or somewhat supportive, one of the comments was that the PWGSC review process was so slow that it jeopardized their ability to bid on the US opportunity. Another company said that PWGSC support is based on the latest negotiated rates which can be problematic if rate negotiations are in arrears and the rates are not current.



Respondents indicated that it would be beneficial to have access to educational tools addressing the government’s policies on contract costing and profit such as information sessions, seminars, electronic templates and concise information packets.

The 12 members of the Costing Advisory Group considered these results along with the written comments received from companies, related them to the contexts of their own company experiences, and then analyzed the impacts of the contract costing and profit program on industry, on the government, on the ability of the client department to get timely value for money, and on the ability of the government to achieve its stated objectives for military procurement. The Advisory Group then identified a number of pragmatic, positive suggestions for reforming and improving the contract costing and profit progr



[Annex B](#)

BACKGROUND

PWGSC MANDATE,
CONTRACT COSTING and
the COST & PROFIT
ASSURANCE PROGRAM

BACKGROUND ON THE PWGSC MANDATE, CONTRACT COSTING
AND
THE COST AND PROFIT ASSURANCE PROGRAM

The purpose of this background annex is to provide an overview of the role and mandate of Public Works and Government Services Canada (PWGSC) with regard to defence procurement and to outline the policies and practices that govern some of its defence procurement activities. This paper describes ministerial authorities regarding the determination of contract price and governing policy instruments such as the PWGSC Costing Principles 1031-2.

The PWGSC mandate is to be a common service agency for the Government of Canada's various departments, agencies and boards, to help enable them to deliver their respective programs and services to Canadians.

PWGSC is the government's manager and steward of common office space, provider of real estate services, central purchasing agent, banker and accountant. It also provides services in the areas of payroll and pensions, information technology, translation, audit, communications and consulting.

Canadian Government Procurement Agency

In its central purchasing role, PWGSC is responsible for the integrity of the procurement process and for acquiring goods and services on behalf of departments and agencies at the best value for Canadians, and more specifically, that its procurement practices will:

1. stand the test of public scrutiny in matters of prudence and probity, facilitate access, encourage competition, and reflect fairness in the spending of public funds;
2. ensure the pre-eminence of operational requirements;
3. support long-term industrial and regional development and other national objectives; and
4. comply with the government's obligations under domestic and international trade agreements.

PWGSC's procurement activities are governed in large measure by the following major statutes and regulations:

- i. *Department of Public Works and Government Services Act;*
- ii. *Financial Administration Act;*
- iii. *Defence Production Act;*

- iv. Federal Accountability Act;
- v. Government Contract Regulations

The operating and legal framework is also comprised of trade agreements, policies, directives, procedures and guidelines and a challenge process. PWGSC procurement practices, policies and procedures, are detailed in the PWGSC Supply Manual and in the Manual of Standard Acquisition Clauses and Conditions (SACC). They are designed to ensure that the above objectives are satisfied.

Defence Production Act

In addition to its centralized purchasing agent function across government, the PWGSC Minister exercises additional broad authorities with respect to defence procurement.

The Defence Production Act (DPA) gives the Minister of PWGSC the exclusive authority to buy or otherwise acquire defence supplies and construct defence projects required by the Department of National Defence. Inter alia, the DPA requires contractors to maintain detailed accounts and records of the cost of carrying out defence contract work and to produce such records to any person authorized by the Minister.

It further empowers the PWGSC Minister to reduce the total amount paid or payable under a contract to such amount as the Minister may deem reasonable in cases where:

“the Minister is satisfied, either before or after the performance, in whole or in part, of a defence contract, that the total amount paid or payable thereunder to any person is in excess of the fair and reasonable cost of performing the contract together with a fair and reasonable profit”

Contract Cost Principles 1031-2

The PWGSC Supply Manual stipulates that, when acquiring non-commercial goods and services, a contract price is to be negotiated based upon Contract Cost Principles 1031-2, based on either actual or estimated costs in cases where:

1. a contract is to be awarded on a non-competitive basis (sole source) basis, or
2. only one compliant bid is received as a result of a competitive process.

For the acquisition of commercial goods and services, the application of the Contract Cost Principles 1031-2 is not required, since these are used regularly for other than government purposes, and are sold by the supplier in the course of carrying out its normal business operations; and there is a sufficient number of buyers, other than the government, to establish a going price for the good or service.

Contract Cost Principles 1031-2 do apply to a significant portion of defence contracts, because defence goods and services are typically non-commercial in nature. For determining contract costs in accordance with the Contract Cost Principles 1031-2, additional policies, like the 19 Cost Interpretations Bulletins outlined in Chapter 10 of the Supply Manual are taken into consideration at the time of negotiations.

Defence contract price negotiations carried out by the contracting authority and the cost analyst communities are typically based on Contract Cost Principles 1031-2 and departmental profit policy. Under Contract Cost principles 1031-2, twenty different categories of cost are deemed to be non-applicable and are not accepted to be included as part of the negotiated price.

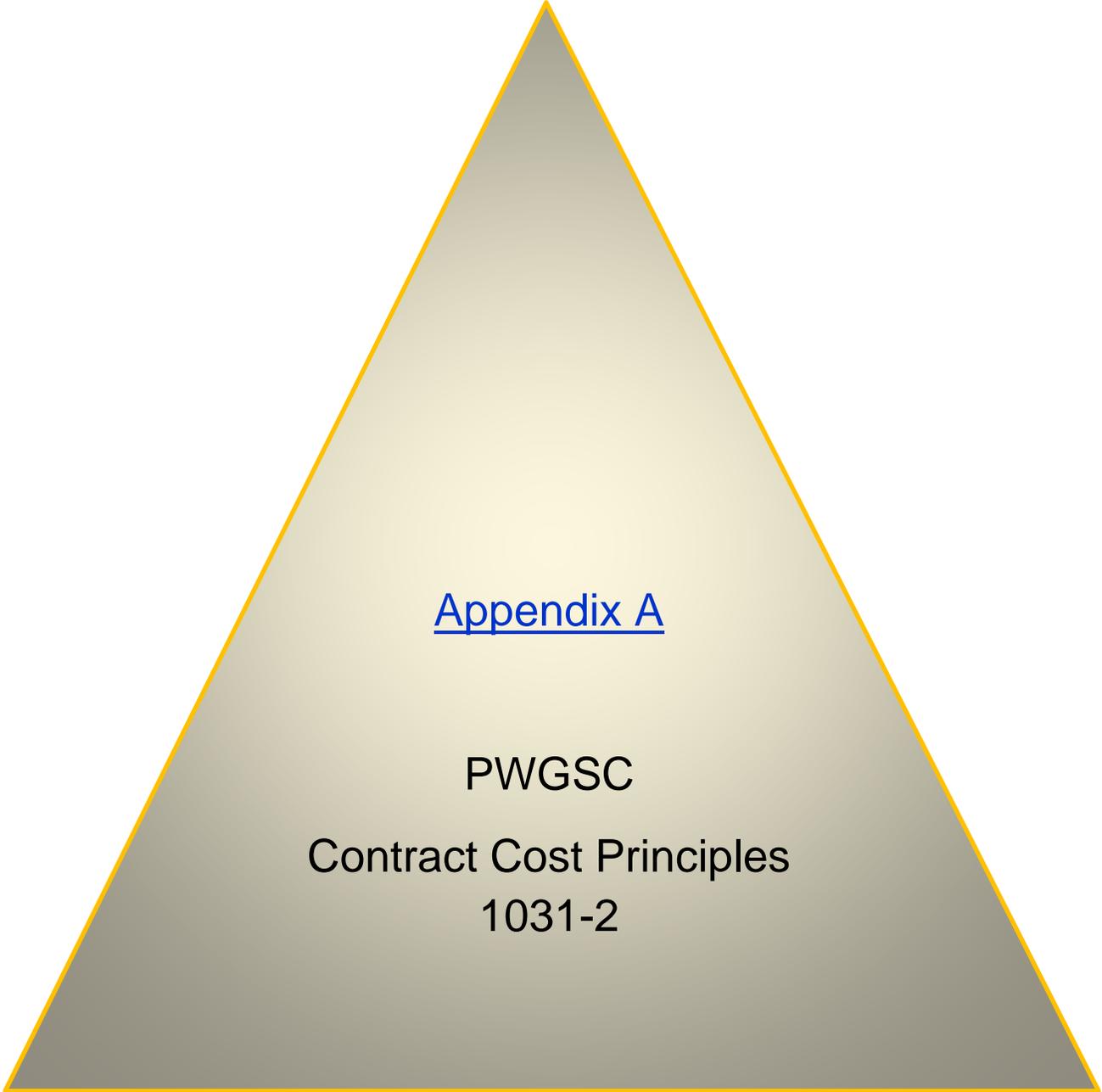
Please see Appendix A to this Annex for a complete version of PWGSC Costing Principles 1031-2, along with explanations as to the non-applicability of certain costs when utilizing Contract Cost Principles 1031-2.

PWGSC Cost and Profit Assurance Program

Also included in Chapter 10 of the Supply Manual is a reference to the recovery and settlement of contract claims adjustments. This refers to amounts that contractors may have overclaimed and may have been detected and reported through various PWGSC contract audit engagements (referred to as Assurance Engagement Reports prepared for the Cost and Profit Assurance Program (CPAP)). This program is managed by a group of PWGSC professional advisors who assist contracting officers in safeguarding the Crown from overpaying on major contracts.

The PWGSC Acquisitions Branch contracting authority and cost analyst communities are charged with the responsibility of implementing these policies, practices and procedures in support of a variety of cost related activities. These include contract cost estimation and profit negotiations, the development of contract basis of payment and method of payment provisions as well as cost verification and audit. Other cost related services include the analysis and assessment of bidder's financial capability and negotiation of company charge-out and overhead rates.

The cost analysis community reports within Acquisitions Branch under Contract Cost Analysis, Audit and Policy Directorate (CCAAPD) within the Policy, Risk, Integrity and Strategic Management Sector.



[Appendix A](#)

PWGSC
Contract Cost Principles
1031-2

PWGSC Contract Cost Principles 1031-2

- 01 General Principle
- 02 Definition of a Reasonable Cost
- 03 Direct Costs
- 04 Indirect Costs
- 05 Allocation of Indirect Costs
- 06 Credits
- 07 Non-applicable Costs

01 - General Principle

The total cost of the Contract must be the sum of the applicable direct and indirect costs which are, or must be reasonably and properly incurred and/or allocated, in the performance of the Contract, less any applicable credits. These costs must be determined in accordance with the Contractor's cost accounting practices as accepted by Canada and applied consistently over time.

02 - Definition of a Reasonable Cost

1. A cost is reasonable if the nature and amount do not exceed what would be incurred by an ordinary prudent person in the conduct of a competitive business.
2. In determining the reasonableness of a particular cost, consideration will be given to:
 - a. whether the cost is of a type generally recognized as normal and necessary for the conduct of a contractor's business or performance of the Contract;
 - b. the restraints and requirements by such factors as generally accepted sound business practices, arm's length bargaining, federal, provincial and local laws and regulations, and contract conditions;
 - c. the action that prudent business persons would take in the circumstances, considering their responsibilities to the owners of the business, their employees, customers, the Government and public at large;
 - d. significant deviations from the established practices of the Contractor which may unjustifiably increase the contract costs; and
 - e. the specifications, delivery schedule and quality requirements of the particular contract as they affect costs.

03 - Direct Costs

There are three categories of direct costs:

- a. "Direct Material Costs" meaning the cost of materials which can be specifically identified and measured as having been used or to be used in the performance of the Contract and which are so identified and measured consistently by the Contractor's cost accounting practices as accepted by Canada.
 - i. These materials may include, in addition to materials purchased solely for the performance of the Contract and processed by the Contractor, or obtained from subcontractors, any other materials issued from the Contractor's general stocks.
 - ii. Materials purchased solely for the performance of the Contract or subcontracts must be charged to the Contract at the net laid-down cost to the Contractor before cash discounts for prompt payment.
 - iii. Materials issued from the Contractor's general stocks must be charged to the Contract in accordance with the method as used consistently by the Contractor in pricing material inventories.
- b. "Direct Labour Costs" meaning the costs of the portion of gross wages or salaries incurred for the Work, which can be specifically identified and measured as having been incurred or to be incurred in the performance of the Contract and which are so identified and measured consistently by the Contractor's cost accounting practices as accepted by Canada.
- c. "Other Direct Costs" meaning those applicable costs, not falling within the categories of direct material or direct labour, but which can be specifically identified and measured as having been incurred or to be incurred in the performance of the Contract and which are so identified and measured consistently by the Contractor's cost practices as accepted by Canada.

04 - Indirect Costs

1. "Indirect Costs" (overhead)" meaning those costs which, though necessarily having been incurred during the performance of the Contract for the conduct of the Contractor's business in general, cannot be identified and measured as directly applicable to the performance of the Contract.
2. These Indirect Costs may include, but are not necessarily restricted to, such items as:
 - a. indirect materials and supplies (*);
 - b. indirect labour;
 - c. fringe benefits (the Contractor's contribution only);
 - d. public services expenses: expenses of a general nature such as power, heat, light, operation and maintenance of general assets and facilities;

- e. fixed/period charges: recurring charges such as property taxes, rentals and reasonable depreciation costs;
- f. general and administrative expenses: including remuneration of executive and corporate officers, office wages and salaries and expenses such as stationery, office supplies, postage and other necessary administration and management expenses;
- g. selling and marketing expenses associated with the goods, services or both being acquired under the Contract;
- h. general research or development expenses as considered applicable by Canada.

(*) For supplies of similar low-value, high-usage items the costs of which meet the above definition of Direct Material Costs but for which it is economically expensive to account for these costs in the manner prescribed for direct costs, then they may be considered to be indirect costs for the purposes of the Contract.

05 - Allocation of Indirect Costs

Indirect Costs must be accumulated in appropriate indirect cost pools, reflecting a contractor's organizational or operational lines and these pools subsequently allocated to contracts in accordance with the following two principles:

- a. the costs included in a particular indirect cost pool should have a similarity of relationship with each contract to which that indirect cost pool is subsequently distributed; further, the costs included in an indirect cost pool should be similar enough in their relationship to each other that the allocation of the total costs in the pool provides a result which would be similar to that achieved if each cost within that pool were separately distributed;
- b. the allocation basis for each indirect cost pool should reflect, as far as possible, the causal relationship of the pooled costs to the contracts to which these costs are distributed.

06 - Credits

The applicable portion of any income, rebate, allowance, or any other credit relating to any applicable direct or indirect cost, received by or accruing to the Contractor, must be credited to the Contract.

07 - Non-applicable Costs

Despite that the following costs may have been or may be reasonably and properly incurred by the Contractor in the performance of the Contract, they are considered non-applicable costs to the Contract:

- a. allowance for interest on invested capital, bonds, debentures, bank or other loans together with related bond discounts and finance charges;
- b. legal, accounting and consulting fees in connection with financial reorganization, security issues, capital stock issues, obtaining of patents and licenses and prosecution of claims against Canada;
- c. losses on investments, bad debts and collection charges;

- d. losses on other contracts;
- e. federal and provincial income taxes, excess profit taxes or surtaxes and/or special expenses in connection with those taxes;
- f. provisions for contingencies;
- g. premiums for life insurance on the lives of officers and/or directors where proceeds accrue to the Contractor;
- h. amortization of unrealized appreciation of assets;
- i. depreciation of assets paid for by Canada;
- j. fines and penalties;
- k. expenses and depreciation of excess facilities;
- l. unreasonable compensation for officers and employees;
- m. specific product development or improvement expenses not associated with the product being acquired under the Contract;
- n. advertising, except reasonable advertising of an industrial or institutional character placed in trade, technical or professional journals for the dissemination of information for the industry or institution;
- o. entertainment expenses;
- p. donations except those to charities registered under the *Income Tax Act*
- q. dues and other memberships other than regular trade and professional associations;
- r. fees, extraordinary or abnormal for professional advice in regard to technical, administrative or accounting matters, unless approval from the Contracting Authority is obtained.
- s. compensation in the form of dividend payments or calculated based on dividend payments;
- t. compensation calculated, or valued, based on changes in the price of corporate securities, such as stock options, stock appreciation rights, phantom stock plans or junior stock conversions; or, any compensation in the form of a payment made to an employee in lieu of an employee receiving or exercising a right, option, or benefit.

PWGSC Standard Acquisition Clauses and Conditions
Section 3
Date Modified: 2012-07-16



[Appendix B](#)

PWGSC

Rationale

**Non-Applicability of
Certain Costs**

Rationale for the Non-Applicability of Certain Costs

The following costs are considered non-applicable to government contracts when utilizing contract cost principles 1031-2 for the reasons given.

1. Allowances for interest on invested capital, bonds, debentures, bank or other loans together with related bond discounts and finance charges

Interest on borrowing, however represented, is not an acceptable cost. There are several reasons for this. In the first place, it is impossible to know how much of a contractor's capital should be properly provided by equity capital and how much by borrowed capital. If it were fair to allow interest on the borrowed capital (the financial reward to the lender), it would also seem fair to allow dividends (the financial reward to the investor). As dividends are recognized as a distribution of profits and therefore not an item of cost, so too with interest. Another consideration is the determination of what a contractor's capital properly should be, regardless of what it may actually happen to be. If interest were to be an acceptable cost, then a contractor financed by bonds, debentures or long term loans would be in an advantageous position compared to a contractor financed by the sale of equity. The government recognizes the cost-of-money (interest) associated with capital employed, however financed, as a factor in the calculation of profit.

2. Legal, accounting and consulting fees in connection with financial re-organization, security issues, capital stock issues, obtaining of patents and licences and prosecution of claims against Canada

A distinction should be drawn between the occasional expenses in relation to the raising of capital referred to here, which are not an acceptable cost, and the normal recurring expenses associated with the day-to-day management and recording of capital transactions, which are an acceptable cost. The latter expenses include those arising from the registry and transfer of share capital when they form part of the activity of the company secretary, costs of share holders' meetings, normal proxy solicitations, reports to shareholders, submission of required reports to government agencies, reasonable directors' fees and incidental expenses of directors and for committee meetings.

3. Losses on investments, bad debts and expenses for the collection thereof

Since interest on capital invested in a contractor's business is not considered a business operating cost, neither is interest received by a contractor from funds invested outside the business considered a necessary credit against business operating costs. However, it also follows that any losses sustained by a contractor from these outside investments are not considered to be a business operating cost and thus are not acceptable on government contracts.

Since the government as a debtor always pays its just debts, while it is only the commercial customers who have bad debts on a contractor's books, the losses due to bad debts and the expenses of collection thereof are not an acceptable cost to government contracts.

4. Losses on other contracts

An excess of costs over income on a contract is not acceptable as a cost to any other contract. This principle also applies to application by a contractor of preferred overhead rates to certain contracts. Where this occurs, the excess of actual overhead over the preferred overhead amount will not be absorbed by government contracts.

5. Federal and provincial income taxes, excess profit taxes or surtaxes and/or special expenses in connection therewith

In general, taxes which a contractor is required to pay and which are computed in accordance with sound accounting principles are acceptable costs, except for those included under this heading and/or other taxes in connection with financing, refinancing or re-organizing.

On the other hand, all tax refunds, federal or provincial, are not required to be applied to reduce any related expenses.

6. Provisions for contingencies

A contingency liability is a liability which could arise on the happening of some event which may or may not occur. The initial provision or increase of funding for a contingent liability is considered to be a setting aside of earned profits to meet possible liabilities against future profits and not a business operating cost and therefore not an acceptable cost to government contracts.

There is one exception to the above and that is in respect of the acceptability of costs for the provision of warranties. In any firm price contract, a contractor may include as a cost a reasonable amount to be set aside as a provision for the absorption of expenses associated with warranties given under the terms of the contract. In determining a reasonable amount, the following factors should be taken into account:

- a. the amounts provided for warranty expenses should be separate for each distinctive product or family of products;
- b. the amounts provided should reflect, where available, the previous performance of the product(s) in regard to warranty, using an average of three to five years;
- c. the cost of any provision for warranty charged to a specific contract should reflect any difference in the warranty period from that normally granted by a contractor on the product(s); and
- d. the costs should be net of any warranty contract sales to other customers.

7. Premiums for life insurance on the lives of officers and/or directors where proceeds accrue to the contractor

Similarly, proceeds from such life insurance need not be applied to reduce any cost to the contractor.

Premiums on this type of insurance are not acceptable in government contracts since Canada does not derive any benefit therefrom.

8. Amortization of unrealized appreciation of assets

See Supply Manual – Chapter 10 - Annex 10.5.2: Cost Interpretation Bulletin - Number 02 Depreciation, "Depreciation".

9. Depreciation of assets paid for by Canada

See Supply Manual – Chapter 10 - Annex 10.5.2: Cost Interpretation Bulletin - Number 02 Depreciation, "Depreciation".

10. Fines and penalties

The amounts of fines and penalties imposed by federal, provincial or local authorities are not an acceptable cost to government contracts, for to accept such amounts would be tantamount to the government supporting financially the offense which gives rise to the imposition of a fine or penalty.

11. Expenses and depreciation of excess/idle facilities

For this purpose, excess/idle facilities means the sum of all fixed assets appearing in a contractor's books of account which are not in use or for which no use is anticipated within a reasonable period. The expenses associated with the maintenance and/or the amounts of depreciation attributable to such fixed assets are not acceptable costs to government contracts.

The expenses and/or depreciation of excess/idle facilities, as defined above, which the government has ordered retained for defence purpose, should be charged to a separate contract set up for that purpose.

12. Unreasonable compensation for officers and employees

The extra costs associated with the above are not an acceptable charge to government contracts.

13. Product development or improvement expenses not associated with the product being acquired under the contract

See Supply Manual – Chapter 10 - Annex 10.5.7: Cost Interpretation Bulletin - Number 07 Research and Development Expenses.

14. Advertising, except reasonable advertising of an industrial or institutional character placed in trade, technical or professional journals for the dissemination of information for the industry or institution

- a. Assuming that a contractor's employees enhance their knowledge by reading trade, technical or professional journals, and, in turn, government contracts benefit from this increased knowledge by way of increased efficiency and productivity, and that the advertising supports these publications, the expenses of advertising in this manner are an acceptable cost to government contracts, provided:
 - i. it is in the nature of institutional or support advertising only, and not in the form of display advertising;
 - ii. it does not advertise a particular product or service of a contractor;
 - iii. it is placed in trade, technical or institutional journals (financial publications are primarily for investors, not for an industry or trade; and so do not qualify); and
 - iv. the cost is reasonable.
- b. Expenses associated with the help wanted advertisements are an acceptable cost, provided they are reasonable and only for the purpose of recruiting personnel.
- c. The expenses associated with advertising through any media for other than (1) and (2) above, are not an acceptable cost to government contracts. For this purpose, advertising media are: magazines, newspapers, television and radio programs or "commercials", brochures, direct mail, outdoor advertising, conventions, exhibits, free goods and samples.

15. Entertainment expenses

Although expenses for amusement, diversion, social activities and incidentals relating thereto are not acceptable, the expenses associated with meetings and conferences, when called for the dissemination of technical information or discussion of production problems and the like, are acceptable. These latter expenses may include those for meals, transportation, rental of meeting places and other incidentals provided they are reasonable.

16. Donations, except those to charities registered under the Income Tax Act

Donations, except those to political parties, are an acceptable cost provided they comply with the Income Tax regulations and are taken into overhead in the period they are paid rather than pledged.

17. Dues and other memberships other than regular trade and professional associations

The expenses associated with membership, either of the company as a whole or individual officers or employees in associations whose prime purpose is to provide entertainment or recreation, are not an acceptable cost to government contracts.

18. Fees, extraordinary or abnormal, for professional advice in regard to technical, administrative or accounting matters, unless approval from the Contracting Authority is obtained

The fees associated with obtaining this assistance are not an acceptable cost, unless a contractor demonstrates, to the satisfaction of the contracting officer, the circumstances giving rise to the need for this assistance.

19. Compensation in the form of dividend payments or calculated based on dividend payments

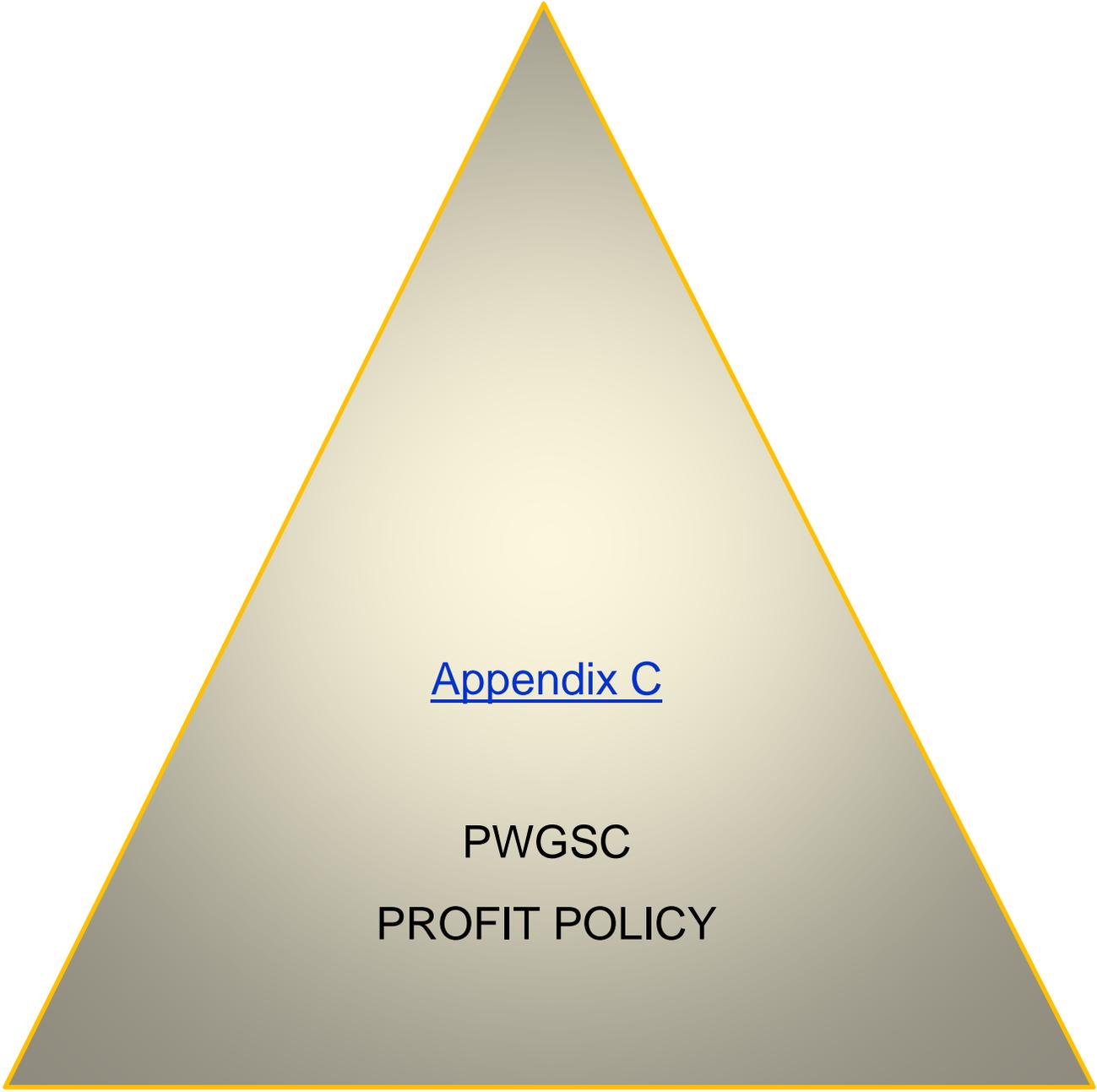
Dividends are not organization costs; they are a distribution of earnings to shareholders. Therefore since dividends are not organization operating costs they are disallowed contract costs.

20. Compensation calculated, or valued, based on changes in the price of corporate securities, such as stock options, stock appreciation rights, phantom stock plans or junior stock conversions; or, any compensation in the form of a payment made to an employee in lieu of an employee receiving or exercising a right, option, or benefit

Disallowing this type of expense as a contract cost is already addressed as per paragraph f. provisions for contingencies of section 07 Non-applicable Costs of SACC General Conditions Contract Cost Principles 1031-2. This contingent liability is the setting aside of a provision to retain the employee and motivate future performance, based on events which may or may not occur. The provision for a contingency is considered to be a setting aside of earned profits to meet possible future liabilities and is not a business operating cost. Therefore it is not an acceptable cost to government contracts.

Further, compensation based on changes in securities price is not based on work actually performed and thus, is unallowable. Regardless of the name given to the plan, stock-based compensation scenarios continue to emerge, and rather than trying to cover each scenario individually, in Contract Cost Principles 1031-2, a general disallowance addresses compensation based on changes in prices of corporate securities.

PWGSC Supply Manual
Chapter 10 – Annex 10.4
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[Appendix C](#)

PWGSC
PROFIT POLICY

PWGSC Contract Profit Policy

The policy and guidelines for the calculation of the amount of profit applicable to negotiated contracts and parts thereof with Canadian suppliers, for both goods and services are detailed in 10.65 (b) to 10.65.35 Total Profit. Contracts valued under \$50,000 do not require negotiation of profit under this section.

There are differences in the guidelines for contracts with total costs between \$50,000 and \$249,999, and for contracts with total costs of \$250,000 or more.

For agency and resale outlets, the procedures for profit determination in 10.50.15 Price Analysis apply.

When for any reason it is not possible to establish an acceptable basis of price by competition or a fair and reasonable price assessment, the price must be negotiated. The object of price negotiation is to duplicate a fair market price, while establishing a realistic division of responsibilities and risks between the contractor and Canada.

A fair market price for non-competitive contracts for the procurement of goods or services (other than commercial goods or services) must be negotiated. The object of such negotiation is to arrive at a price which is considered to be fair and reasonable in the circumstances based upon an estimate of the costs, to be incurred in the performance of the contract, computed in accordance with the Contract Cost Principles 1031-2, plus a fair profit. A fair profit is an amount no greater than that calculated under this section.

There are the following exceptions:

- i. Generally, all contracts placed on behalf of the Canadian Commercial Corporation (CCC). However, if the ultimate client for the CCC contract is the United States Department of Defense or National Aeronautics and Space Administration (NASA) or the United Kingdom Ministry of Defence, the profit may be calculated in accordance with this section.
- ii. Contracts or parts thereof for which the price is based on catalogues, price lists or fee schedules where only discounts are subject to negotiation.

Profit levels will vary:

- iii. to recognize the cost of money associated with the capital employed by the contractor in performance of the contract;
- iv. to recognize the levels of general business and contractual risk assumed by the contractor in performance of the contract.

The calculation of the amount of profit attributable to each of the above factors must normally be made in accordance with the following guidelines.

Return on Capital Employed

The return on capital employed will be determined in two parts:

- a. return on fixed capital employed, and
- b. return on working capital employed.

The determination is different for contracts with total costs between \$50,000 and \$249,999 and for contracts with total costs of \$250,000 or more.

Return on Fixed Capital Employed (between \$50,000 and \$249,999)

- a. For contracts with total costs between \$50,000 and \$249,999, the return on fixed capital employed is calculated as follows:

If machinery and/or equipment owned by the contractor are used on a regular basis in the manufacture of the product(s) or provision of the service(s) being acquired under the contract, an amount equivalent to 1 percent of total allowable costs will be awarded as a return on fixed capital employed.

Return on Working Capital Employed (between \$50,000 and \$249,999)

The following rates applied to the total contract costs will be used to provide for a return on working capital employed:

- a. if there is no provision for progress payments, advance payments or milestone payments - 3 percent;
- b. if there is a provision for progress payments or milestone payments - 1.5 percent;
- c. if there is a provision for advance payments - 1.5 percent (Note: The profit factor of 1.5 percent will apply only to total costs less amount of advance payments.);
- d. if there is a provision for both progress payments and advance payments - 0 percent.

Return on Fixed Capital Employed (\$250,000 or more)

- a. For contracts with total costs of \$250,000 or more, the return on fixed capital employed is calculated as follows:

The provision of a return on fixed capital employed is intended not only to compensate contractors for the cost of money associated with the fixed capital employed on the contract but also to encourage investment in new capital equipment, the result of which is generally greater productivity and consequently reduced costs to Canada.

- i. For the purpose of this section, the fixed capital employed is defined as the net book value of fixed assets, less:
 - A. land and any intangible assets,
 - B. any fixed assets not in use such as idle plant, and
 - C. any surplus value arising from re-appraisal.

- ii. The determination of fixed capital employed will be as follows:
 - A. Determine the percentage: $(X / Y) \times 100\%$
 - X = overhead recovery base allocated to the contract
 - Y = total budgeted amount of recovery base
 - B. Apply the percentage in (A) to the net book value of fixed assets.

Such determination will be performed in accordance with the format set out in Supply Manual Chapter 10 - Annex 10.1: Determination of Fixed Capital Employed Applicable to a Contract.

- iii. The rate of return to be applied to the fixed capital employed applicable to the contract will be 1.7 times the corporate bond rate, which will be published monthly by the Policy, Risk, Integrity and Strategic Management Sector (PRISMS). The rate used will be the latest rate published at the date that the contractor's price proposal is firmed up. In the event that the published rate at the time of contract award has changed by more than one full point, up or down, this rate will be used to re-compute the return.

- iv. The rate used in the contractor's price proposal will be the latest figure published at the time the price proposal is submitted. In order to conform to (iii) above, it is necessary that the following clause be included in the price proposal:

"The price quoted includes an amount of profit using a corporate bond rate of ___ percent. In the event that the corporate bond rate, as published by the Policy, Risk, Integrity and Strategic Management Sector, at the time of contract award, has changed by more than one full point, up or down from this rate, the price will be adjusted to reflect such rate."

Return on Working Capital Employed (\$250,000 or more)

- a. The amount of working capital employed applicable to a particular contract is defined as all allowable contract costs (exclusive of depreciation where considered significant) less contract revenue (exclusive of profit).

For contracts with total costs of \$250,000 or more, the return on working capital employed is calculated as follows:

- i. During negotiations, a schedule of the estimated net working capital for the contract, as defined above, on a month-by-month basis, will be determined and agreed to between the contracting officer and the contractor.
 - ii. The rate of return to be applied to the cumulative monthly amounts of working capital is defined below. However, as this is an annual rate of return, one-twelfth only of the rate is applicable to each monthly amount. For ease of calculation, the equivalent formula, to be used for determining the return on working capital employed on a particular contract, is as follows:
$$(A / 12) \times B$$

A = sum of the cumulative monthly working capital amounts
B = prescribed rate
 - iii. The rate of return to be applied to working capital employed applicable to the contract will be the chartered bank prime rate. PRISMS will publish this rate weekly. The rate used will be the latest rate published at the date that the contractor's price proposal is firmed up. In the event that the published rate at the time of contract award has changed by more than one full point, up or down, this rate will be used to re-compute the return.
 - iv. The rate used in the contractor's price proposal will be the latest figure published at the time the price proposal is submitted. The following clause must be included in the price proposal:

"The price quoted includes an amount of profit using the chartered bank prime rate of ___ percent. In the event that the chartered bank prime rate, as published by the Policy, Risk, Integrity and Strategic Management Sector, at the time of contract award, has changed by more than one full point, up or down from this rate, the price will be adjusted to reflect such rate."
- b. Specific guidelines in regard to the cost base for purposes of all profit calculations are as follows:
- i. Direct material costs should include the costs of all materials purchased specifically for the contract together with the costs of any other materials issued specifically for the contract from the contractor's own inventories except Accountable Advance (AA) spares embodied. Direct materials must not include the value of Government Furnished (GF) nor Contract Issue (CI) materials. However, direct labour and overhead costs associated with the acquisition, stocking and handling of GF and CI materials and AA spares embodied may be included under the appropriate cost element for profit purposes.
 - ii. Overhead in this context includes not only plant or factory overhead, but engineering, material handling, general and administrative or any other overheads as appropriate to and allowable on the contract.
 - iii. All other allowable costs are those costs not considered to be direct material, direct labour or overhead but nevertheless are an appropriate and allowable direct charge to the contract. Royalty payments and the goods and services tax or the harmonized sales tax, although they may be an appropriate and allowable direct charge to the contract, must not be included for the purpose of profit calculation.

General Business Risk

- a. The award of profit under this factor is intended to recognize the level of effort a contractor makes in the management of all the resources required to perform the contract in an efficient and economical manner.
- b. The level of effort is considered to vary according to the elements of cost and is reflected in the following rates of profit to be applied to the costs in each element:
 - i. direct materials: 1.5 percent
 - ii. subcontracts: 2.0 percent
 - iii. accountable advance spares embodied: 2.0 percent
 - iv. direct labour: 4.0 percent
 - v. overhead: 4.0 percent
 - vi. all other allowable costs: 1.5 percent

Contractual Risk

- a. The rates of profit to be paid for contractual risk will depend upon the basis of payment selected for each individual line item of the contract, or part thereof, and the cost base associated with each distinct basis of payment.
- b. The basis of payment determines the maximum level of profit, and requires the following consideration of different factors in arriving at the appropriate profit level.
 - i. **firm price and firm base price with economic price adjustments (7 percent maximum)** - consider:
 - A. the ability of Canada to state its requirements in the form of a well-defined specification;
 - B. the ability of the contractor to convert Canada's specification into a comprehensive statement of work;
 - C. the ability of Canada and the contractor to pre-cost the statement of work;

- D. the duration of the contract and its effect on the predictability of labour and material costs and overhead distribution, taking into account whether protection in this regard is provided to the contractor by the inclusion in the contract of a provision for economic price adjustment (firm base price with economic price adjustments basis of payment);
 - E. whether the final determination of the firm price takes place before or after a portion of the contract period has elapsed.
- ii. **fixed time rate with ceiling price - (4.5 percent maximum)**
fixed time rate without ceiling price - (3.5 percent maximum) - consider:

- A. the duration of the contract and its effect on the predictability of the labour and overhead rates;
 - B. if a ceiling price is included, the familiarity of the contractor with the work being performed under the contract resulting from the previous manufacture of the same or similar products, or the provision of the same or similar services;
 - C. whether the final determination of the fixed time rates takes place before or after a portion of the contract period has elapsed.
- iii. **cost reimbursable with incentive fee - (4.5 percent maximum)** - consider:
- A. the degree to which the difference between the target fee and the maximum fee will provide an incentive for more effective cost control and contract performance by the contractor;
 - B. whether the agreement on target costs and target fee was reached before or after a portion of the contract period has elapsed.

To calculate the bonus on target incentive fee contracts: the maximum fee for cost reimbursable with incentive fee contracts must consist of the target fee plus an added amount which brings the total profit for the General Business Risk and Contractual Risks Factors to a maximum of 10 percent of target costs.

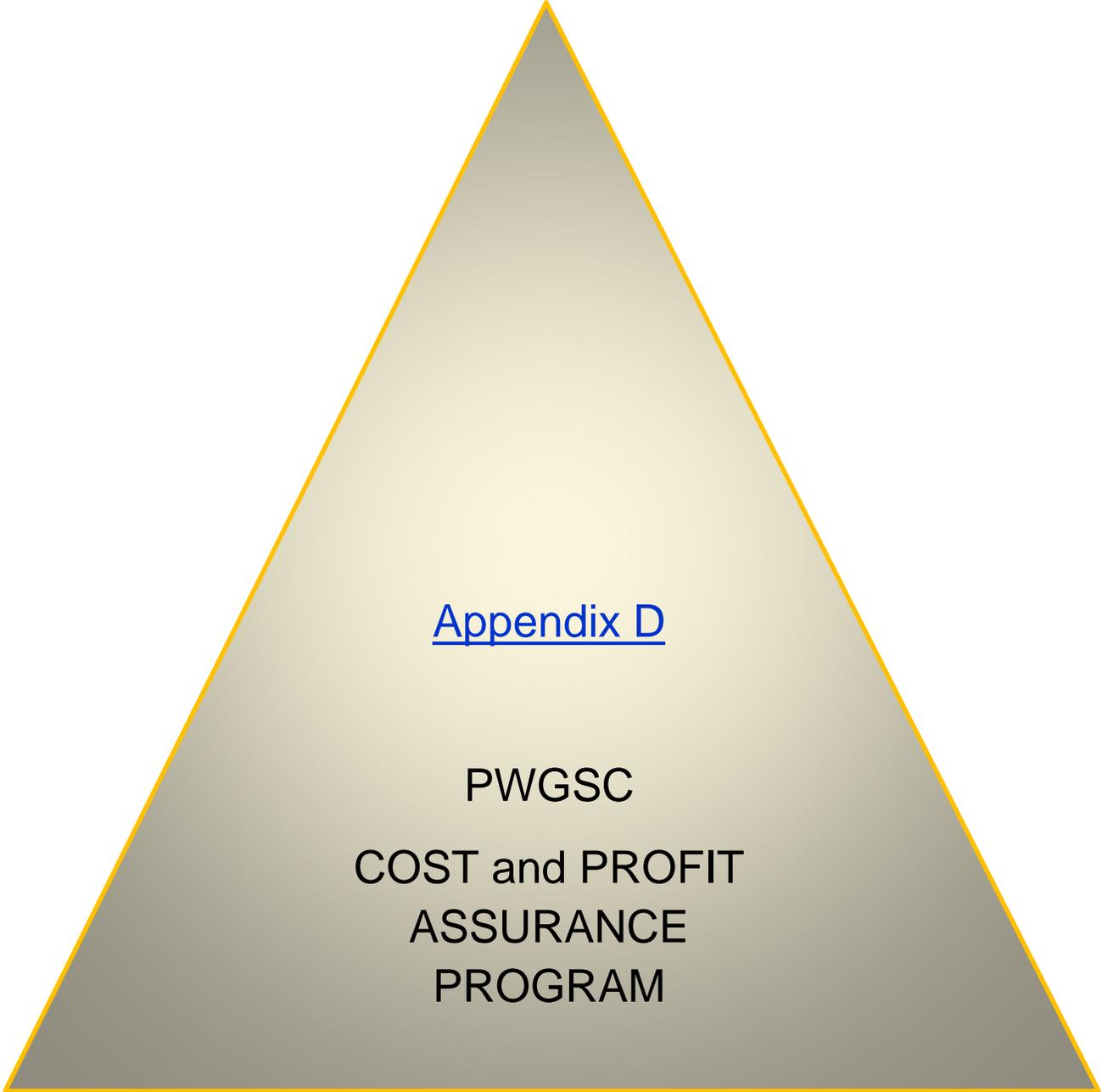
- iv. **cost reimbursable with fixed fee with ceiling price - (4.5 percent maximum)**
cost reimbursable without ceiling price - (1 percent maximum) - consider:
- A. the reliability of the cost estimate used for determining the fixed fee, taking into account the duration of the contract and its effect on the predictability of costs, and provided that no "swing points" at which the fixed fee will be renegotiated are included in the contract;
 - B. if a ceiling price is included, the familiarity of the contractor with the work being performed under the contract resulting from the previous manufacture of the same or similar products, or the provision of the same or similar services;
 - C. whether the fixed fee was determined before or after a portion of the contract period has elapsed.
- v. **cost reimbursable with no fixed fee and no ceiling price - (0 percent):**
there is no business or contractual risk.

Total Profit

- a. The total allowable amount of profit must be the lowest of:
 - i. sum of supportable amounts by factor; and;

- ii. 20% of the total cost.
- b. The total amount of profit awarded under all factors must in no event exceed 20 percent of the total contract costs.
- c. The amount of profit for all factors should be calculated separately and included in the price of each line item with a distinct basis of payment in the contract.

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Chapter 10 – Section 10.65
Date Modified: 2012-07-14



[Appendix D](#)

PWGSC
COST and PROFIT
ASSURANCE
PROGRAM

PWGSC Cost and Profit Assurance Program

Introduction

- i. The recovery and settlement of contract claims adjustments refers to overclaims detected and reported in assurance engagement reports prepared for the Cost and Profit Assurance Program (CPAP). CPAP is a professional advisory program provided by the Contract Cost Analysis, Audit and Policy Directorate (CCAAPD) to assist contracting officers in safeguarding the Crown from overpaying on major contracts. Assurance engagements are commissioned as a result of either an assurance strategy developed with the assistance of CCAAPD assurance advisors, or as a response to a contracting officer's concerns of overbilling.
- ii. CCAAPD cost auditors examine the support for a contractor's claims against the contractor's terms and conditions related to basis of payment and compares amounts claimed against the contractor's records. Assurance engagement reports can identify amounts in excess of what the contract allows and matters of compliance, such as related to retention of records or maintenance of proper accounting systems and controls.
- iii. The level of assurance ranges from high assurance (audit engagements), to no assurance (compilations). Descriptions of the various types of assurance engagements follow:
 - A. **Audit engagements** are designed to allow the Cost Auditor to obtain reasonable assurance about whether "contractor-submitted" financial information is free from material misstatement, whether due to fraud or error, thereby enabling the Cost Auditor to express an opinion on whether the financial information is prepared, in all material respects, in accordance with financial terms and conditions of the contract.
 - B. **Review engagements** are designed to add a measure of credibility to the subject matter being reported on. The objective is to assess whether the information being reported on is plausible within the framework of the appropriate criteria, which may involve review and evaluation of systems documentation, analytical review of financial information and interviews of contractor staff.
 - C. **Specified audit procedure engagements** are restricted in scope, such that assurance offered may be limited to specific transactions examined or tasks performed.
 - D. **Compilations** offer no assurance other than the involvement by the accountant in the preparation of the information. A compilation engagement consists of the accountant receiving information from a client and then arranging it into the form

of a financial statement. The accountant ensures that the assembly of information is arithmetically correct, but does not perform an audit or a review.

Throughout the assurance engagement, there is close collaboration and regular communication among all key stakeholders, specifically the Assurance Advisor, the Cost Auditor, PWGSC contracting officer, the client department representative, and the Cost Analyst, if the Cost Analyst was involved in negotiating the pricing arrangements relevant to the contract(s) subject to examination.

The process for the recovery and settlement of contract claims adjustments starts upon receipt of the assurance engagement report by the Assurance Advisor.

Notification Report and Action Plan

- i. A notification report is initiated, drafted and prepared by the assurance advisor, CCAAPD. Its purpose is to explain the key findings and recommend actions that should be taken by contracting officers in dealing with the contractor's claims for payment, its accounting practices, or its internal controls. The Assurance Advisors sends this notification report, along with a copy of the Cost Auditor's assurance engagement report, to the contracting officer and the client department representative. While the notification report summarizes and incorporates all matters raised in the assurance engagement report, unlike the assurance engagement, it contains advice on actions required by the Crown.
- ii. The notification report is intended to support the contracting officer's:
 - A. negotiations with the contractor on final settlement of financial claims for payment;
 - B. follow-up on matters of contractor compliance, as it relates to records, internal controls, cost accounting or billing practices; and
 - C. documentation and approval of the disposition of findings raised in the assurance engagement report.
- iii. The notification report includes:
 - A. A plain language description of proposed adjustments to contractor claims for payment with details on its findings, time period and contract(s) covered by the engagement, and, if observed, information on internal control or accounting system weaknesses, etc.;
 - B. Recommendations requiring response by the contracting officer;
 - C. A request for an action plan in response to recommendations contained in the notification report with expected timelines for completion.

- iv. The action plan is prepared and approved by procurement and responds to recommendations contained in the notification report, as prepared by CCAAPD.
- v. The contracting officer must provide the action plan to the Assurance Advisor within 30 calendar days of receipt of the notification report. The appropriate director of contracting must approve the action plan.
- vi. The contracting officer should provide updates to the Assurance Advisor on progress made against the action plan on a monthly or as required basis.

General Assistance

Once the action plan is received from the contracting officer, assistance will be provided by the Assurance Advisor. This could include pursuit of recoveries, recommendations for changes in internal control in the contractor's accounting systems and so forth. Also, assistance relates to clarifying any questions that the contracting officer may have and obtaining additional details from the Cost Auditor related to the basis of support for adjustments to contractor claims and other matters, as may be required.

Technical Support in Negotiation of Adjustments

Given the technical complexity of the Cost Auditor's findings, procurement may require assistance of a professional accountant to support the contractor negotiations. If such assistance is required, please contact CCAAPD.

Rejection of Adjustments to Contractor Claims

Any plans to reject proposed adjustments to contractor claims must be approved prior to discussion with the contractor. Approvals are in accordance with subsection k. below and must include the client department, the Public Works and Government Services Canada (PWGSC) contracting authority and the Policy, Risk, Integrity and Strategic Management (PRISM) Sector.

Reporting

- i. CCAAPD closely monitors, tracks and reports on recovery and settlement actions and follows-up with the respective contracting authorities until all recommendations contained in the notification report have been resolved. CCAAPD prepares monthly status reports, which are distributed to the Senior Directors and Directors Generals of Contracting.
- ii. On a quarterly basis, CCAAPD will report to the Acquisitions Branch Management Committee on the status of recovery and resolution of adjustments as well as lessons learned through the course of this process.

Repayment of Over-claimed Amounts

When the contractor provides a cheque(s) to the contracting officer in repayment of over-claimed amounts, the contracting officer must provide the following items to the Assurance Advisor within 7 calendar day of deposit:

- i. Copy of contractor's cheque(s);
- ii. Copy of the Official Receipt from PWGSC's Revenue & Receivables Cashier's Office; and
- iii. Copy of PWGSC's Refund Coding Form indicating the financial general ledger account coding.

Closeout

CCAAPD is responsible for the final administrative closeout of this recovery and settlement of contract claims process. Once the tasks contained in the action plan have been completed, the Assurance Advisor prepares a report summarizing the disposition of contract claims adjustments and matters related to contractor compliance for the contracting officer's concurrence. Closeout is finalized upon the report's approval, as delineated below, under subsection k.

Approvals of Disposition of Assurance Engagement Report

Sign-off thresholds with tiered delegations are required from all three parties, namely the client department, the PWGSC contracting authority and PRISM.

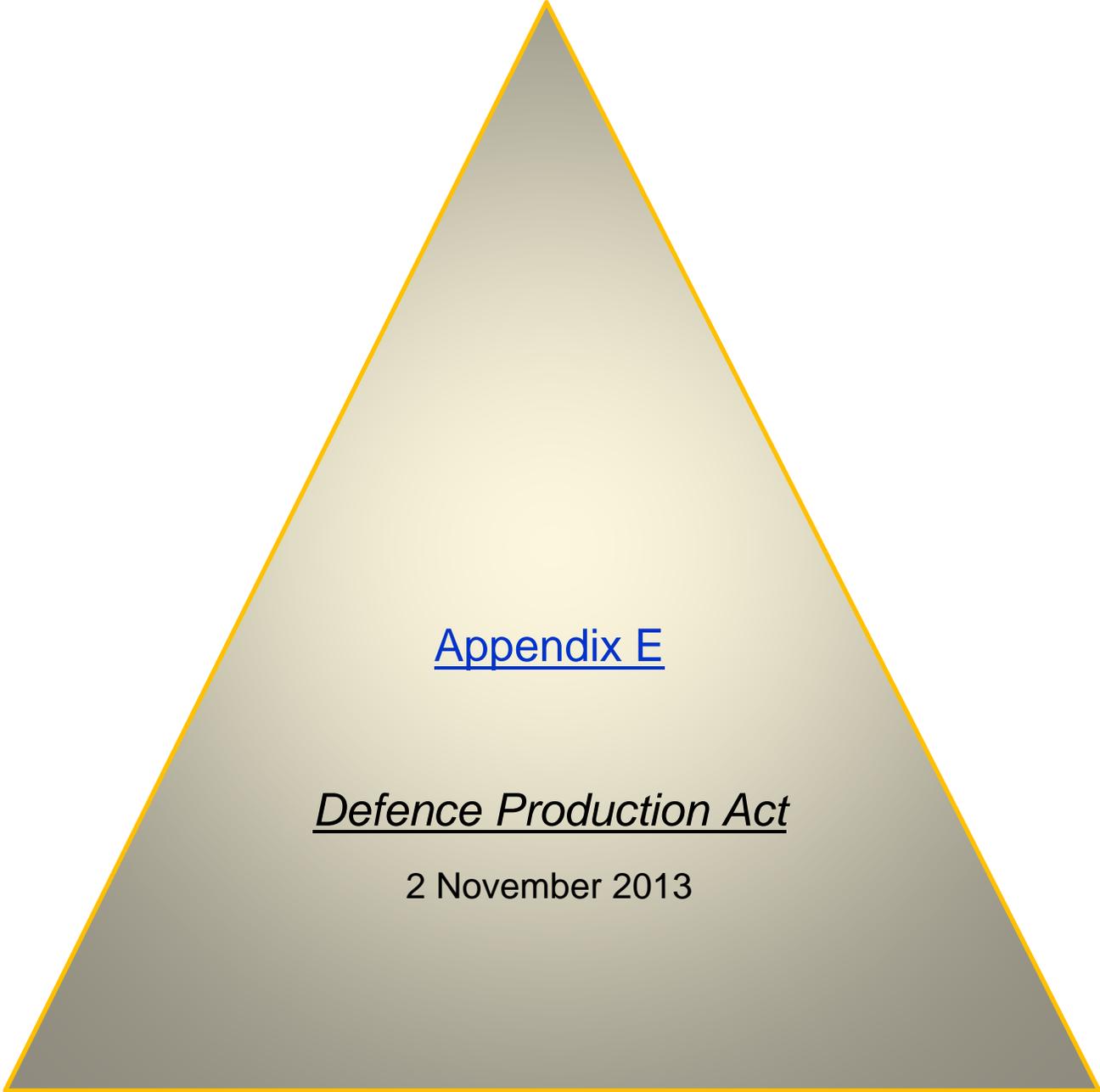
The management level required for sign-off is determined by the total dollar value of the contract claims adjustments, as stated in the notification report. The sign-off thresholds are as follows:

- i. Senior Directors: up to and including \$200,000
- ii. Director Generals: \$200,001 to \$999,999
- iii. Assistant Deputy Minister, Acquisition Branch: \$1,000,000 and over.

NOTE:

As an interim measure until April 1, 2014, the Assistant Deputy Minister, Acquisition Branch, must authorize the final report on the disposition of all contract claims adjustments and matters related to contractor compliance.

PWGSC Supply Manual
Chapter 10 – Section 10.70
Date Modified: 2013-04-16



Appendix E

Defence Production Act

2 November 2013



CANADA

CONSOLIDATION

CODIFICATION

Defence Production Act Loi sur la production de défense

R.S.C., 1985, c. D-1

L.R.C. (1985), ch. D-1

Current to November 2, 2013

À jour au 2 novembre 2013

Last amended on April 1, 2005

Dernière modification le 1 avril 2005

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OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit:

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

Inconsistencies
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité
— lois

NOTE

This consolidation is current to November 2, 2013. The last amendments came into force on April 1, 2005. Any amendments that were not in force as of November 2, 2013 are set out at the end of this document under the heading “Amendments Not in Force”.

NOTE

Cette codification est à jour au 2 novembre 2013. Les dernières modifications sont entrées en vigueur le 1 avril 2005. Toutes modifications qui n'étaient pas en vigueur au 2 novembre 2013 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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R.S.C., 1985, c. D-1

L.R.C., 1985, ch. D-1

An Act respecting defence production

Loi concernant la production de défense

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Defence Production Act*.

1. *Loi sur la production de défense*.

Titre abrégé

R.S., c. D-2, s. 1.

S.R., ch. D-2, art. 1.

INTERPRETATION

DÉFINITIONS

Definitions

2. In this Act,

2. Les définitions qui suivent s'appliquent à la présente loi.

Définitions

“Account”
« compte »

“Account” means the Defence Production Loan Account established under section 18;

« arrêté » ou « décret » Injonction, ordonnance, instruction ou prescription écrite, d'ordre général ou spécifique, formulée sous le régime de la présente loi ou d'un règlement.

« arrêté » ou
« décret »
“order”

“associated government”
« gouvernement associé »

“associated government” means Her Majesty's Government in the United Kingdom, any other government of the Commonwealth, the government of a country that is a member of the North Atlantic Treaty Organisation or the government of any other country designated by the Governor in Council as being a country the defence of which is vital to the defence of Canada;

« compte » Le Compte de prêts de la production de défense ouvert conformément à l'article 18.

« compte »
“Account”

“construct”
« construction »

“construct” includes repair, maintain, improve or extend;

« construction » Y sont assimilés la réparation, l'entretien, l'amélioration ou l'agrandissement.

« construction »
“construct”

“defence contract”
« contrat de défense »

“defence contract” means

« contrat de défense »

a) Contrat conclu avec Sa Majesté ou l'un de ses mandataires, ou avec un gouvernement associé, et qui porte de quelque façon sur du matériel de défense ou des ouvrages de défense, ou sur l'étude, la fabrication, la production, la construction, la finition, l'assemblage, le transport, la réparation, l'entretien, le service, l'entreposage ou le commerce de matériel de défense ou d'ouvrages de défense;

« contrat de défense »
“defence contract”

(a) a contract with Her Majesty or an agent of Her Majesty, or with an associated government, that in any way relates to defence supplies or to defence projects or to the designing, manufacturing, producing, constructing, finishing, assembling, transporting, repairing, maintaining, servicing or storing of, or dealing in, defence supplies or defence projects, and

b) sous-contrat de défense.

“defence projects”
« ouvrages de défense »

“defence projects” means buildings, aerodromes, airports, dockyards, roads, defence fortifications or other military works, or works required for the production, maintenance or storage of defence supplies;

« fournitures d'État » La machinerie, les machines-outils, l'outillage ou le matériel de défense fournis par le ministre ou par un mandataire de Sa Majesté au nom de celle-ci ou d'un gouvernement associé, ou acquis ou achetés pour le compte de Sa Majesté ou d'un gouvernement associé avec des fonds fournis par le ministre, un mandataire de Sa Majesté ou un gouvernement associé.

« fournitures d'État »
“government issue”

“defence subcontract”
« sous-contrat de défense »

“defence subcontract” means a contract or arrangement between any persons whomever,

(a) to perform all or any part of the work or service or make or furnish any article or material for the purpose of any other defence contract,

(b) under which any amount payable is contingent on the entry into of any other defence contract or determined with reference to any amount payable under or otherwise by reference to any other defence contract, or

(c) under which any part of the services performed or to be performed consists of soliciting, attempting to negotiate or negotiating any other defence contract or soliciting or negotiating for the purchase or sale of any articles, materials or services required to fulfil any other defence contract,

and, for greater certainty but not so as to limit the foregoing, for the purposes of this definition the expression “other defence contract” includes a defence subcontract;

“defence supplies”
« matériel de défense »

“defence supplies” means

(a) arms, ammunition, implements of war, vehicles, mechanical and other equipment, watercraft, amphibious craft, aircraft, animals, articles, materials, substances and things required or used for the purposes of the defence of Canada or for cooperative efforts for defence being carried on by Canada and an associated government,

(b) ships of all kinds, and

(c) articles, materials, substances and things of all kinds used for the production or supply of anything mentioned in paragraph (a) or (b) or for the construction of defence projects;

“Department”
« ministère »

“Department” means the Department of Public Works and Government Services;

“government issue”
« fournitures d’État »

“government issue” means machinery, machine tools, equipment or defence supplies furnished by the Minister or by an agent of Her Majesty on behalf of Her Majesty or on behalf of an associated government or acquired or purchased on behalf of Her Majesty or on behalf of an associated government with funds provided by the Minister or by an agent of Her Majesty or by an associated government;

« gouvernement associé » Le gouvernement de Sa Majesté au Royaume-Uni, tout autre gouvernement du Commonwealth, le gouvernement d’un pays membre de l’Organisation du Traité de l’Atlantique-Nord ou celui de tout autre pays dont la défense est déclarée par le gouverneur en conseil vitale pour celle du Canada.

« gouvernement associé »
“associated government”

« matériel de défense »

« matériel de défense »
“defence supplies”

a) Les armes, munitions, instruments de guerre, les véhicules, l’outillage mécanique et autre, les navires, véhicules amphibies, aéronautiques, animaux, articles, matières, substances et choses, requis ou utilisés pour la défense du Canada ou en vue d’efforts concertés, pour la défense, de la part du Canada et d’un gouvernement associé;

b) les navires de tous genres;

c) les articles, matières, substances et choses de toutes sortes utilisés pour la production ou la fourniture des objets visés aux alinéas a) ou b) ou pour la construction d’ouvrages de défense.

« ministère » Le ministère des Travaux publics et des Services gouvernementaux.

« ministère »
“Department”

« ministre » Le ministre des Travaux publics et des Services gouvernementaux.

« ministre »
“Minister”

« ouvrages de défense » Bâtiments, aérodromes, aéroports, chantiers maritimes, routes, fortifications de défense ou autres ouvrages militaires ou ouvrages requis pour la production, l’entretien ou l’entreposage de matériel de défense.

« ouvrages de défense »
“defence projects”

« prix » Y sont assimilés les tarifs pour quelque service que ce soit.

« prix »
“price”

« redevances » Droits de licence et autres paiements analogues à des redevances, exigibles ou non en vertu d’un contrat, qui sont soit calculés en pourcentage du coût ou du prix de vente du matériel de défense ou établis à un montant fixe par article produit, soit fondés sur la quantité ou le nombre d’articles produits ou vendus ou sur le volume d’affaires réalisé. La présente définition s’applique également aux demandes en dommages-intérêts pour violation ou usage de toute topographie enregistrée au sens du paragraphe 2(1) de la *Loi sur les topographies de circuits intégrés* ou de tout brevet ou dessin industriel enregistré.

« redevances »
“royalties”

<p>“Minister” « ministre »</p>	<p>“Minister” means the Minister of Public Works and Government Services;</p>	<p>« sous-contrat de défense » Contrat ou arrangement :</p>	<p>« sous-contrat de défense » “defence subcontract”</p>
<p>“order” « arrêté » ou « décret »</p>	<p>“order” means a general or specific order, requirement, direction or prescription in writing made or issued under this Act or a regulation;</p>	<p>a) prévoyant soit l’accomplissement, en tout ou en partie, de l’ouvrage ou du service, soit la fabrication ou la fourniture de tout article ou matière en exécution d’un autre contrat de défense;</p>	
<p>“price” « prix »</p>	<p>“price” includes rate or charge for any service;</p>	<p>b) aux termes duquel un montant exigible dépend de la conclusion d’un autre contrat de défense ou est établi par rapport à un montant payable en fonction ou aux termes d’un autre contrat de défense;</p>	
<p>“royalties” « redevances »</p>	<p>“royalties” includes</p> <p>(a) licence fees and all other payments analogous to royalties, whether or not payable under any contract, that are calculated as a percentage of the cost or sale price of defence supplies or as a fixed amount per article produced or that are based on the quantity or number of articles produced or sold or on the volume of business done, and</p> <p>(b) claims for damages for the infringement or use of any registered topography within the meaning of the <i>Integrated Circuit Topography Act</i> or of any patent or registered industrial design;</p>	<p>c) aux termes duquel une partie des services accomplis ou à accomplir consiste à solliciter, négocier ou tenter de négocier un autre contrat de défense, ou à solliciter ou négocier en vue de l’achat ou de la vente de quelque article, matière ou service requis pour l’exécution d’un autre contrat de défense.</p>	
<p>“sale” « vente »</p>	<p>“sale” includes consignment or other disposition of materials and the supplying of any service.</p> <p>R.S., 1985, c. D-1, s. 2; 1994, c. 47, s. 220; 1996, c. 16, ss. 60, 61; 2004, c. 25, s. 123(F).</p>	<p>Pour l’application de la présente définition, « autre contrat de défense » s’entend notamment d’un sous-contrat de défense.</p> <p>« vente » Y sont assimilées la consignation ou toute autre forme de disposition de choses, ainsi que la fourniture de services.</p> <p>L.R. (1985), ch. D-1, art. 2; 1994, ch. 47, art. 220; 1996, ch. 16, art. 60 et 61; 2004, ch. 25, art. 123(F).</p>	<p>« vente » “sale”</p>

PART 1

PROCUREMENT OF DEFENCE SUPPLIES

STAFF

Appointment and employment

3. (1) Such officers, clerks and employees as are necessary for the proper conduct of the business of the Department under this Act may be appointed in the manner authorized by law but the Minister may

(a) with the approval of the Treasury Board, employ such technical or other temporary employees as the Minister deems necessary and, with its approval, fix the remuneration of, and prescribe the travel or other expenses that may be incurred by, those employees; and

(b) employ any person to hold a position under this Act for a period not exceeding sixty days and fix the remuneration of, and prescribe the travel or other expenses that may be incurred by, that person.

PARTIE 1

FOURNITURE DE MATÉRIEL DE DÉFENSE

PERSONNEL

Nomination

3. (1) Le personnel nécessaire à l’exécution des travaux du ministère en application de la présente loi est nommé de la manière autorisée par la loi; toutefois, le ministre peut :

a) avec l’approbation du Conseil du Trésor, engager, à titre temporaire, le personnel technique et autre qu’il estime nécessaire et en fixer le traitement et les indemnités, notamment pour frais de déplacement;

b) engager quiconque sous le régime de la présente loi pour une période maximale de soixante jours et fixer le traitement et les indemnités, notamment pour frais de déplacement, de cette personne.

Exception	<p>(2) Where the Governor in Council decides that it is not practicable or is not in the public interest to apply subsection (1) to any position or employee or any class thereof, the Governor in Council may exclude that position or employee or that class in whole or in part from the provisions of subsection (1) and may make such regulations as the Governor in Council deems advisable with respect to employment therein, including appointment, organization, classification, rates of compensation and terms and conditions of employment.</p> <p>R.S., c. D-2, s. 3.</p>	<p>(2) Dans les cas où le gouverneur en conseil estime que l'application du paragraphe (1) n'est pas pratique ou encore qu'elle n'est pas dans l'intérêt public, il peut en exclure une charge, un préposé ou une catégorie de charges ou de préposés, en tout ou en partie, et prendre, à l'égard de l'emploi en cause, les règlements qu'il juge opportuns — notamment en ce qui a trait à la nomination, l'organisation, la classification, le barème de rémunération et les conditions de travail.</p> <p>S.R., ch. D-2, art. 3.</p>	Exception
Minister's functions dischargeable by persons deputed by Minister	<p>4. The Minister may authorize any person, on behalf and under the control and direction of the Minister, to do any act or thing or to exercise any power that the Minister may do or exercise under this Act.</p> <p>R.S., c. D-2, s. 4.</p>	<p>4. Le ministre peut habiliter quiconque à exercer, en son nom et sous son autorité, les attributions que lui confère la présente loi.</p> <p>S.R., ch. D-2, art. 4.</p>	Exercice des attributions du ministre par des personnes autorisées
Appointment of persons to advise and aid Minister	<p>5. The Governor in Council may appoint advisers and establish advisory and other boards, composed of such members as the Governor in Council may appoint, to advise or aid the Minister, which advisers and boards are to perform such duties and exercise such powers as he may designate, and may fix the remuneration and expenses to be paid to persons appointed under this section.</p> <p>R.S., c. D-2, s. 5.</p>	<p>5. Le gouverneur en conseil peut nommer des conseillers et constituer des comités consultatifs et autres, composés des membres qu'il désigne, pour aviser ou assister le ministre, lesquels exerceront les pouvoirs et fonctions conférés par lui; il peut en outre en fixer la rémunération et les indemnités.</p> <p>S.R., ch. D-2, art. 5.</p>	Nomination de conseillers et constitution de comités
Corporations	<p>6. (1) If the Minister considers that it is likely to facilitate the carrying out of the purposes and provisions of this Act, the Minister may, with the approval of the Governor in Council, procure the incorporation of any one or more corporations for the purpose of undertaking or carrying out any acts or things that the Minister is authorized to undertake or carry out under this Act.</p>	<p>6. (1) S'il estime que l'application de la présente loi s'en trouverait facilitée, le ministre peut, avec l'approbation du gouverneur en conseil, susciter la constitution de personnes morales pour la prise en charge ou l'exécution des mesures qu'il est autorisé à prendre en charge ou à exécuter sous le régime de la présente loi.</p>	Constitution de personnes morales
Removal and appointment	<p>(2) The Minister may remove any members, directors or officers of a corporation incorporated under this section at any time and may appoint others in their stead or may appoint additional persons as members thereof.</p>	<p>(2) Le ministre peut révoquer les membres, administrateurs ou cadres d'une personne morale constituée sous le régime du présent article, leur en substituer d'autres ou nommer des membres supplémentaires.</p>	Révocation et nomination
Agent of Her Majesty	<p>(3) A corporation incorporated under this section is for all purposes an agent of Her Majesty and it may exercise its powers only as an agent of Her Majesty.</p> <p>R.S., c. D-2, s. 6.</p>	<p>(3) Une personne morale constituée sous le régime du présent article est mandataire de Sa Majesté et ne peut exercer ses pouvoirs qu'à ce titre.</p> <p>S.R., ch. D-2, art. 6.</p>	Qualité de mandataire de Sa Majesté
Legal proceedings	<p>7. Actions, suits or proceedings in respect of any right or obligation that a corporation incor-</p>	<p>7. À l'égard des droits et obligations qu'elle assume pour le compte de Sa Majesté sous le</p>	Action en justice

porated under section 6 acquires or incurs on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the corporation in the name of the corporation in any court that would have jurisdiction if the corporation were not an agent of Her Majesty.

R.S., c. D-2, s. 6.

Audit

8. The accounts of a corporation incorporated under section 6 shall be audited by the Auditor General of Canada.

R.S., c. D-2, s. 6.

Minister may contract with corporation

9. (1) Notwithstanding that a corporation is an agent of Her Majesty, the Minister may, on behalf of Her Majesty, enter into a contract under this Act with the corporation as if it were not an agent of Her Majesty.

Contract with person to act as agent of Her Majesty

(2) The Minister may, with the approval of the Governor in Council, enter into a contract with a person authorizing that person to act, under the control and direction of the Minister, as an agent of Her Majesty, for any of the purposes for which the Minister is authorized to act on behalf of Her Majesty under this Act.

R.S., c. D-2, s. 7.

POWERS AND DUTIES OF THE MINISTER

Powers relating to all departments

10. (1) Subject to this Act, the Minister may exercise the powers conferred by this Act on the Minister in relation to defence supplies or defence projects required for the purposes of any department in, or portion of, the federal public administration.

Powers relating to National Defence

(2) The Minister shall have exclusive authority to buy or otherwise acquire defence supplies and construct defence projects required by the Department of National Defence, except

(a) defence projects to be constructed by persons in the employ of Her Majesty; and

(b) such defence supplies or defence projects as the Minister of National Defence or any other Minister designated by the Governor in Council may procure or construct at the request of the Minister.

nom de celle-ci ou le sien, une personne morale constituée sous le régime de l'article 6 peut ester en justice sous son propre nom devant les tribunaux qui seraient compétents si elle n'était pas mandataire de Sa Majesté.

S.R., ch. D-2, art. 6.

8. Les comptes d'une personne morale constituée sous le régime de l'article 6 sont vérifiés par le vérificateur général du Canada.

S.R., ch. D-2, art. 6; 1976-77, ch. 34, art. 30.

Vérification

9. (1) La qualité de mandataire de Sa Majesté que possède une personne morale n'empêche pas le ministre de conclure avec elle, pour le compte de Sa Majesté, un accord visé par la présente loi.

Contrats avec une personne morale

(2) Le ministre peut, avec l'approbation du gouverneur en conseil, conclure avec une personne un contrat autorisant celle-ci à agir sous son autorité, comme mandataire de Sa Majesté, à l'une des fins auxquelles il est lui-même autorisé à agir au nom de Sa Majesté au titre de la présente loi.

Personne habilitée à agir comme mandataire de Sa Majesté

S.R., ch. D-2, art. 7.

POUVOIRS ET FONCTIONS DU MINISTRE

10. (1) Sous réserve des autres dispositions de la présente loi, le ministre peut exercer les pouvoirs qui lui sont conférés par la présente loi à l'égard du matériel de défense ou des ouvrages de défense requis pour les besoins d'un ministère ou secteur de l'administration publique fédérale.

Pouvoirs relatifs à tous les ministères

(2) Le ministre a le pouvoir exclusif de faire l'acquisition, notamment par achat, du matériel de défense et de construire les ouvrages de défense que requiert le ministère de la Défense nationale, sauf:

Pouvoirs relatifs au ministère de la Défense nationale

a) les ouvrages de défense dont la construction relève de personnes à l'emploi de Sa Majesté;

b) le matériel ou les ouvrages de défense que le ministre de la Défense nationale ou un autre ministre désigné par le gouverneur en conseil peut acquérir ou construire à la demande du ministre.

Powers conferred by other Acts	<p>(3) The Minister may exercise powers and carry out duties and functions conferred or imposed on the Minister by or pursuant to any other Act.</p> <p>R.S., 1985, c. D-1, s. 10; 2003, c. 22, s. 158(E).</p>	<p>(3) Le ministre peut exercer les pouvoirs et fonctions qui lui sont dévolus sous le régime d'une autre loi.</p> <p>L.R. (1985), ch. D-1, art. 10; 2003, ch. 22, art. 158(A).</p>	Pouvoirs conférés par d'autres lois
Acts on behalf of associated government	<p>11. The Minister, if authorized by the Governor in Council to do so, may do or undertake, on behalf of an associated government, any act or thing that the Minister is authorized to do or undertake by this Act on behalf of Her Majesty.</p> <p>R.S., c. D-2, s. 9.</p>	<p>11. Avec l'autorisation du gouverneur en conseil, le ministre dispose, pour toute mesure qu'il prend pour le compte d'un gouvernement associé, des pouvoirs que la présente loi l'habilite à exercer pour le compte de Sa Majesté.</p> <p>S.R., ch. D-2, art. 9.</p>	Pouvoir d'agir pour le compte d'un gouvernement associé
ORGANIZATION OF INDUSTRY FOR DEFENCE		ORGANISATION DE L'INDUSTRIE POUR LA DÉFENSE	
Duties of Minister	<p>12. The Minister shall examine into, organize, mobilize and conserve the resources of Canada contributory to, and the sources of supply of, defence supplies and the agencies and facilities available for the supply thereof and for the construction of defence projects and shall explore, estimate and provide for the fulfilment of the needs, present and prospective, of the Government and the community with respect thereto and generally shall take steps to mobilize, conserve and coordinate all economic and industrial facilities in respect of defence supplies and defence projects and the supply or construction thereof.</p> <p>R.S., c. D-2, s. 10.</p>	<p>12. Il incombe au ministre d'inventorier, d'organiser, de mobiliser et d'utiliser rationnellement tant les ressources du Canada contribuant au matériel de défense et les sources d'approvisionnement de celui-ci que les organismes et installations pouvant participer à sa fourniture et à la construction d'ouvrages de défense; il lui incombe également de déterminer — pour le présent et le futur — et de satisfaire les besoins de l'État et de la collectivité à cet égard et, d'une manière générale, de prendre les mesures nécessaires à la mobilisation, l'utilisation rationnelle et la coordination des installations économiques, notamment industrielles, reliées aux matériel ou ouvrages de défense, ainsi que de la fourniture ou construction de ceux-ci.</p> <p>S.R., ch. D-2, art. 10.</p>	Fonctions du ministre
Minister may require returns to be made	<p>13. (1) The Minister may, by notice in writing, require any person referred to in subsection (2) to make periodical or other returns, at such times and containing such particulars as may be specified in the notice, with respect to defence supplies produced, dealt in or controlled by the person or that the person holds, has contracted for or contemplates acquiring, and the sources of supply thereof, and with respect to the facilities or accommodation that the person has available for or that are adaptable to the production or storage of defence supplies or the construction of defence projects.</p>	<p>13. (1) Le ministre peut, par avis écrit, en joindre aux personnes visées au paragraphe (2) de préparer, aux dates indiquées dans l'avis, des rapports, périodiques ou autres, renfermant les détails indiqués dans l'avis et portant sur le matériel de défense qu'elles produisent, qu'elles contrôlent, dont elles font le commerce, qu'elles détiennent, qui font l'objet d'un contrat conclu par elles ou qu'elles projettent d'acquérir, sur leurs sources d'approvisionnement en matériel de défense, ainsi que sur les installations ou l'aménagement matériel dont elles disposent pour la production et l'entreposage de matériel de défense ou la construction d'ouvrages de défense, ou qui y sont adaptables.</p>	Pouvoir d'exiger des rapports
Persons who are to make returns	<p>(2) The Minister may require the returns referred to in subsection (1) to be made by any person who</p>	<p>(2) Le paragraphe (1) s'applique aux personnes suivantes :</p> <p>a) celles qui produisent du matériel de défense, en font le commerce ou en ont le</p>	Personnes qui doivent préparer les rapports

(a) produces, deals in or has control of defence supplies or constructing defence projects; or

(b) carries on a business or possesses accommodation or facilities that, in the opinion of the Minister, is or are suitable for or can be adapted to producing, dealing in or storing defence supplies or constructing defence projects.

R.S., c. D-2, s. 11.

Other departments to assist Minister in obtaining information

14. Where a Government department has, under or pursuant to any Act, power to obtain, for any purpose, information as to matters with respect to which the Minister is empowered to require returns to be made, that department shall, if so required by the Minister, exercise that power for the purpose of assisting the Minister in obtaining any such information.

R.S., c. D-2, s. 12.

Stock-piling

15. The Minister may, on behalf of Her Majesty and subject to this Act, acquire, store, maintain, transport, sell, exchange or otherwise dispose of such materials or substances as may be designated by the Governor in Council as materials or substances essential to the needs of the community of which it is advisable to maintain stocks in order to safeguard against possible shortages thereof.

R.S., 1985, c. D-1, s. 15; 2004, c. 25, s. 124(F).

DEFENCE PROCUREMENT

Ministerial powers of procurement and disposal

16. The Minister may, on behalf of Her Majesty and subject to this Act,

(a) buy or otherwise acquire, utilize, store, transport, sell, exchange or otherwise dispose of defence supplies;

(b) manufacture or otherwise produce, finish, assemble, process, develop, repair, maintain or service defence supplies or manage and operate facilities therefor;

(c) construct or acquire defence projects and sell, exchange or otherwise dispose of them;

(d) arrange for the performance of professional or commercial services;

(e) purchase or otherwise acquire, sell, exchange or otherwise dispose of real or personal property or any interest in real or personal property, or an immovable or a

contrôle ou qui construisent des ouvrages de défense;

b) celles dont le ministre estime que les activités commerciales concernent la production, le commerce ou l'entreposage de matériel de défense ou la construction d'ouvrages de défense ou qui possèdent des installations ou un aménagement matériel susceptibles, selon le ministre, de convenir ou de s'adapter à ces opérations.

S.R., ch. D-2, art. 11.

14. Le ministère qui est légalement habilité à obtenir, à une fin quelconque, des renseignements sur des sujets à l'égard desquels le ministre peut exiger des rapports doit, à la demande de celui-ci, user de son habilitation pour l'aider à obtenir l'information pertinente.

S.R., ch. D-2, art. 12.

Aide d'autres ministères pour l'obtention de renseignements

15. Le ministre peut, au nom de Sa Majesté et sous réserve des autres dispositions de la présente loi, acquérir, entreposer, conserver ou transporter les matières ou substances que le gouverneur en conseil désigne comme indispensables aux besoins de la collectivité et dont il est opportun de maintenir des stocks afin d'en prévenir la pénurie, ou en disposer, notamment par vente ou échange.

L.R. (1985), ch. D-1, art. 15; 2004, ch. 25, art. 124(F).

APPROVISIONNEMENT POUR LA DÉFENSE

16. Le ministre peut, au nom de Sa Majesté et sous réserve des autres dispositions de la présente loi :

a) acheter ou acquérir par tout autre moyen, utiliser, entreposer ou transporter du matériel de défense, ou en disposer, notamment par vente ou échange;

b) fabriquer ou produire par tout autre moyen, finir, assembler, traiter, développer, réparer ou entretenir du matériel de défense ou administrer et exploiter des installations à ces fins;

c) construire ou acquérir des ouvrages de défense, ou en disposer, notamment par vente ou échange;

Pouvoirs du ministre

movable or any right in an immovable or a movable, that, in the opinion of the Minister, is or is likely to be necessary or desirable for any of the purposes mentioned in paragraph (a), (b) or (c);

(f) make loans or advances to or guarantee repayment of loans or advances made to a person

(i) for the purpose of providing assistance for the construction, acquisition, extension or improvement of capital equipment or works by, or to provide working capital for, that person for the manufacture, production, finishing, assembling, processing, development, storage, transportation, repairing, maintenance or servicing of defence supplies or for the construction or operation of defence projects, or

(ii) by way of advance payment on account of or to enable that person to carry out any contract entered into with the Minister under this Act or any defence contract; and

(g) do all such things as appear to the Minister to be incidental to or necessary or expedient for the matters referred to in the foregoing provisions of this section or as may be authorized by the Governor in Council with respect to the procurement, construction or disposal of defence supplies or defence projects.

R.S., 1985, c. D-1, s. 16; 2004, c. 25, s. 125.

Expenditures
from C.R.F.

17. There may be expended from the Consolidated Revenue Fund amounts for the following purposes:

(a) to pay the cost of acquisition, storage, maintenance or transportation of stocks of materials or substances purchased pursuant to section 15, or stocks of defence supplies acquired under section 16, that the Minister deems it is advisable to maintain; and

d) prendre des dispositions en vue de la prestation de services professionnels ou commerciaux;

e) acheter ou acquérir par tout autre moyen des biens meubles ou immeubles — ou tout droit afférent — ou des biens personnels ou réels — ou tout intérêt afférent — qui, à son avis, sont nécessaires ou utiles à la réalisation des objets mentionnés à l’alinéa a), b) ou c), ou sont susceptibles de le devenir, ou en disposer, notamment par vente ou échange;

f) consentir des prêts ou avances à toute personne — ou garantir le remboursement de prêts ou avances ainsi consentis :

(i) soit pour l’aider dans la construction, l’acquisition, l’agrandissement ou l’amélioration d’outillage fixe ou de biens de production ou lui fournir un capital d’exploitation pour la fabrication, la production, la finition, l’assemblage, le traitement, le développement, l’entreposage, le transport, la réparation ou l’entretien de matériel de défense, ou pour la construction ou le fonctionnement d’ouvrages de défense,

(ii) soit sous forme de paiement par anticipation fait aux termes d’un contrat qu’il a conclu avec cette personne dans le cadre de la présente loi ou d’un contrat de défense, ou pour permettre à cette personne d’exécuter un tel contrat;

g) prendre toute autre mesure qu’il juge accessoire, nécessaire ou utile aux matières visées au présent article ou que le gouverneur en conseil peut autoriser en ce qui a trait à la fourniture, la construction ou la disposition de matériel de défense ou d’ouvrages de défense.

L.R. (1985), ch. D-1, art. 16; 2004, ch. 25, art. 125.

17. Peuvent être prélevées sur le Trésor les sommes nécessaires au paiement des dépenses suivantes :

a) le coût d’acquisition, d’entreposage, de conservation ou de transport de stocks de matières ou substances achetées dans le cadre de l’article 15, ou de stocks de matériel de défense acquis sous le régime de l’article 16 et que le ministre juge à propos de maintenir;

Dépenses sur le
Trésor

	<p>(b) to pay the cost of acquisition, storage or maintenance of defence supplies requisitioned for payment out of an appropriation or by an agent of Her Majesty or to be paid for by an associated government, such amounts if paid to be recovered from the appropriation or from the agent or associated government.</p>	<p>b) le coût d'acquisition, d'entreposage ou de conservation de matériel de défense réquisitionné, pour paiement sur un crédit, par un mandataire de Sa Majesté ou par un gouvernement associé, ces sommes devant, si elles sont payées sur le Trésor, être recouvrées sur le crédit ou du mandataire ou gouvernement associé.</p>	
	R.S., c. D-2, s. 15; 1980-81-82-83, c. 17, s. 12.	S.R., ch. D-2, art. 15; 1980-81-82-83, ch. 17, art. 12.	
Expenditures from C.R.F.	<p>18. (1) There may be paid from the Consolidated Revenue Fund amounts for loans or advances authorized under this Act for any purpose other than to assist in the construction, acquisition, extension or improvement of capital equipment or works by any person.</p>	<p>18. (1) Peuvent être effectués sur le Trésor des paiements pour des prêts ou avances autorisés sous le régime de la présente loi autrement que pour aider à la construction, l'acquisition, l'agrandissement ou l'amélioration par quiconque d'outillage fixe ou de biens de production.</p>	Paiements sur le Trésor
Defence Production Loan Account	<p>(2) There shall be established in the accounts of Canada, for the purposes of this section, an account to be known as the Defence Production Loan Account and to which shall be charged all moneys to be paid pursuant to subsection (1).</p>	<p>(2) Pour l'application du présent article, est ouvert, parmi les comptes du Canada, un compte intitulé « Compte de prêts de la production de défense ». Ce compte peut être débité des paiements effectués en application du paragraphe (1).</p>	Compte de prêts de la production de défense
	1980-81-82-83, c. 17, s. 12.	1980-81-82-83, ch. 17, art. 12.	
Limitation on amount expended from C.R.F.	<p>19. (1) The aggregate of expenditures made pursuant to section 17 and subsection 18(1) shall not at any time exceed by more than one hundred million dollars the aggregate of amounts</p> <p>(a) received by the Receiver General from the disposition by the Minister of materials, substances or defence supplies referred to in paragraph 17(a);</p> <p>(b) charged to another appropriation in respect of costs referred to in paragraph 17(a), where the materials, substances or defence supplies may be acquired under that appropriation;</p> <p>(c) charged to an appropriation or paid by an agent of Her Majesty or by an associated government to pay costs incurred in respect of defence supplies payment for which was made out of the Fund under paragraph 17(b); and</p> <p>(d) received in repayment of a loan or advance referred to in subsection 18(1).</p>	<p>19. (1) Le total des dépenses faites conformément à l'article 17 et au paragraphe 18(1) ne peut à aucun moment dépasser de plus de cent millions de dollars le total des sommes suivantes :</p> <p>a) celles obtenues par le receveur général pour la disposition, par le ministre, de matières, substances ou matériel de défense visés à l'alinéa 17 a);</p> <p>b) celles imputées à d'autres crédits et relatives aux frais visés à l'alinéa 17 a), quand ces crédits permettent l'acquisition de matières, substances ou matériel de défense;</p> <p>c) celles imputées à des crédits ou payées par un mandataire de Sa Majesté ou par un gouvernement associé pour couvrir les frais exposés relativement à du matériel de défense, le paiement ayant été fait sur le Trésor au titre de l'alinéa 17 b);</p> <p>d) celles reçues en remboursement d'un prêt ou d'une avance visés au paragraphe 18(1).</p>	Plafonnement
	<p>(2) No loss sustained in respect of the acquisition and subsequent disposition of any defence supplies or on account of any loan or advance or otherwise may be credited against any</p>	<p>(2) Les pertes subies à l'égard de l'acquisition et de la disposition subséquente de matériel de défense, ou en raison d'un prêt ou d'une avance ou pour tout autre motif ne peuvent être</p>	Non-imputation des pertes au compte des dépenses sans affectation
No credit of loss against expenditure without appropriation			

expenditure made pursuant to section 17 or subsection 18(1), except pursuant to an appropriation by Parliament for that purpose.

R.S., 1985, c. D-1, s. 19; 2004, c. 25, s. 126.

Title to
government
issue or building

20. If, by the terms of a defence contract, it is provided that title to any government issue or building furnished or made available to a person or obtained or constructed by the person with money provided by Her Majesty or an agent of Her Majesty or an associated government remains vested or vests in Her Majesty or in an associated government free and clear of all claims, liens, prior claims or rights of retention within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, charges or encumbrances, then, despite any law in force in any province,

(a) the title to the government issue or building remains vested or vests in accordance with the terms of the contract free and clear of all claims, liens, prior claims or rights of retention within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, charges or encumbrances; and

(b) subject to any provisions in the contract, Her Majesty or the associated government in whom the title is vested is entitled at any time to remove, sell or dispose of the government issue or building.

R.S., 1985, c. D-1, s. 20; 2001, c. 4, s. 72; 2004, c. 25, s. 127(F).

Premature
rescission,
resolution or
termination of
contract

21. No person is entitled to damages, compensation or other allowance for loss of profit, direct or indirect, arising out of the rescission, resolution or termination of a defence contract at any time before it is fully performed if it is rescinded, resolved or terminated under a power contained in the contract or under a power conferred by or under an Act of Parliament.

R.S., 1985, c. D-1, s. 21; 2004, c. 25, s. 128.

Relief from
claims and
proceedings for
royalties

22. (1) The Minister may, on behalf of Her Majesty, contract with any person that Her Majesty will relieve that person from any claims, actions or proceedings for the payment of royalties for the use or infringement of any patent, registered industrial design or registered topography by that person in, or for the furnish-

portées au crédit du compte des dépenses faites sous le régime de l'article 17 ou du paragraphe 18(1) que si le Parlement affecte des crédits à cette fin.

L.R. (1985), ch. D-1, art. 19; 2004, ch. 25, art. 126.

20. Malgré toute règle de droit en vigueur dans une province, en cas de stipulation, dans un contrat de défense, selon laquelle Sa Majesté ou un gouvernement associé acquiert ou conserve la propriété de fournitures d'État ou d'une construction fournies ou mises à la disposition d'une personne, ou obtenues ou construites par elle avec des fonds fournis par Sa Majesté, un mandataire de celle-ci ou un gouvernement associé, libre de toute priorité ou droit de rétention selon le *Code civil du Québec* ou les autres lois de la province de Québec, de tout privilège ou de toute réclamation, charge ou servitude :

a) la propriété est acquise ou conservée conformément aux termes du contrat;

b) sous réserve de toute stipulation au contrat, Sa Majesté ou le gouvernement associé à qui appartiennent les fournitures ou la construction peuvent les transférer ou en disposer, notamment par vente.

L.R. (1985), ch. D-1, art. 20; 2001, ch. 4, art. 72; 2004, ch. 25, art. 127(F).

Propriété de
fournitures
d'État ou d'une
construction

21. Nul n'a droit au paiement de dommages-intérêts, d'une indemnité ou d'une autre allocation en raison d'une perte de profits, directe ou indirecte, résultant de la résolution ou la résiliation d'un contrat de défense survenue en tout temps avant que l'exécution en soit terminée si la résolution ou la résiliation a lieu conformément à un pouvoir prévu au contrat ou conféré en application d'une loi fédérale.

L.R. (1985), ch. D-1, art. 21; 2004, ch. 25, art. 128.

Résolution ou
résiliation de
contrats

22. (1) Le ministre peut, au nom de Sa Majesté, prendre envers une personne un engagement portant que Sa Majesté la libérera de toute réclamation, action ou poursuite en paiement de redevances pour l'emploi ou la violation par cette personne, dans le cadre de l'exécution d'un contrat de défense, d'un brevet, d'un des-

Immunité de
poursuite —
redevances

ing of any engineering or technical assistance or services to that person for, the performance of a defence contract.

sin industriel enregistré ou d'une topographie enregistrée, ou à l'égard d'une aide apportée ou de services techniques rendus à cette personne dans les mêmes circonstances.

Relief from royalty payments

(2) A person with whom the Minister has contracted under subsection (1) is not liable to pay royalties under any contract, statute or otherwise by reason of the use or infringement of a patent, registered industrial design or registered topography in, or in respect of engineering or technical assistance or services furnished for, the performance of a defence contract and to which the contract under subsection (1) applies.

(2) Une personne avec qui le ministre a conclu un engagement conformément au paragraphe (1) n'est pas tenue de verser des redevances au titre d'un contrat, d'une loi ou d'une autre autorité en raison de la violation ou de l'emploi, dans le cadre de l'exécution d'un contrat de défense auquel s'applique l'engagement visé au paragraphe (1), d'un brevet, d'un dessin industriel enregistré ou d'une topographie enregistrée, ou à l'égard d'une aide apportée ou de services techniques fournis pour l'exécution d'un tel contrat.

Exemption

Compensation for use

(3) A person who, but for subsection (2), would be entitled to a royalty from another person for the infringement or use of a patent, registered industrial design or registered topography or in respect of engineering or technical assistance or services is entitled to reasonable compensation from Her Majesty for the infringement, use or services and, if the Minister and that person cannot agree as to the amount of the compensation, it shall be fixed by the Commissioner of Patents.

(3) Quiconque, sans l'exemption prévue au paragraphe (2), aurait droit au paiement d'une redevance visée au paragraphe (1) a le droit de recevoir de Sa Majesté une indemnité raisonnable pour l'emploi, la violation, l'aide ou les services en cause et, à défaut d'entente entre le ministre et l'intéressé sur le montant de l'indemnité, celui-ci est fixé par le commissaire aux brevets.

Indemnisation

Appeal

(4) Any decision of the Commissioner of Patents under subsection (3) is subject to appeal to the Federal Court under the *Patent Act*.

(4) La décision du commissaire aux brevets peut faire l'objet d'un appel à la Cour fédérale aux termes de la *Loi sur les brevets*.

Appel à la Cour fédérale

Definition of "registered topography"

(5) In this section, "registered topography" has the same meaning as in the *Integrated Circuit Topography Act*.

(5) Dans le présent article, « topographie enregistrée » s'entend au sens du paragraphe 2(1) de la *Loi sur les topographies de circuits intégrés*.

Définition de « topographie enregistrée »

R.S., 1985, c. D-1, s. 22; 1994, c. 47, s. 220.

L.R. (1985), ch. D-1, art. 22; 1994, ch. 47, art. 220.

Accounts records and documents of contractor

23. A person who has entered into a defence contract shall

23. Quiconque a passé un contrat de défense doit :

Tenue de registres et conservation

(a) keep detailed accounts and records of the cost of carrying out the contract and retain those accounts and records until the expiration of six years after the end of the calendar year in which the contract is terminated or completed; and

a) tenir des comptes et registres détaillés du coût de l'exécution du contrat et conserver ceux-ci jusqu'à l'expiration des six années suivant la fin de l'année civile marquant la fin du contrat;

(b) on demand, produce to any person thereunto authorized by the Minister every account, record or document of any description with respect to the contract and with respect to his other business that may be required by the person so authorized and permit him to examine, audit and take copies of and ex-

b) produire, sur demande, à quiconque y est autorisé par le ministre, les comptes, registres ou documents de toute nature relatifs au contrat et à ses autres affaires que peut exiger la personne, et permettre à celle-ci de

tracts from the accounts, records or documents.

R.S., c. D-2, s. 19; 1980-81-82-83, c. 102, s. 2.

Re-assessment
of costs and
profits

24. (1) Where the Minister is satisfied, either before or after the performance, in whole or in part, of a defence contract, that the total amount paid or payable thereunder to any person is in excess of the fair and reasonable cost of performing the contract together with a fair and reasonable profit, the Minister may

(a) by order, reduce the amount that the person is entitled to retain or receive thereunder to such amount as the Minister may fix as the fair and reasonable cost of performing the contract together with a fair and reasonable profit thereon; and

(b) direct the person to pay to the Receiver General forthwith any amount that the person has received under the contract in excess of the amount so fixed.

Where person a
party to two or
more contracts

(2) Where a person is a party to two or more defence contracts, the Minister may,

(a) by one order, reduce the total amount that the person is entitled to retain or receive under any two or more or all of the contracts to such amount as the Minister may fix as the fair and reasonable cost of performing the contracts together with a fair and reasonable profit thereon, or

(b) by order, fix the amount that the person is entitled to retain or receive in respect of defence contracts, during such period as may be designated by the Minister, as the fair and reasonable cost of performing the contracts together with a fair and reasonable profit thereon during that period,

and the Minister may direct the person to pay to the Receiver General forthwith any amount that the person has received under the contracts or in respect of defence contracts during that period in excess of the amount so fixed in respect thereof.

Contractor
carrying on
other business

(3) In determining a person's fair and reasonable cost of performing defence contracts, or the fair and reasonable profit thereon, during any period, the Minister may, if during that period the person has carried on business other than the performance of defence contracts, determine for the purposes of this section such

les examiner, de les vérifier et de les reproduire, en tout ou en partie.

S.R., ch. D-2, art. 19; 1980-81-82-83, ch. 102, art. 2.

Nouvel
établissement du
coût et du
bénéfice

24. (1) Dans les cas où, avant ou après l'exécution totale ou partielle d'un contrat de défense, le ministre est convaincu que le montant global payé ou à payer à une personne aux termes du contrat dépasse un coût d'exécution juste et raisonnable auquel s'ajoute un bénéfice juste et raisonnable, il peut :

a) par arrêté, y substituer le montant qu'il juge approprié, compte tenu de ces deux facteurs;

b) ordonner, le cas échéant, à la personne de verser sans délai au receveur général la somme reçue aux termes du contrat en excédent du montant ainsi fixé.

(2) Lorsqu'une personne est partie à plusieurs contrats de défense, le ministre peut :

a) soit, par un seul arrêté, réduire le montant global que cette personne a le droit de retenir ou de recevoir, en vertu de plusieurs ou de tous les contrats en cause, au montant qu'il établit comme représentant le coût juste et raisonnable d'exécution des contrats, auquel il ajoute un bénéfice juste et raisonnable à leur égard;

b) soit, par arrêté, fixer le montant que cette personne a le droit de retenir ou de recevoir à l'égard de contrats de défense, au cours de la période qu'il fixe, comme coût juste et raisonnable d'exécution des contrats, auquel il ajoute un bénéfice juste et raisonnable pour la période en cause.

Partie à
plusieurs
contrats

Il peut en outre lui ordonner de verser sans délai au receveur général tout montant qu'elle a reçu, en vertu des contrats ou à l'égard de contrats de défense, durant la période visée, au-delà du montant ainsi fixé.

(3) Lorsqu'une personne, pendant une période donnée, s'est livrée à d'autres opérations que l'exécution de contrats de défense, le ministre peut, en vue d'établir pour cette période un coût juste et raisonnable d'exécution des contrats de défense par cette personne, ou un bénéfice juste et raisonnable à leur égard, fixer,

Entrepreneur se
livrant à d'autres
opérations

share or part of the gross income of, or the cost incurred by, the person during that period as is to be regarded as being attributable to that other business.

Minister not limited or bound by contractor's accounts or records

(4) Where the Minister is satisfied that the accounts or records kept by a person with respect to the performance of a defence contract, or of defence contracts during any period referred to in paragraph (2)(b) or subsection (3), are insufficient to enable the cost of performance of the contract or contracts to be determined or that the cost as shown by the accounts or records is not fair and reasonable, the Minister is not limited or bound by the accounts or records in fixing the fair and reasonable cost of performance of the contract or contracts.

Recovery of repayments directed by Minister

(5) An amount payable to the Receiver General pursuant to a direction of the Minister under this section is recoverable in the Federal Court or any other court of competent jurisdiction, with full costs of suit, as a debt due to Her Majesty.

R.S., c. D-2, s. 19; R.S., c. 10(2nd Supp.), s. 64.

Appeal to Federal Court

25. (1) A person affected by an order or direction made by the Minister under section 24 may, within the period of thirty days after the receipt of a copy of the order or direction, inform the Minister of the intention of that person to appeal against the order or direction to the Federal Court and shall, within that period, file a notice of the intention in the Court and, on the giving and filing of the notice, all proceedings under the order or direction shall be stayed pending disposition of the appeal by the Federal Court.

Appellant may be ordered to give security

(2) Where a person has appealed under this section against an order or direction, a judge of the Federal Court may, on application made on behalf of the Minister, order the person to give security to the satisfaction of the Court for payment of the amount payable under the order or direction, or of such part of that amount, as the judge deems advisable in the circumstances, if it appears to the judge that the person has assets to pay the amount required to be paid by the person under the order or direction in whole or in part but that the assets may be disposed of or converted, before the appeal is decided, in such way that assets may not be available to pay any

pour l'application du présent article, la part ou portion du revenu brut de cette personne, ou du coût subi par elle, au cours de la période en question, qu'il faut tenir pour attribuable à ces autres opérations.

(4) Le ministre, s'il est convaincu que les comptes ou registres tenus par une personne pour l'exécution soit d'un contrat de défense unique soit de plusieurs contrats de défense pendant la période visée à l'alinéa (2)b) ou au paragraphe (3) sont insuffisants pour permettre l'établissement du coût d'exécution du contrat ou des contrats en cause, ou que le coût indiqué par les comptes ou registres n'est pas juste et raisonnable, n'est ni limité ni lié par eux.

Caractère purement consultatif des registres de l'entrepreneur

(5) Le montant que le ministre ordonne de payer au receveur général sous le régime du présent article est recouvrable devant la Cour fédérale ou tout autre tribunal compétent, avec pleins dépens, à titre de créance de Sa Majesté.

S.R., ch. D-2, art. 19; S.R., ch. 10(2^e suppl.), art. 64.

Créance de Sa Majesté

25. (1) Tout intéressé peut, dans les trente jours de la réception d'un exemplaire d'un arrêté ou ordre ministériel formulé sous le régime de l'article 24, aviser le ministre de son intention d'interjeter appel de l'arrêté ou ordre à la Cour fédérale; il est d'autre part tenu, dans ce même délai, de produire un tel avis à la Cour fédérale, ce qui suspend les poursuites prises sous le régime de l'ordre ou de l'arrêté en attendant la décision du tribunal sur l'appel.

Appel à la Cour fédérale

(2) Lorsqu'un intéressé a, sous le régime du présent article, interjeté appel d'un arrêté ou ordre formulé par le ministre, un juge de la Cour fédérale peut, sur demande faite au nom du ministre, ordonner à l'intéressé de fournir un cautionnement, acceptable au tribunal, pour le paiement du montant exigible en vertu de l'arrêté ou de l'ordre ou de la partie de ce montant qu'il estime appropriée, s'il lui apparaît que l'appellant possède les biens voulus pour payer, en tout ou en partie, la somme que l'arrêté ou l'ordre l'astreint à verser mais qu'il est possible que ceux-ci soient convertis ou qu'il en soit disposé avant l'issue de l'appel de sorte que l'appellant n'ait plus les biens voulus pour ac-

Cautionnement

amount that may be owing as a result of the appeal.

Proceedings on appeal

(3) Where a notice of appeal has been filed in accordance with subsection (1), the Federal Court shall, on the application of the Minister or the appellant, give directions relative to the disposition of the appeal and, on the hearing of the appeal, shall have jurisdiction to review any order or direction of the Minister and may confirm the Minister's order or direction or vary the same as it deems just and the decision of the Court is final and conclusive.

R.S., 1985, c. D-1, s. 25; 2004, c. 25, s. 129(F).

26. to 29. [Repealed, 2000, c. 31, s. 2]

GENERAL

Non-disclosure of information

30. No information with respect to an individual business that has been obtained under or by virtue of this Act shall be disclosed without the consent of the person carrying on that business, except

(a) to a government department, or any person authorized by a government department, requiring the information for the purpose of the discharge of the functions of that department; or

(b) for the purposes of any prosecution for an offence under this Act or, with the consent of the Minister, for the purposes of any civil suit or other proceeding at law.

R.S., c. D-2, s. 23.

Powers of specific government companies

31. The Canadian Commercial Corporation or a company to which the *Government Corporations Operation Act* applies has capacity and power to make arrangements to act on behalf of the Minister under this Act or to enter into contracts to act as agent of Her Majesty under this Act and the making of those arrangements or the entry into those contracts and the carrying out thereof shall be deemed to be included in the objects and purposes for which the Corporation or the company was incorporated.

R.S., c. D-2, s. 24.

Paramount powers under this Act

32. The powers conferred by this Act may be exercised notwithstanding anything contained in the *Public Works Act*.

R.S., c. D-2, s. 25.

quitter toute somme due en conséquence de l'appel.

(3) En cas de dépôt d'un avis d'appel conformément au paragraphe (1), la Cour fédérale donne, à la demande du ministre ou de l'appellant, ses directives sur le règlement de l'appel et, lors de l'audition de celui-ci, elle est compétente pour réviser un arrêté ou un ordre formulé par le ministre. En outre, elle peut confirmer l'arrêté ou l'ordre ou le modifier selon ce qu'elle juge équitable. La décision de la Cour est définitive et sans appel.

L.R. (1985), ch. D-1, art. 25; 2004, ch. 25, art. 129(F).

26. à 29. [Abrogés, 2000, ch. 31, art. 2]

DISPOSITIONS GÉNÉRALES

Procédures en appel

30. Les renseignements recueillis sur une entreprise dans le cadre de la présente loi ne peuvent être communiqués sans le consentement de l'exploitant de l'entreprise, sauf :

a) à un ministère, ou à une personne autorisée par un ministère, qui en a besoin pour l'accomplissement de ses fonctions;

b) aux fins de toute poursuite pour infraction à la présente loi ou, avec le consentement du ministre, de toute affaire civile ou autre procédure judiciaire.

S.R., ch. D-2, art. 23.

Renseignements protégés

Pouvoirs de certaines sociétés du secteur public

31. La Corporation commerciale canadienne, ou une personne morale à laquelle s'applique la *Loi sur le fonctionnement des sociétés du secteur public*, a l'autorité et le pouvoir de conclure des arrangements pour agir au nom du ministre au titre de la présente loi ou pour conclure des contrats en vue d'agir comme mandataire de Sa Majesté sous le régime de la présente loi et la conclusion de ces arrangements ou de ces contrats et leur exécution sont réputées faire partie de la mission pour laquelle la Corporation ou la personne morale a été constituée.

S.R., ch. D-2, art. 24.

Suprématie de la présente loi

32. Les pouvoirs conférés par la présente loi s'exercent malgré toute autre disposition de la *Loi sur les travaux publics*.

S.R., ch. D-2, art. 25.

Orders and regulations	<p>33. The Governor in Council may make orders and regulations to carry out the purposes and provisions of this Part.</p> <p>R.S., 1985, c. D-1, s. 33; 2000, c. 31, s. 3.</p>	<p>33. Le gouverneur en conseil peut, par décret ou règlement, prendre toute mesure d'application de la présente partie.</p> <p>L.R. (1985), ch. D-1, art. 33; 2000, ch. 31, art. 3.</p>	Décrets et règlements
Regulations to be published	<p>34. (1) Every regulation, as defined in the <i>Statutory Instruments Act</i>, made under the authority of this Part shall be published in the <i>Canada Gazette</i> within 30 days after it is made.</p>	<p>34. (1) Les règlements, au sens de la <i>Loi sur les textes réglementaires</i>, pris en application de la présente partie, sont publiés dans la <i>Gazette du Canada</i> dans les trente jours de leur prise.</p>	Publication
Motion to revoke or amend	<p>(2) Where a regulation has been published in the <i>Canada Gazette</i> pursuant to subsection (1), a notice of motion in either House signed by ten members thereof and made in accordance with the rules of that House within seven days of the day the regulation was published or, if that House is not then sitting, on any of the first seven days next thereafter that that House is sitting, praying that the regulation be revoked or amended, shall be debated in that House at the first convenient opportunity within the four sitting days next after the day the motion in that House was made.</p> <p>R.S., 1985, c. D-1, s. 34; 2000, c. 31, s. 4.</p>	<p>(2) En cas de publication d'un règlement dans la <i>Gazette du Canada</i> en application du paragraphe (1), un avis de motion en demandant la révocation ou la modification, signé par dix membres de l'une des chambres et présenté à cette chambre conformément aux règles de celle-ci, dans les sept jours de la publication du règlement ou, si la chambre ne siège pas, dans les sept jours de séance ultérieurs de celle-ci, doit y être débattu à la première occasion favorable dans les quatre jours de séance suivant la date à laquelle la chambre a été saisie de la motion.</p> <p>L.R. (1985), ch. D-1, art. 34; 2000, ch. 31, art. 4.</p>	Motion de révocation ou de modification
PART 2		PARTIE 2	
REGULATION OF ACCESS TO CONTROLLED GOODS		RÉGLEMENTATION DE L'ACCÈS AUX MARCHANDISES CONTRÔLÉES	
INTERPRETATION		DÉFINITION	
Definition of "controlled goods"	<p>35. In this Part, "controlled goods" means the goods referred to in the schedule.</p> <p>2000, c. 31, s. 5.</p>	<p>35. Pour l'application de la présente partie, sont des «marchandises contrôlées» les marchandises dont les coordonnées figurent à l'annexe.</p> <p>2000, ch. 31, art. 5.</p>	Définition de «marchandises contrôlées»
APPLICATION		EXCLUSION DE CERTAINES PERSONNES	
Excluded persons	<p>36. This Part does not apply to a person who</p> <p>(a) occupies a position in the federal public administration, including a position in a federal Crown corporation, or is employed by Her Majesty in right of a province, who acts in good faith in the course of their duties and employment; or</p> <p>(b) is a member of a class of persons prescribed by regulation.</p> <p>2000, c. 31, s. 5; 2003, c. 22, s. 159(E).</p>	<p>36. Sont soustraites à l'application de la présente partie :</p> <p>a) pour l'accomplissement de bonne foi de ses fonctions, la personne qui occupe un poste dans l'administration publique fédérale ou dans une société d'État fédérale ou qui est employée par une province;</p> <p>b) la personne qui fait partie d'une des catégories de personnes prévues par règlement.</p> <p>2000, ch. 31, art. 5; 2003, ch. 22, art. 159(A).</p>	Personnes non assujetties à la présente partie
OFFENCES		INFRACTIONS	
Prohibitions	<p>37. (1) No person shall, unless the person is registered under section 38 or exempt from registration under section 39 or 39.1, knowingly</p>	<p>37. (1) À moins d'être inscrit en application de l'article 38 ou exempté d'inscription en application des articles 39 ou 39.1, nul ne peut dé-</p>	Interdiction de portée générale

examine or possess a controlled good or transfer a controlled good to another person.

libérément examiner des marchandises contrôlées, en avoir en sa possession ou en transférer à une autre personne.

Offence re person registered or exempt

(2) No person registered or exempt from registration shall knowingly transfer a controlled good to or permit the examination of a controlled good by a person who is not registered or exempt from registration.

(2) Il est interdit à la personne inscrite ou exemptée d'inscription de transférer délibérément des marchandises contrôlées à une personne qui ne l'est pas ou de lui permettre de les examiner en toute connaissance de cause.

Infraction visant certaines personnes

Definition of "transfer"

(3) In this section, "transfer" means, in respect of a controlled good, to dispose of it or disclose its content in any manner.

(3) Pour l'application du présent article, effectue un transfert quiconque aliène de quelque façon une marchandise contrôlée ou en communique le contenu.

Définition de « transfert »

Scope of registration

(4) The registration of a person extends to the officers, directors and employees authorized by the registered person in accordance with the regulations.

(4) L'inscription d'une personne s'étend aux administrateurs, cadres et employés autorisés par elle en conformité avec les règlements.

Portée de l'inscription

2000, c. 31, s. 5.

2000, ch. 31, art. 5.

REGISTRATION

INSCRIPTION

By Minister

38. (1) The Minister may, in accordance with the regulations, register any person who makes an application for registration and may, for that purpose, request any information that in the opinion of the Minister is necessary.

38. (1) Le ministre peut, en conformité avec les règlements, inscrire la personne qui en fait la demande; il peut à cette fin exiger les précisions qu'il juge nécessaires.

Pouvoir du ministre d'inscrire

Conditions

(2) A registration or its renewal is subject to conditions prescribed by regulation and any conditions that in the opinion of the Minister are appropriate.

(2) L'inscription et son renouvellement sont assortis des conditions réglementaires et des conditions que le ministre juge indiquées.

Conditions

Denial — security assessment

(3) The Minister may deny an application for registration or suspend, amend or revoke a registration on the basis of a security assessment prescribed by regulation.

(3) Le ministre conserve le pouvoir de refuser l'inscription, de la suspendre, de la modifier ou de la révoquer en raison d'une évaluation de sécurité faite en conformité avec les règlements.

Pouvoir de refuser : question de sécurité

Certificate of registration

(4) The Minister shall furnish a registered person with a certificate of that registration in a form that the Minister may specify.

(4) Il remet à la personne inscrite un certificat — dont il fixe la forme — attestant sa qualité.

Modalités pratiques

2000, c. 31, s. 5.

2000, ch. 31, art. 5.

EXEMPTION

EXEMPTION

By regulation

39. Individuals of a class prescribed by regulation are exempt from registration.

39. Sont exemptées d'inscription les personnes physiques qui font partie d'une catégorie prévue par règlement.

Exemption par règlement

2000, c. 31, s. 5.

2000, ch. 31, art. 5.

By Minister

39.1 (1) The Minister may, in accordance with the regulations, exempt an individual from registration and may, for that purpose, request any information that in the opinion of the Minister is necessary.

39.1 (1) Le ministre peut, en conformité avec les règlements, exempter d'inscription toute personne physique et exiger à cette fin les précisions qu'il juge nécessaires.

Exemption sur demande

Conditions	(2) An exemption or its renewal is subject to conditions prescribed by regulation and any conditions that in the opinion of the Minister are appropriate.	(2) L'exemption et son renouvellement sont assortis des conditions réglementaires et des conditions que le ministre juge indiquées.	Conditions
Denial — security assessment	(3) The Minister may deny, suspend, amend or revoke an exemption on the basis of a security assessment prescribed by regulation.	(3) Le ministre conserve le pouvoir de refuser l'exemption, de la suspendre, de la modifier ou de la révoquer en raison d'une évaluation de sécurité faite en conformité avec les règlements.	Pouvoir de refuser : question de sécurité
Certificate of exemption	(4) If an exemption is granted, the Minister shall furnish, in accordance with the regulations, a certificate of exemption in a form that the Minister may specify. 2000, c. 31, s. 5.	(4) S'il accorde l'exemption, le ministre délivre un certificat — dont il fixe la forme — en conformité avec les règlements. 2000, ch. 31, art. 5.	Modalités pratiques
REPORT		RENSEIGNEMENTS	
To Minister	40. Every registered person shall provide the Minister with any information prescribed by regulation, in the manner and time prescribed by regulation. 2000, c. 31, s. 5.	40. La personne inscrite est tenue de transmettre au ministre les renseignements exigés par les règlements, dans les délais et selon les modalités réglementaires. 2000, ch. 31, art. 5.	Rapport au ministre
INSPECTION		INSPECTION	
Designation of inspectors	41. (1) The Minister may designate persons or classes of persons whom the Minister considers qualified to act as inspectors for the purposes of this Part.	41. (1) Le ministre peut désigner, individuellement ou par catégorie, les personnes qu'il estime qualifiées pour remplir les fonctions d'inspecteur dans le cadre de la présente partie.	Désignation
Certificate of designation	(2) The Minister shall furnish every inspector with a certificate of designation as an inspector and, on entering any place or inspecting any thing, an inspector shall show the certificate to the person apparently in charge of the place or thing if the person requests proof of the inspector's designation. 2000, c. 31, s. 5.	(2) Le ministre remet à chaque inspecteur un certificat attestant sa qualité que ce dernier présente, sur demande, à la personne apparemment responsable de la chose ou des lieux qui font l'objet de sa visite. 2000, ch. 31, art. 5.	Certificat
Inspection of facilities	42. (1) For the purpose of ensuring compliance with this Part and the regulations, an inspector may at any reasonable time enter and inspect any place.	42. (1) En vue de faire observer la présente partie et les règlements, l'inspecteur peut procéder, à toute heure convenable, à la visite de tout lieu.	Inspection de tout lieu
Powers of inspector	(2) When conducting the inspection, the inspector may (a) require the attendance of and question any person who the inspector considers will be able to assist in the inspection; (b) require any person to produce for inspection or copying any document that the inspector believes contains any information relevant to the administration of this Part or the regulations;	(2) L'inspecteur peut, au cours de sa visite : a) exiger la présence des personnes qu'il juge à même de l'assister et les interroger; b) exiger, pour examen ou reproduction, la communication de tout document qui, à son avis, contient de l'information relative à l'application de la présente partie et des règlements;	Pouvoirs de l'inspecteur

(c) detain or remove any controlled good, until the inspector is satisfied that the requirements of this Part and the regulations are met; and

(d) require that any individual in charge of a place that is the subject of an inspection take any measures that the inspector considers appropriate.

Inspector may be accompanied

(3) While exercising any authority under this Part, an inspector may be accompanied by any other person chosen by the inspector.

2000, c. 31, s. 5.

c) retenir toute marchandise contrôlée, ou l'emporter, jusqu'à ce qu'il soit convaincu que sont satisfaites les exigences de la présente partie et des règlements;

d) ordonner au responsable des lieux qui font l'objet de sa visite de prendre les mesures qu'il estime indiquées.

(3) Dans l'exercice des attributions que lui confère la présente partie, l'inspecteur peut se faire accompagner d'une personne de son choix.

2000, ch. 31, art. 5.

Inspecteur accompagné d'un tiers

REGULATIONS

Governor in Council

43. The Governor in Council may make regulations for carrying out the purposes and provisions of this Part, including regulations

(a) respecting the classes of persons referred to in paragraph 36(b);

(b) respecting the procedure, under subsection 37(4), for authorizing officers, directors and employees to examine, possess or transfer controlled goods and the conditions they must satisfy to be authorized;

(c) respecting registrations under section 38 and exemptions from registration under sections 39 and 39.1, including

(i) the conditions of eligibility,

(ii) the procedure to be followed in making applications and the information to be set out in the applications,

(iii) the factors to be considered by the Minister when deciding whether a person may be registered or exempted,

(iv) the Minister's powers to renew, suspend, amend or revoke a registration or an exemption,

(v) the conditions of registration or the renewal of a registration, including the keeping of records, the requirement to report under section 40, and the establishment and implementation of security plans,

(vi) the conditions of exemption or the renewal of an exemption, and

(vii) security assessments made under subsection 38(3) or 39(3); and

POUVOIRS RÉGLEMENTAIRES

43. Le gouverneur en conseil peut prendre les règlements nécessaires à l'application de la présente partie, notamment en vue de régir :

a) les catégories de personnes qui sont exclues au titre de l'alinéa 36b);

b) la procédure à suivre, en application du paragraphe 37(4), pour autoriser les administrateurs, cadres ou employés à examiner, posséder ou transférer des marchandises contrôlées et les conditions auxquelles ceux-ci doivent satisfaire;

c) l'inscription au titre de l'article 38 et l'exemption au titre des articles 39 ou 39.1, y compris :

(i) les conditions d'admissibilité,

(ii) la marche à suivre pour faire une demande et les renseignements que celle-ci doit comporter,

(iii) les facteurs à prendre en compte par le ministre pour statuer sur la demande,

(iv) l'étendue des pouvoirs du ministre de renouveler, de suspendre, de modifier ou de révoquer l'inscription ou l'exemption,

(v) les conditions dont peuvent être assortis l'inscription et son renouvellement, notamment la tenue de livres, la transmission de renseignements au ministre en application de l'article 40 et l'élaboration et la mise en œuvre de plans de sûreté,

(vi) les conditions dont peuvent être assortis l'exemption et son renouvellement,

Règlements du gouverneur en conseil

(d) amending, on the joint recommendation of the Minister and the Minister of Foreign Affairs, the schedule.

2000, c. 31, s. 5.

(vii) l'évaluation de sécurité visée aux paragraphes 38(3) et 39(3);

d) la modification, sur recommandation du ministre et du ministre des Affaires étrangères, de la liste des marchandises contrôlées figurant à l'annexe.

2000, ch. 31, art. 5.

PART 3

OFFENCE AND PUNISHMENT

44. No person shall

(a) make any false or misleading statement or provide false or misleading information to an inspector or other person carrying out functions under this Act;

(b) destroy any record or document required to be kept under this Act or the regulations;

(c) make a false entry in a record required to be kept under this Act or the regulations or omit to make any entry in such a record;

(d) interfere in any way with any thing detained or removed by an inspector, except with the inspector's permission; or

(e) fail to comply with any reasonable request of an inspector or otherwise obstruct an inspector in the performance of the inspector's functions.

2000, c. 31, s. 5.

Other prohibitions

Serious offence

45. (1) Every person who contravenes section 37 is guilty of

(a) an offence punishable on summary conviction and liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding two years, or to both; or

(b) an indictable offence and liable to a fine not exceeding \$2,000,000 or to imprisonment for a term not exceeding 10 years, or to both.

Other offences

(2) Every person who contravenes any other provision of this Act or the regulations is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months, or to both.

PARTIE 3

INFRACTIONS ET PEINES

44. Il est interdit :

a) de faire une déclaration fautive ou trompeuse ou de fournir un renseignement faux ou trompeur à un inspecteur ou à une autre personne chargée de l'application de la présente loi;

b) de détruire des dossiers ou autres documents dont la tenue est exigée sous le régime de la présente loi et des règlements;

c) de faire de fausses inscriptions dans ces dossiers ou d'omettre d'y faire une inscription;

d) sans l'autorisation de l'inspecteur, de modifier, de quelque manière que ce soit, l'état ou la situation des objets qu'il a retenus ou emportés;

e) de manquer aux exigences que peut valablement formuler l'inspecteur agissant dans l'exercice de ses fonctions ou d'entraver son action.

2000, ch. 31, art. 5.

Autres interdictions

Infractions graves

45. (1) Quiconque contrevient à l'article 37 commet une infraction et encourt, sur déclaration de culpabilité :

a) par procédure sommaire, une amende maximale de 100 000 \$ et un emprisonnement maximal de deux ans, ou l'une de ces peines;

b) par mise en accusation, une amende maximale de 2 000 000 \$ et un emprisonnement maximal de dix ans, ou l'une de ces peines.

Autres infractions

(2) Quiconque contrevient à toute autre disposition de la présente loi ou aux règlements commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 25 000 \$ et un emprison-

Defence of due diligence	(3) For the purposes of subsection (2), no person shall be found to have contravened section 13 or 44 or the regulations if the person exercised all due diligence to prevent the contravention.	nement maximal de douze mois, ou l'une de ces peines.	(3) Pour l'application du paragraphe (2), nul ne peut être déclaré coupable d'avoir contrevenu aux articles 13 ou 44 ou aux règlements s'il a pris toutes les précautions voulues pour s'y conformer.	Moyen de défense
Continuing offence	(4) If an offence is committed or continued on more than one day, the person who commits it is liable to be convicted of a separate offence for each day on which the offence is committed or continued.		(4) Il peut être compté une infraction distincte pour chacun des jours au cours desquels se commet ou se continue une infraction.	Infraction continue
Factors to be considered when imposing sentence	(5) If an offender is convicted under subsection (1), the court imposing a sentence on the offender shall, in addition to considering any other relevant factors, consider the nature of the controlled goods that are the subject-matter of the offence.		(5) Lorsqu'un contrevenant est reconnu coupable en application du paragraphe (1), le tribunal qui inflige la peine prend en considération, en plus de tout autre élément pertinent, la nature des marchandises contrôlées objet de l'infraction.	Détermination de la peine
Limitation period for summary conviction offences	(6) Proceedings by way of summary conviction may be instituted at any time within, but not later than, three years after the day on which the subject-matter of the proceedings arose. 2000, c. 31, s. 5.		(6) Les poursuites par voie de procédure sommaire se prescrivent par trois ans à compter de la date de survenance de l'événement. 2000, ch. 31, art. 5.	Prescription
Officers, etc., of corporation	46. An officer or a director, or an agent or a mandatary, of a corporation that commits an offence under this Act is liable to be convicted of the offence if he or she directed, authorized, assented to, acquiesced in or participated in the commission of the offence, whether or not the corporation has been prosecuted or convicted. 2000, c. 31, s. 5; 2004, c. 25, s. 130(E).		46. En cas de perpétration par une personne morale d'une infraction à la présente loi, ses dirigeants, administrateurs ou mandataires qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participé, sont considérés comme des coauteurs de l'infraction. 2000, ch. 31, art. 5; 2004, ch. 25, art. 130(A).	Personnes morales et leurs dirigeants, etc.

SCHEDULE
(Section 35)

CONTROLLED GOODS LIST

1. The following goods listed in the schedule to the *Export Control List* made under section 3 of the *Export and Import Permits Act* are controlled goods:

- (a) Group 2: goods listed in item 2001 that are prohibited firearms, as defined in paragraph (c) of the definition “prohibited firearm” in subsection 84(1) of the *Criminal Code*;
- (b) Group 2: goods listed in item 2003 that are ammunition with a calibre greater than 12.7 mm;
- (c) Group 2: goods listed in items 2002 and 2004 to 2022;
- (d) Group 5: goods listed in item 5504; and
- (e) Group 6: all goods listed.

2000, c. 31, s. 7.

ANNEXE
(article 35)

LISTE DES MARCHANDISES CONTRÔLÉES

1. Marchandises figurant à l'annexe de la *Liste des marchandises d'exportation contrôlée* établie en application de l'article 3 de la *Loi sur les licences d'exportation et d'importation*:

- a) au groupe 2 : celles prévues à l'article 2001 qui tombent sous le coup de l'alinéa c) de la définition de « arme à feu prohibée » au paragraphe 84(1) du *Code criminel*;
- b) au groupe 2 : celles prévues à l'article 2003 qui sont des munitions d'un calibre supérieur à 12,7 mm;
- c) au groupe 2 : celles prévues aux articles 2002 et 2004 à 2022;
- d) au groupe 5 : celles prévues à l'article 5504;
- e) au groupe 6 : toutes les marchandises qui y sont prévues.

2000, ch. 31, art. 7.