

What Not To Do

Laws, regulations and policies impact what you can and cannot do while participating in the procurement process. This is a list of practices to avoid.

Contracting without a written contract or verbal authorization

Verbal contracts are risky and must be avoided in all but the most pressing emergency. Never tell a contractor to do something or agree with the supplier that something needs to be done that is different from what is written in the contract. This could be perceived as a verbal amendment to the contract. Only the contracting authority can change, via a formal amendment, a contract.



Contracting without proper authority

This practice occurs when a representative of the Crown commits the Government of Canada to a contract for goods or service without the prior necessary authority approvals related to Transaction Authority, in accordance with the *Financial Administration Act*. This is not allowed.

Retroactive or after-the-fact contracting or backdating a contract



This is the practice of approving and awarding a contract after the work has started or has sometimes been completed, usually without competition. This is in violation of the *Financial Administration Act*.

Contract splitting

Contract splitting is the practice of unnecessarily dividing a total requirement into a number of smaller contracts, to avoid controls on the duration of assignments or contract approval authorities. It can also include situations where an existing contract is amended to introduce new work that was foreseen at the outset but intentionally not included in the original contract. Splitting a requirement purely to avoid trade agreement obligations, to avoid competition, or to reduce approval levels is unacceptable. It must never be done.

Payrolling

This practice occurs when a representative of the Crown names a preferred individual to conduct services to a company bidding on proposals for professional service contracts or directs an individual to register with a particular bidder. This practice is unfair.



Inappropriate sole sourcing

This practice involves buying something without soliciting bids, as required by the *Government Contracts Regulations*. Government procurement should be wholly competitive, with only a few exceptions. Consult the [Government Contracts Regulations](#) to review these exceptions to the requirement to solicit bids.

Employer-employee relationships



Contractors must not be treated as employees as this would be contrary to and in conflict with the [Public Service Employment Act](#) and principles of common law dealing with employer-employee relationships. An employer-employee relationship results from an agreement by which a contractor agrees to work, full time or part time, for an organization for a specified or indefinite period of time, in return for salary or wages. The employer decides where, when and how the work will be done. Managers are responsible for ensuring that an employer-employee relationship does not develop during the term of the contract.

Below are other examples of practices to avoid:

- Supplying the equipment and tools required by the contractor
- Assigning work carried out by the contractor that becomes an integral part of operations
- Inviting contractors to staff meetings or staff social events

Consult section 16 of the [Contracting Policy](#) to determine if an employer-employee relationship exists.

Inappropriate use of emergency contracting

This practice involves using the emergency exception to address delays or bad planning. The only time emergency contracting can be used is during a pressing emergency where delay in taking action would be injurious to the public interest, such as these examples:

- An actual or imminent life-threatening situation
- A disaster endangering the quality of life or safety of Canadians
- A disaster resulting in the loss of life
- A disaster resulting in significant loss or damage to Crown property



[Appendix C of the Contracting Policy](#) outlines more detail and specifies the Emergency Contracting Authority Delegation Limit.

Inappropriate statements of work

Statements of work that read like job descriptions

This practice involves creating a statement of work that reads like an ongoing list of activities, resembling a job description rather than a work proposal with clear performance-based outputs, deliverables and timelines. It runs the risk of creating an employer-employee relationship.

Tailoring a statement of work to limit competition

This practice involves adjusting a statement of work so as to favour a particular supplier or group of suppliers or using a particular supplier's offering as a basis to prescribe the requirements, giving them an unfair advantage over other suppliers.

Scope creep

This practice involves allowing a contractor to perform services that go beyond the defined parameters of the statement of work specified in the contract. It also occurs when the statement of work is increased by the technical authority beyond its original intent. This is unfair to potential suppliers who would have initially bid or won the solicitation if the increased scope was part of the original solicitation.