

NAVAL POSTGRADUATE SCHOOL

Monterey, California



THESIS

**COMPARISON OF THE DEFENSE ACQUISITION
SYSTEMS OF CANADA AND THE UNITED STATES OF
AMERICA**

by

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December 1999

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AND
THE UNITED STATES OF AMERICA**

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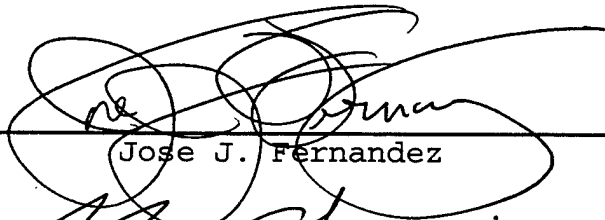
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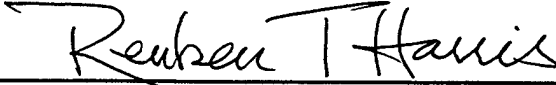
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I. INTRODUCTION

A. PURPOSE

The purpose of this paper is to conduct a macro-level comparison of the acquisition systems supporting the defense departments of Canada and the U.S. The research provides a broad overview of major similarities and differences between the two countries' acquisition systems. The study's comparative analysis seeks to identify policies and procedures that contribute to the effectiveness of the respective systems. Similarly, this comparative analysis will develop potential recommendations for adopting or modifying policies and procedures to contribute to more effective and efficient processing of future acquisition requirements in both countries.

B. BACKGROUND

Both Canada and the U.S. have comprehensive internal organizational structures devoted to carrying out federal acquisition. Additionally, both countries possess "external" political and legal frameworks that empower, direct and oversee their respective acquisition workforces. And, although similarly well grounded and mature, both systems are operating within environments that encourage or require acquisition reform.

Ongoing reformist efforts are the result of policies in both Canada and the U.S. that seek to streamline acquisition processes and to often model them, in varying degrees, to the best practices of commercial firms. By implementing reforms, both countries hope to improve the overall acquisition process and make more efficient and effective use of their acquisition workforce. Given the fiscal constraints resulting from post-Cold War declines in military budgets, both countries also see reform as a mechanism to make the

most of limited acquisition resources with the goal of providing the "best value" to the taxpayer and the customer.

C. AREAS OF RESEARCH

The objectives of this research paper are to:

- Outline and compare the political and legal environments that empower, direct and oversee the Canadian and U.S. acquisition organizations.
- Outline and compare Canadian and U.S. acquisition organizations and key responsibilities.
- Conduct a comparative analysis of major elements of Canadian and U.S. acquisition processes through contract award.
- Discuss those major process elements that are advantageous in the respective systems and recommend elements that either country may consider adopting from the other.

D. RESEARCH QUESTIONS

The primary research question is: "What are the similarities and differences between the defense acquisition systems of Canada and the U.S., and what are the reasons for these similarities and differences?" The subsidiary research questions are:

- What are the political and legal influences that shape the defense acquisition systems of Canada and the U.S.?
- What is the objective and what are the goals of the Canadian and U.S. defense acquisition systems, and to what extent are they similar or different?
- What organizational structures and resources are in place to accomplish the goals of the defense acquisition systems of Canada and the U.S., and what are the similarities and differences between these structures?
- What are the defense acquisition processes of Canada and the U.S., and what are the similarities and differences between these processes?

E. SCOPE AND LIMITATIONS

This research comprises a macro-level comparison of the acquisition systems of Canada and the U.S., with particular emphasis on how federal procurement is organized and conducted in support of national defense. The thesis will analyze major acquisition processes, with the exception of those comprising the post-award phase of acquisition. Detailed aspects of acquisition functions are considered only when they are necessary in order to convey an adequate overall understanding of larger functions being reviewed. The research provides a broad overview of both major similarities and differences between the two countries' acquisition systems. Additionally, following analysis of these similarities and differences, the thesis will make recommendations for improvement, where appropriate.

The U.S. Federal Acquisition Regulation (FAR), as well as appropriate U.S. supplemental guidance, is used as a basis for conducting a broad-level comparison with related Canadian acquisition regulations, such as those policies and procedures promulgated by the Treasury Board Secretariat (TBS) and Public Works and Government Services Canada (PWGSC).

F. METHODOLOGY

The methodology used in this thesis consists of the following:

- A literature search via the Internet, private and Government databases, books, and periodicals available in the Naval Postgraduate School Dudley Knox Library, and other available sources of relevant information.
- A site-visit to Canada's National Defence Headquarters in Ottawa. During the visit, additional thesis information was collected, and interviews were conducted with personnel within the Department of National Defence (DND) and other departments and agencies.

- Additional, new or follow-up interviews and questions via phone or through e-mail.

G. ORGANIZATION

This study is organized into five chapters. Chapter I presents the purpose and background of the study and outlines the author's objectives and methodology. Chapter II provides general background and discussion of the political and legal aspects of the Canadian and U.S. acquisition systems along with a comparison of each country's federal acquisition goals. Chapter III provides an overview and comparative analysis of both the structure and key roles of the acquisition organizations of Canada and the U.S. Chapter IV includes an assessment and comparison of reform efforts. Its primary focus is an assessment and comparison of selected elements within the phases of both countries' acquisition systems leading to contract award. And, finally, Chapter V draws conclusions, answers the research questions, makes recommendations, and suggests areas for future study.

II. BACKGROUND

A. INTRODUCTION

In both Canada and the U.S., basic statutes and regulations underlying federal Government acquisition are influenced or shaped by political and legal forces external to acquisition organizations. In Canada, the *Contracting Policy Manual* published by the Treasury Board Secretariat (TBS) illustrates this point:

Many of these administrative requirements follow from the applicability of other laws, policies, conventions, and procedures which are of themselves outside of the policy for contracting for goods, services, and construction. [Ref. 1: Subpart 4.2.1]

These influences are, in large part, a natural evolutionary by-product of Government's role as a sovereign entity in establishing a political and legal framework for authorizing, obligating and expending public funds to acquire necessary goods and services. Involvement in acquisition also allows Government to deploy fiscal policies or further socio-economic objectives.

This chapter examines and compares the roles of key organizations and officials engaged in executive, legislative, or judicial functions that shape Canadian and U.S. federal acquisition goals and processes. Overall, the Canadian political and legal environment will be covered in greater depth and used as a basis for critical comparison with U.S. equivalents in the latter section of the chapter. This chapter will not examine the details of the each country's underlying federal budget process; however, the bibliography provides a good source of documents on this topic. This chapter also briefly introduces some of the principal organizations involved in the internal execution of

acquisition processes. Chapter III expands upon the roles, structures, and key players of internal acquisition organizations.

B. CANADA

1. Federal Acquisitions Objective and Goals

A TBS policy statement describes the objective and goals of Canadian federal acquisition. The broad objective of federal contracting is "to acquire goods and services and to carry out construction in a manner that enhances access, competition, and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people." [Ref. 1:Part 1] The TBS policy statement refines this objective into more specific goals:

Government contracting shall be conducted in a manner that will:
(a) 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; (b) ensure the pre-eminence of operational requirements; (c) support long-term industrial and regional development and other appropriate national objectives, including aboriginal economic development; (d) comply with the Government's obligations under the North American Free Trade Agreement (NAFTA), the World Trade Organization Agreement on Government Procurement (WTO-AGP), and the Agreement on Internal Trade (AIT). [Ref. 1:Part 2]

As this chapter's introduction pointed out, political and legal environmental forces forge these federal contracting objectives and goals. The following sections will explore these political and legal influences and related organizations.

2. Political Environment

a. General Form of Government

Canada is a constitutional monarchy and a federal state with a democratic parliament. The executive, legislative, and judicial branches share the responsibility for governing at the federal level. The Prime Minister and Cabinet comprise the executive

branch. Parliament (the legislative branch) consists of the Queen, the House of Commons and the Senate. The members of the House of Commons are elected at least every five years, while the Prime Minister appoints Senators. [Ref. 9: Subpart 2.2]

b. The Prime Minister and Cabinet

The key decision-making official within the federal Government is the Prime Minister, the leader of the party holding the largest number of seats in the House of Commons. The official role of the Prime Minister is not described in law. However, the key powers of this office speak to the inherent political strength he or she wields. The Prime Minister [Ref. 9: Subpart 2.4.1]:

- Appoints Senators, members of Cabinet and other senior positions (Deputy Ministers, ambassadors, heads of Crown [Government] corporations, etc.).
- Organizes Government (shuffles, realigning departmental responsibilities, creating or closing agencies, etc.).
- Advises the Governor General on the need and date for a general election.
- Determines (sets) overall Government priorities.
- Exercises the strongest voice in Cabinet; facilitates and manages Cabinet debate.
- Provides the directing force for parliamentary debate.

By directly or indirectly exercising these powers, the Prime Minister can significantly affect acquisition policy. By appointments, the Prime Minister places personnel who favor his or her policies into positions of influence. By setting priorities, the Prime Minister can direct or significantly affect the launch or approval of Government-wide acquisition-related agenda, such as Acquisition Reform, or more specific issues such as defense projects.

As a group, the Prime Minister and Ministers in Cabinet make all major Government policy decisions. The Prime Minister usually establishes Committees of Cabinet to handle streams of specific policy issues. The Treasury Board is an example of one such committee. Although Cabinet Committees with varying responsibilities have always existed, only the Treasury Board (TB)—the financial control committee for Government expenditures—is established in legislation (the *Financial Administration Act*). Others are established "at [the] pleasure" of the Prime Minister. [Ref. 9: Subpart 2.4.4] The TBS was established to provide administrative support to the ministers who form the TB and is made up of Public Service staff.

The Prime Minister's appointed Cabinet can develop regulations or "Orders in Council" that affect contracting policy. The TBS's *Contracting Policy Manual* lists only one such regulation, *SOR/86-1123, The Treasury Board Delegation of Powers Order*, which clarifies TB contract approval requirements. Since only the Cabinet approves regulations, the Prime Minister, via Cabinet appointments and other political influence, has a large amount of leverage in pushing through any regulations that he or she desires. [Ref. 3] The roles of the TB and its Secretariat will be discussed in more detail later.

c. Privy Council Office

Among a group of Government policy organizations known as central agencies, the Privy Council Office (PCO) is a powerful organization that fills a key advisory role to the Prime Minister. Even so, the PCO has no independent research capability and, as such, appears to "take in more information than it gives out." [Ref. 9: Subpart 3.2.1] Because PCO executes a strong support role for the Prime Minister and

because it exercises leadership in major Government initiatives, the PCO has both subtle, indirect and significant, direct capability to affect the acquisition process. Principally, PCO advises the Prime Minister on major, Government-wide policy issues and provides secretariat support for decision-making by the Prime Minister's Cabinet and Cabinet Committees. PCO also spearheads the major management initiative "La Relève," begun in 1997, that "targets Government and the Public Service, seeking to modernize service delivery, improve policy capacity, and create a dynamic, flexible organization capable of meeting the needs of the future." [Ref. 9: Subpart 3.2.1] This initiative and other major Government management initiatives fall under the purview of the PCO and its head, the Clerk of the Privy Council, the most senior public servant, who is also Deputy Minister to the Prime Minister and Head of the Public Service. [Ref. 9: Subpart 3.2.1]

d. Parliament

Parliament, comprised of the Queen, the House of Commons (or "Commons"), and the Senate, makes up the legislative branch of the federal Government. The Commons, comprised of 301 elected members, is popularly elected, while the appointed Senate ideally provides "sober second thought" to legislation. [Ref. 9: Subpart 2.3] Within Parliament, four types of committees—Standing Committees, Special Committees, Legislative Committees, and the "Committee of the Whole" handle aspects of the legislative process. "Royal Assent and Proclamation" is the final stage at which a bill becomes law. [Ref. 9: Subpart 2.3] Additional details on the legislative process and discussion of legislative terminology can be obtained via the following bibliography references: *The Dynamics of Canadian Federalism in Canadian Politics*; *The Politics of Public Spending in Canada*; and *Canadian Public Policy: Ideas, Structures, Process*.

Parliamentary (legislative) Acts affecting the acquisition process will be considered in subpart II.B.3, legal environment.

e. The Treasury Board and its Secretariat

The TB, as a Cabinet Committee, is responsible for the Government's expenditure budget and general management. The TB's leadership consists of the President of Treasury Board (a Cabinet minister), the Minister of Finance, and four other ministers chosen by the Prime Minister. [Ref. 9: Subpart 3.2.2] At the time of this research, the TB leadership included the Minister responsible for Infrastructure (President); Minister of National Defence (MND); Minister of Public Works and Government Services Canada (PWGSC); Minister of Fisheries and Oceans; and Minister of Veterans Affairs—also Secretary of State. [Ref. 14]

Although the TBS was originally established to provide support to the TB, over the years its role as primary manager of the Government's financial, human, and material resources expanded, leading to an increase in size and separate departmental status. [Ref. 9: Subpart 3.2.2] However, TBS's mandate still shows the subordinate position the Secretariat holds relative to the Treasury Board:

As the administrative arm of the Treasury Board, the Secretariat has a dual mandate: to support the Treasury Board as a committee of ministers and to fulfil the statutory responsibilities of a central Government agency. It is headed by a Secretary-Comptroller General, who reports to the President of the Treasury Board. [Ref. 15]

As the TB's administrative arm, the TBS functions, per its mandate, in the four primary areas of expenditure management, personnel management, financial and information management, and internal administration. Logically, the Secretariat's areas of responsibility, since it implements and administers TB policies, closely mirror this

Cabinet Committee's focus, per mandate, on expenditure management (budget), general Government management, and Public Service employment. [Ref. 14][Ref. 15] Some of the key TB/TBS functions will be elaborated to illustrate the Committee/Department's zone of responsibility, which includes contracting policy.

In its role as employer or personnel manager for most of the federal Public Service, TBS sets compensation levels, manages collective bargaining, and is responsible for employment equity, conflict of interest, and other employee-related policies. Nearly 50 percent of TBS staff is dedicated to human resource management functions. [Ref. 9: Subpart 3.2.2]

In its budget and financial roles, TBS liaisons with departments to ensure that they do not exceed their budgets. The President of Treasury Board also submits annually to Parliament the Main Estimates, known as the "Blue Books (internal budget of Government)." [Ref. 9: Subpart 3.2.2] Through its comptroller general function, TBS assists departments in running their programs efficiently and effectively. The Comptroller General Division also aids departments in establishing and maintaining sound financial management, audit, and program evaluation practices. [Ref. 9: Subpart 3.2.2]

In the role of internal administration and Government management, TBS establishes administrative policies that cover a spectrum of Government functions. Foremost to this research is TBS's policy on contracting, which will be discussed further within this chapter and the thesis.

As this chapter concerns political and legal influences to acquisition, a review of TBS priorities will help when comparing the direction of the political

establishment and its influence on the acquisition workforce. Current Government-wide initiatives in which TBS plays a major role include Alternative Service Delivery (ASD), Departmental Business Plans and Government Accountability, Service Quality, Portfolio Management, Collective Bargaining, Universal [personnel] Classification System, and Information Management and Technology in Government. [Ref. 9:subpart 3.2.2]

ASD is of some concern to virtually all Public Service employees and to many members of the Canadian Forces. For example, the Department of National Defence (DND) has used ASD in awarding service contracts for non-core functions and to streamline in-house functions. [Ref. 10: p. 47] Interestingly, a Senior TBS official indicated that the TB had had an ASD section but lost and never regained it following personnel cuts in the early 1990s. [Ref. 2]

Although the TBS formally establishes contracting policy, most contracting officers in the principal contracting branch of Canada's central contracting department, the PWGSC Supply Operations Service Branch (SOSB), are not familiar with TBS policy and generally see only the contracting policy established in the *PWGSC Supply Manual*. [Ref. 5: p. 40; 46] This assertion is one conclusion of SOSB Business Process Renewal (BPR) Team, a group formed to review acquisition processes within SOSB. [Ref. 5: p. 1] This finding illustrates a potential disconnect or weak "enforcement link" between the policies of TBS and PWGSC. The organization and culture of PWGSC, SOSB, and other elements of BPR Team's findings will be explored in more detail in later chapters.

f. Department of Finance

The Department of Finance "is responsible for providing the Government with analysis and advice on the broad economic and financial affairs of Canada." [Ref 9: Subpart 3.2.3] The department's main objective is to assist the Government, the Minister of Finance and the Secretary of State for International Financial Institutions in developing and implementing fiscal and other economic policies that support Canada's economic and social goals. As such, the Department of Finance is positioned to exert significant influence in lobbying for regional and domestic considerations in acquisition (source selection). [Ref. 9: Subpart 3.2.3]

Finance also interacts with other Government departments for harmonious coordination of all federal initiatives that have an impact on the economy. The Minister of Finance also reports to Parliament on the activities of a number of other agencies, including the Canadian International Trade Tribunal (CITT). [Ref 9: Subpart 3.2.3] The functions of this quasi-judicial body in hearing procurement challenges (protests) are significant to acquisition and will be explored further in subpart II.B.3, legal environment.

g. Industry Canada

Industry Canada (IC) is an agency dedicated to Canadian socio-economic objectives. Even so, IC is not listed in the Canadian Institute on Governance's overview of Canadian Government nor is IC mentioned within the TBS's *Contracting Policy Manual* or its appendices. [Ref. 1][Ref. 9] However, a Senior TBS official, when asked his opinion of specific organizations that establish the basic mechanics of the acquisition process, concluded that IC had a significant impact on the acquisition process. "If the

impact/contribution of TB, PWGSC and IC were considered on the acquisition process, TB would be one, PWGSC would be one and IC would be one-half." [Ref. 2] In a similar vein, a senior Canadian Military official compared IC to U.S. industry lobbyists stating that "IC is like having the lobbyists in house." [Ref. 27]

Industry Canada's departmental mandate, according to the organization's Web site is: "[to] help make Canadians more productive and competitive in the global, knowledge-based economy" via policies, programs and services that help create an economy that:

- provides more and better-paying jobs for Canadians;
- supports stronger business growth through sustained improvements in productivity; and
- gives consumers, businesses, and investors confidence that the marketplace is fair, efficient, and competitive. [Ref. 4]

The head of IC, the Canadian Minister of Industry, amplifies this mission objective, stating that, as a member of the Industry Portfolio of 13 departments and agencies, his department is working with partners and stakeholders to promote growth in productivity, employment, and income and "thereby helping Canada to improve its standard of living." [Ref. 4] Industry Canada's challenge to Government and industry—to become world leaders in E-Business—is a potential catalyst for change in current acquisition processes. [Ref. 5: p. 83-84]

h. Oversight

(1) Office of the Auditor General (OAG). This agency, which is independent of the Government, reports to Parliament and exercises strong influence across Government and the Public Service. "The OAG also is the watchdog of

Government performance, assessing practices with an eye to value for money." [Ref 9: Subpart 3.3.1] This means that OAG investigates Government practices to ensure that financial, human, and physical resources are managed efficiently, effectively and frugally. It also means that OAG closely watches for breaches in accountability and ensures that the Government and its employees are being held accountable for their actions. The "expanding role of the OAG has provoked much controversy, first because comprehensive auditing is a subjective exercise, and second because evaluation of programs necessitates a discussion of political objectives—traditionally the purview of politicians." [Ref 9: Subpart 3.3.1]

The SOSB BPR Team report refers to one unnamed OAG report regarding a major management renewal program, which began in 1994, and the impact of this renewal effort on defense capital acquisitions. This OAG report focuses on the need for interaction among key players in the acquisition process. "Because equipment acquisition is a Government-wide process, the DND is working with PWGSC, IC, and the private sector to improve Government practices." [Ref. 5: p. 14]

(2) Departmental Performance Reports. The House of Commons requires departments and agencies to provide an annual Departmental Performance Report, another tool for extending political oversight to acquisition processes. [Ref. 8: p. i] The Planning, Performance, and Reporting Sector of TBS oversees and manages this report, which, along with other related reports, establishes a climate of "results-based accountability." Simply translated, this means that Departmental Performance Reports outline accomplishments achieved against previously established performance expectations and commitments. Additionally, these reports

provide political and public visibility for expenditures of funds to acquire supplies, services, and defense projects. Along this vein, the DND Performance Report is presented by the MND and posted on a web site maintained by TBS. [Ref. 8]

DND's 1997/98 fiscal year report casts light on the prevalent fiscal climate under which Canadian defense acquisition operates. The report's executive summary stresses that acquisition programs for new equipment "will enhance operational efficiency and provide Canadians with the best value for their defence dollars." [Ref. 8: p. 2]. The report also mentions that "the Department and the Canadian Forces are experiencing a 23% decline in the defence budget between fiscal years 1993-94 and 1998-1999. . . . [A] 30% drop in purchasing power after inflation is taken into account." [Ref 8: p. 2] Finally, DND's report makes several references to project expenditures, such as a C\$31 million cooperative initiative with the North American Technology and Industrial Base Organization, which is expected to yield C\$4.2 million in direct contracts to Canadian Industry. [Ref. 8: p. 20]

3. Legal Environment

Legal influences on the acquisition process, as they relate to establishing a source for or interpretation of federal contract law, are addressed on two principal fronts. First, this section examines the role of statutes and related regulations and policies. Second, it discusses the role of the CITT in interpreting contract provisions and setting precedents for acquisition. Interviews conducted support the idea that the Canadian Common Law (federal) courts have had minimal involvement in interpreting contract provisions and setting precedents for acquisition-related acts and regulations. Nevertheless, this section will give a brief overview of this topic within the CITT discussion. [Ref. 2][Ref. 16] The

Canadian Constitution will not be discussed or interpreted for potential contributions to defining contract law. The U.S. Constitution does not specifically address the Government's right to enter into contracts. However, in 1831, "the Supreme Court, in a 'landmark' decision (*U.S. versus Tingey*), declared that the Government has inherent powers, based on sovereignty, to enter into contracts and implied powers, as necessary for the proper performance of its duties." [Ref. 12: Subpart 3.1.1]

a. Statutory Policies

Under the heading of references for contracting policy, the TBS's *Contracting Policy Manual* lists, in addition to the *Financial Administration Act*, 12 acts, eight specific regulations and policies, and the "policies and guidelines" found in the *Treasury Board Manual* as basic references for federal contracting. [Ref. 1:Part 6] This section also refers to "general policies related to avoidance of price fixing" as applicable to contracting. The *Contracting Policy Manual* also illustrates the need to consider other provisions of statutory law, as well as evolving judicial decisions, that establish precedence in the application of the law. [Ref. 1: Subpart 6.1.3] In general, procurement-related statutes are much less prevalent in Canadian than in U.S. legislation. [Ref. 2] Examples of U.S. statutes will be reviewed later.

b. Administrative Law

Administrative law in the U.S. would include Executive Orders (EOs) signed by the President, rules and regulations, decisions of the General Accounting Office's (GAO) Comptroller General, and decisions of administrative law judges. [Ref. 12: Subpart 3.1.3] Some examples of Canadian administrative law were included in the mention of rules and regulations associated with statutes and other fundamental

references for TB contracting policy. Below is a more detailed look at Canadian legal influences to acquisition.

The Treasury Board Delegation of Powers Order (SOR/86-1123) is a close approximation to a U.S. Presidential EO, for which Canada has no direct equivalent. As the review of the relationship between the Prime Minister and his/her Cabinet brought out, this Cabinet functions "collectively," as an approximate extension of the powers of the Prime Minister. Since the Cabinet approves regulations such as SOR/86-1123, the Prime Minister, through his or her influence in the Cabinet, can effect the formation and approval of regulations in a manner similar to the EO process.

Unlike the U.S., in Canada, the comptroller general functions, located within the Treasury Board, do not include a ruling body like the U.S. GAO. Nor does Canada possess Boards of Contract Appeals. The U.S. imposed a condition in the 1989 U.S.-Canada Free Trade Agreement (FTA) negotiations requiring Canada to establish an equivalent to the Board of Contract Appeals. [Ref. 10: Subpart 4.013] However, that responsibility was assigned to the already existing CITT. Therefore, an analogous organization does exist—Decisions on administrative law relating to acquisition and contracting are made by the CITT.

The CITT is empowered by the *CITT Act* and its regulations to conduct judicial and advisory functions relating to domestic and international trade. Of six primary CITT mandates, one is of significant acquisition interest: "[The CITT shall] conduct inquiries into complaints by potential suppliers concerning procurement by the federal Government that is covered by the NAFTA, the AIT, and the WTO-AGP." [Ref. 6: p. 1] Organized to execute this mandate, the CITT has taken on the role of an

independent, quasi-legal administrative tribunal ruling on procurement challenges (protests) regarding any aspect of the procurement process. It fulfills this role by conducting inquiries, and making appropriate determinations. [Ref. 6: p. 1][Ref. 7: p. 6]

In making determinations, CITT considers whether the Government has complied with the requirements of NAFTA, the AIT, and/or WTO-AGP and other procedural requirements, as prescribed in the Regulations. [Ref. 7: p. 6] The CITT guide indicates that challenges [protests] will be considered regarding "any aspect of the procurement process." [Ref. 7: p. 9] However, complaints falling outside the boundaries of the trade agreements should be addressed to the responsible Government institution or the appropriate court. [Ref. 7: p. 6] Since the trade agreements' coverage is so pervasive, particularly for Canadian bidders, appeals to the federal courts regarding procurement issues are rarely worthwhile. Thus, appeals to federal courts are rare. In the few cases in which CITT decisions have been appealed to federal courts, the court has upheld the CITT ruling each time. [Ref. 16]

In ruling on a challenge, CITT may order the Government institution to postpone award until the complaint is resolved. However, CITT must rescind the order if the Government institution certifies, in writing and within stipulated time limits, that the procurement is urgent or that delaying the award would be contrary to the public interest. CITT is not empowered to delay performance of an awarded contract. [Ref. 7: p. 15] CITT may issue determinations regarding a challenge at any time during the review process; these may consist of appropriate remedies in the form of awards and recommendations for valid complaints. "Recommendations are to be implemented to the greatest extent possible." [Ref. 7: p.15]

The SOSB BPR report uses a CITT statistic to illustrate the risk-averse culture of the SOSB in terms of managing conflicts between Treasury Board policy and trade agreements.

Measured in terms of CITT challenges, the [contract] approval process has become extremely effective at eliminating risk, with a record of less than one chance in ten thousand (0.08%) of a federal Government contract being challenged. [Ref. 5: p. 38] [Ref. 16]

In 1997, 23 of 5,500 total DND contracts over C\$25,000 were challenged at CITT with two challenges upheld (0.42%). [Ref. 23:slide 9]

In recommending changes to the procurement process within PWGSC, the BPR Project Team suggests conducting a statistical and qualitative review of CITT challenges, with the objective of managing risk and increasing efficiency. The BPR Team concludes that any resulting profiles could be used as benchmarks to determine if a legal specialist should be consulted during pre-award contract review. [Ref. 5: p. 40]

All contract disputes do not necessarily lead to CITT challenges, and PWGSC has its own internal Contract Claims Resolution Board (CCRB) to provide dispute resolution services. [Ref. 11: p. 1] The role of CCRB and its relationship with CITT will be discussed in more detail in Chapter IV.

C. UNITED STATES

1. Federal Acquisition Objective and Goals

The vision (objective) and goals of U.S. Federal acquisition are included in the Federal Acquisition Regulation (FAR)'s "statement of guiding principles." A common theme to all aspects of these FAR principles is the emphasis on teamwork as a means to implement the vision and goals.

The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility. [Ref. 17: Subpart 1.102(a)]

The FAR goes on to list implementing strategy or general goals supporting this vision.

The Federal Acquisition System will (1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example (i) Maximizing the use of commercial products and services; (ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and (iii) Promoting competition; (2) Minimize administrative operating costs; (3) Conduct business with integrity, fairness, and openness; and (4) Fulfill public policy objectives. [Ref. 17: Subpart 1.102(b)]

Refining the concept of empowerment, the FAR states:

In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy, or procedure is a permissible exercise of authority. [Ref. 17: Subpart 1.102(d)]

The U.S. and Canadian visions and goals are very similar. Minor differences include the manner or context of the goal statement and, in some instances, differences in specific goals, such as the U.S.'s emphasis on past performance. The two countries principally diverge on the issue of apparent protectionism and trade. In relative terms, both countries place emphasis on public trust, competition, customer needs, and adherence to federal policy objectives. Canada, however, stresses achieving benefits specific to the Crown and Canadian people, while also emphasizing the importance of complying with national and international trade agreements. On the surface, Canada seems to be operating within a framework of both nationalistic protectionism and

international "trade expansionism." Both these elements are distinctly absent from stated U.S. acquisition vision and goals.

2. Political Environment

a. General Form of Government

As a democratic republic of 50 states and with ten times the Canadian population, the U.S.'s federal Government is much larger than Canada's. As with most republics, the Constitution contains clearly defined roles for the executive and legislative branches. Parliamentary democracies such as Canada typically rely more on a combination of constitutional, statutory, and common law authorities. Constitutional amendments and thousands of related pages of legislation, policies, and procedures created since the U.S.'s founding also expand upon the role of the country's federal Government. However, the Constitution does not specifically address the Government's right to enter into contracts. Therefore, U.S. political and legal organizations have defined and empowered contracting functions, by necessity, in order to spend tax revenues authorized by the Constitution to operate—purchase supplies and services for—the federal Government. [Ref. 12: Subpart 3.1.1]

b. The President

The executive powers of the President are similar to those of the Prime Minister and Cabinet. However, compared with the Cabinet's power to establish regulations, the President's power to establish policies affecting federal acquisition through EOs is much more focused and, apparently, more strongly deployed. The Federal Acquisition Process (FAP) Guide lists some eighteen of the most important EOs

[Ref 12: Subpart 3.1.3], including the following eight EO (numbers) establishing procedures for:

- (10582) *Buy-American Act* (Government-wide rules for);
- (11246) Equal Opportunity Requirements for Contractors;
- (11141) Anti-age Discrimination Prohibition to Contractors and Subcontractors;
- (12352 & 12931) Federal Procurement Reform;
- (12352 & 12931) Office of Federal Procurement Policy to Head Procurement Reform;
- (12979) Agency (Internal) Procurement Protest Rules; [Ref 12:Subpart 3.1.3]

The effect of these EOs varies in terms of overall impact on the acquisition community, including contractors. The reform EOs cited above do a great deal to establish organizational reform leadership and urgency. The protest EO directs, with exceptions, that an award be withheld pending resolution of a timely protest and encourages alternative dispute resolution. [Ref 12: Subpart 3.1.3] Also, the FAR's statement of guiding principles, vision, and goals strongly correlate with these EOs' emphasis on public policies (e.g., equal opportunity) and competition (e.g., delay award pending protest).

c. Congress

As the legislative branch for the U.S., Congress is similar in function to Parliament. However, the division of powers between the executive and legislative branches is more rigorously defined in the U.S. than in Canada. In the British-inspired Parliamentary system, the Cabinet effectively controls the legislative branch, so long as a majority Government is in power. In the U.S., Congress influences federal acquisition

through passing laws (statutes) and through the appropriation process. The U.S. legislative branch, however, is much more prolific in doling out legislation affecting acquisition. Nearly 500 statutes apply to one or more aspects of federal procurement. Among these many statutes, the following codified Acts govern the federal acquisition process: *Armed Services Procurement Act*, *Federal Property and Administrative Services Act* and *Small Business Act*. [Ref 12: Subpart 3.2.2] Some other key U.S. Acts affecting acquisition include:

- *Authorization and Appropriations Acts* (various);
 - *Buy American Act* (1933);
 - *Clinger-Cohen Act or Federal Acquisition Reform Act* (1996);
 - *Competition in Contracting Act* (CICA) (1984);
 - *Contract Disputes Act* (1978);
 - *Defense Production Act* (1970);
 - *Federal Acquisition Streamlining Act* (FASA) (1994);
 - *Truth in Negotiations Act* (TINA) (1962);
 - *Javits-Wagner-O'Day-Act* (JWOD) (1938).
- [Ref. 12: Subpart 3.2.2][Ref. 17: Subpart 8.700]

Some of the above Acts have no counterpart among Canadian statutes or within the TBS's *Contracting Policy Manual*. The Canadian appropriation process does not codify acquisition procedures or serve as a vehicle for amending basic procurement statutes, as in the U.S. budget process. [Ref. 3] Unlike U.S. statutes and the FAR, Canadian statutes and regulations do not enumerate the specific, empowering concepts of FASA that refer to commercial item procurement. [Ref. 1][Ref. 17] During the review of

the acquisition process in Chapter IV, analysis may refer to the underlying differences in statutory basis.

**d. *The Office of Management and Budget (OMB) and
The Office of Federal Procurement Policy (OFPP)***

OMB, as mentioned previously, is roughly equivalent to TBS in its funding roles. OMB recommends programs and funding levels for programs. The agency also monitors programs and may adjust funding levels, as appropriate. The specific details of this budgetary process will not be elaborated here. [Ref 12: Subpart 2.2.2]

OFPP, OMB's arm for executing procurement policy, is headed by an administrator appointed by the President. Just as the Canadian Prime Minister affects policy through his political appointments, the President can potentially influence the acquisition process through the selection of this appointee. OFPP promulgates policies by methods that include issuing OFPP Policy Letters or forwarding OMB Circulars, such as *OMB Circular A-76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government*. This circular is similar in intent to the Canadian ASD program being spearheaded by TBS. [Ref 12: Subpart 2.2.3]

EOs 12352 and 12931, mentioned earlier, establish OFPP as a leader in acquisition reform. These EOs also mandate other specific initiatives, such as enhanced development of the acquisition workforce, for which OFPP provides, at a minimum, some level of direction. [Ref. 12: p. 3-6] Including its reform responsibilities, OFPP has many major roles in procurement leadership, such as the following [Ref. 12: p. 2-11]:

- Provides overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies.

- Prescribes Government-wide procurement policies for implementation in the FAR.
- Provides for and directs the activities of the Federal Acquisition Institute (FAI), including recommending to the Administrator of General Services a sufficient budget for such activities.
- Develops policies to maximize practicable opportunities for small, small disadvantaged, and small women-owned businesses to participate in procurements below the simplified acquisitions threshold.
- Advises the President and Congress on matters relating to procurement.

e. Public Participation

This section will contrast the public's role in influencing acquisition policy in the U.S. and Canada. The elements of public participation are similar in both countries. The U.S. Department of Commerce, a close equivalent to IC, helps U.S. businesses succeed. The Department of Commerce also issues the *Commerce Business Daily* (CBD), the public notification medium in which U.S. Government agencies identify proposed contract actions and contract awards. [Ref. 17: Subpart 5.101] Publicizing contract actions will be discussed in more detail in Chapter IV.

In addition, the mechanisms for lobbying and the political relationship between elected officials and their constituencies are comparable. In both countries, trade associations, professional societies, companies, and individuals are free to make their opinions and needs known to Government and elected officials.

Public participation in refining the actual mechanics of the acquisition process is a key area of distinction between the U.S. and Canada. The Canadian federal acquisition system has no formal procedures for industry review of proposed changes to federal acquisition procedures. [Ref. 2] However, in the U.S., the internal organizations

established to maintain the FAR solicit industry inputs. Under the U.S. system, the Civilian Agency Acquisition Council (CAAC), chaired by the General Services Administration (GSA), includes 21 representatives from industry. As one of two councils responsible for maintaining the FAR, The CAAC reviews and provides concurrence to proposed FAR amendments under the overall leadership of the Federal Acquisition Regulatory Council. [Ref. 12: Subpart 3.3.2]

f. Oversight

Created by Congress and headed by the Comptroller General, the GAO has a primary mandate that closely parallels that of Canada's OAG. Both agencies are "watchdogs." [Ref. 12: Subpart 2.1.4] In the U.S., GAO responds to requests of Congressional committees and sub-committees. With the exception of some areas that GAO has determined to be high-risk, it does not conduct self-directed audits. By contrast, OAG develops its own agenda and can look at acquisitions both in DND and across the Government of Canada. However, the OAG often responds positively to requests from the executive or legislative branches to examine specific issues. [Ref. 13] Another distinct difference between the GAO and the OAG is the function that GAO performs with procurement protests; this will be discussed in the next section.

3. Legal Environment

The same elements of the legal environment in Canada apply, for the most part, to the U.S. Both countries have special organizations that hear issues related to administrative law. Although the U.S. has a history of common law involvement in acquisition cases, the role of the judges in these courts is more important in the U.S. private sector than in the federal sector. This same relationship between common law,

administrative law, and private and federal sectors also applies to Canada. However, in Canada common law appears to have, proportionately, even less of a role in influencing acquisition than in the U.S. [Ref. 16]

The desire to avoid or reduce the role of common law in relation to acquisition has led to the creation of administrative law organizations in both countries. In the U.S., the aforementioned *Contract Disputes Act* and *Competition in Contracting Act* play statutory roles in the establishment of administrative law forums such as the Boards of Contract Appeals (BCAs) and the GAO's Office of the Comptroller General. [Ref. 12: Subpart 3.1.3].

BCAs render decisions involving disputes that occur under contracts. If the contractor is not satisfied with the Contracting Officer's final decision regarding a contractual disagreement, then an appeal can be filed with the BCA under the contract's 'Disputes' clause. [Ref. 12: Subpart 3.1.3]

Similar to the operation of the BCA, the Comptroller General, who leads the GAO, may make recommendations regarding protests. GAO's charter, however, is directed to matters of protest concerning award or non-award of contracts. [Ref. 12: Subpart 2.1.4] These recommendations are published as "Comptroller General Decisions."

The U.S. and Canadian federal courts, if they decide to hear a case considered inside their jurisdiction, can override decisions of the administrative courts (BCAs), Comptroller General, and CITT and establish binding precedents. [Ref. 12: Subpart 3.1.4][Ref. 16]

C. SUMMARY

Canadian and U.S. political and legal systems influence acquisition in a similar manner. Although they are organized along different lines, the objectives or "end states" of the federal contracting policies of the two countries are largely similar. Organizational variation is to be expected when, as stated by a senior official of the CITT, "Canada compares to the U.S. by the Rule of 10—That is, the U.S. has approximately ten times the population of Canada and a significantly larger federal Government bureaucracy. However, even accounting for that, some differences were noted.

Canada focuses much on aligning its contracting functions with the goal of complying with trade agreements. The country created and aligned a quasi-judicial organization, the CITT, to hear procurement protests, even though the CITT was not established for this specific purpose. It had already existed and dealt with appeals of tariffs and anti-dumping cases. When the 1989 U.S.-Canada FTA created the necessity for an equivalent to the U.S. appeals procedure, Canada established the Procurement Review Board (PRB). With Canadian Government downsizing, the PRB was eliminated and its responsibilities transferred to the CITT. The CITT has proven an effective means of dealing with contract cases, as there have been few subsequent appeals on cases filed with Canadian courts.

Although the TBS does possess mechanisms for modifying federal acquisition procedures and sets procurement policy through its Procurement Policy Division, OFPP in the U.S. seems to play a more vital, central, and coordinated role in guiding federal Government procurement policies, including reform efforts. To paraphrase one senior TBS official, "the TBS has not evolved definitively to be in charge of procurement

reform, in part, due to an erosion of power resulting from delegations which occurred in the early '90s." [Ref. 2] Nonetheless, TBS monitors reform through its overall policy mission and holds positions on Government-wide procurement reform oversight and steering committees. [Ref. 55]

The next chapter will explore the internal organizations involved in the acquisition functions that support DND [DoD].

III. COMPARATIVE ANALYSIS: STRUCTURE

A. INTRODUCTION

Although the objectives, goals, and political and legal influences of the Canadian and U.S. federal acquisition systems have similarities, they also have distinct differences. Thus, significant differences are to be expected in the internal organizations that have more direct roles in the execution of defense acquisition functions. This chapter will compare the principal U.S. and Canadian organizations involved in defense acquisition. In particular, it will examine the organizational structures and resources in place to accomplish the goals of the defense acquisition systems of Canada and the U.S., focusing on their similarities and differences. Chapter IV will continue the analysis by reviewing specific contracting processes.

The term "acquisition," from the perspective of a U.S. or Canadian program manager (in Canada, a major program is referred to as a "capital project"), can be compared using the U.S. Defense Systems Management College's (DSMC) definition:

. . . the conceptualization, initiation, design, development, test, *contracting*, [emphasis added] production, fielding, deployment, and logistic support, modification, and disposal of weapon and other systems, supplies, or services (including construction) to satisfy DoD needs, intended for use in or in support of military missions. [Ref. 28: Slide 1.2]

This chapter may introduce elements of acquisition that include a program perspective. However, its primary focus remains on the role of the contracting organizations and functions supporting defense acquisition. The need for clarification here will become more apparent as the two countries' acquisition systems are compared.

B. CANADIAN ACQUISITION ORGANIZATION

1. Background

The Canadian system for acquisition (contracting) is largely centralized under the authority delegated to Public Works and Government Services Canada (PWGSC). However, to some extent, contracting authority is also delegated among different departments and agencies. [Ref. 1:Appendix C] In fact, a Treasury Board Secretariat (TBS) official recently indicated that an effort was in progress to get an accurate summary of the activities in Canada that had contracting authority, including Government acquisition (credit) cards. [Ref. 2] Nonetheless, the bulk of contracting authority still lies within one department, PWGSC.

From the perspective of support for defense acquisition, PWGSC acts as the principal or "central" department for contracting services. Within the Department of National Defence (DND), materiel above the authorization level for acquisition card [credit card] purchases (C\$5,000) is normally obtained through the joint efforts of PWGSC contracting officers and DND "acquisition" officers. However, DND can contract for services above C\$5,000 to the thresholds established in TBS's *Contracting Policy Manual, Appendix C - Treasury Board Contracts Directive*. In practice, a large majority of DND's service contracting is conducted via PWGSC. [Ref. 20] Table 1 illustrates this point with a sample year of contracting data for actions that DND executed using its own authority or through PWGSC. The data helps support the role that PWGSC plays in contracting for DND requirements.

Contract Volume (1997)		% of	AVG	TOTAL	% of
Let by PWGSC	Number	Total #	VALUE	VALUE	Total C\$
Under C\$25,000	13,000	3.11	C\$ 8,384	C\$ 108,992,000	3.56
Goods over C\$25,000	3,500	0.84	C\$ 439,143	C\$ 1,537,000,500	50.21
Services over C\$25,000	2,000	0.48	C\$ 618,500	C\$ 1,237,000,000	40.41
Let by DND					
Under C\$25,000 (Note)	400,000	95.54	C\$ 365	C\$ 146,000,000	4.77
Goods over C\$25,000	0	0	C\$ 0	C\$ 0	0
Services over C\$25,000	178	0.04	C\$ 179,775	C\$ 31,999,950	1.05
Totals	418,678	100	C\$ 1,246,167	C\$ 3,060,992,450	100
Note: 80% in Acquisition Cards					

Table 1. DND Contract Volume. After Ref. 23: Slide 8

TBS's *Contracting Policy Manual* outlines the general roles and responsibilities of Common Service Organizations (CSO) like PWGSC in federal Government contracting. The *Manual* discusses the terms under which the CSO and the client organization define their relationship, such as with a general memorandum of understanding (MOU). TBS also discusses the CSO-client roles in life-cycle management. Although TBS stresses that clear lines of communication must be established throughout the life-cycle and that "neither party functions in isolation," this policy guidance does not go so far as to address the formation of Integrated Product Teams (IPTs). [Ref. 1: Subpart 8.9] TBS's breakdown of CSO-client responsibilities also indicates that acquisition is the CSO's (PWGSC's) responsibility and that defining requirements is, to varying degrees, a client's (DND's) responsibility. [Ref. 1: Subpart 8.9.2] This example of TBS policy should be kept in mind and viewed critically as the researcher considers how PWGSC and DND are organized for acquisition.

2. Public Works and Government Services Canada

The TBS's *Contracting Policy Manual* outlines the general scope of PWGSC contracting authority as follows:

Section 9 of the *Department of Public Works and Government Services Act* gives the Minister of PWGSC exclusive responsibility for the procurement of all goods as described in the Act. Other departments and agencies may only procure goods either when their own legislation specifically permits or when an appropriate delegation of authority has been made by the Minister of PWGSC. [Ref. 1: Subpart 4.2.8]

Figure 1 illustrates PWGSC key players, relationships and principal internal organizations that are involved in acquisition support for DND. Following this figure, more details will be provided regarding the role of PWGSC and its contracting sectors.

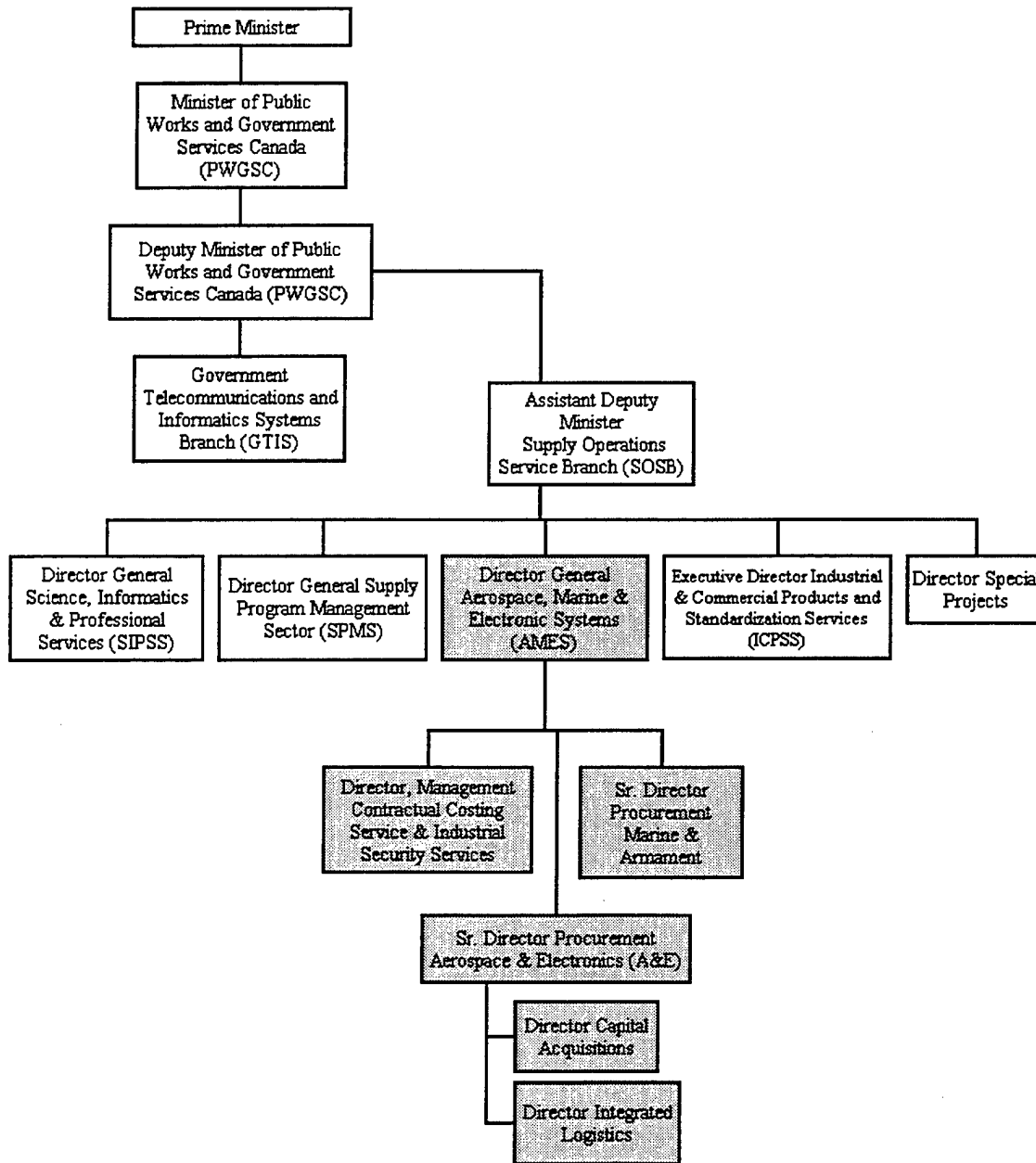


Figure 1. Public Works and Government Services Canada and Supply Operations Service Branch Organization [Ref. 19][Ref. 20][Ref. 38]

As the CSO responsible for Canadian federal Government procurement, PWGSC employs more than 11,800 people across Canada, the United States and Europe. [Ref. 18] The following are some key facts and figures from the department's web site concerning PWGSC's procurement functions. [Ref. 18] The department:

- Deals with approximately 63,000 contracts totaling C\$8 billion annually, making it Canada's largest purchasing organization.

- Buys for approximately 100 federal departments and agencies.
- Provides market research, product planning, project coordination, and contract negotiation.
- Undertakes contracting for major Crown projects (those valued at more than C\$100 million).
- Disposes of surplus Crown-owned assets.
- Manages and disposes of land, buildings, and other facilities.

Subordinate to TBS procedures, the *PWGSC Supply Manual* provides overall departmental guidance relating to procurement and specifically to the execution of the six functions listed above. [Ref. 10] As a detailed guide to the central procurement function, this manual will be heavily referenced during Chapter IV's comparison of contracting processes.

The Minister of PWGSC, via the department Deputy Minister, oversees the operation of the department's ten main branches and agencies, including the central procurement functions of the Supply Operations Service Branch (SOSB). The Government Telecommunications and Informatics Systems Branch (GTIS) also provides some procurement services in relation to Information Technology (IT). This chapter will not address additional details of GTIS functions.

The SOSB is responsible for providing supply-related common services to DND and other federal Government departments and agencies. These CSO functions include requirements-definition, acquisition of goods and services, development of standards, and traffic management. SOSB acquisition services include the procurement of complex technical engineering and science products and services, as well as the procurement of commercial products and services. SOSB is also responsible for contracting out research

and development requirements. The branch's functions are performed within the Ottawa offices and spread out among five regional offices servicing the Atlantic, Quebec, Ontario, Western, and Pacific regions. [Ref. 19]

As Figure 1 illustrates, SOSB is composed of the following principal sectors: Aerospace, Marine, and Electronics Systems (AMES) Sector; Industrial and Commercial Products, and Standardization Services (ICPSS) sector; Science, Informatics, and Professional Services (SIPSS) Sector; and Supply Program Management Sector (SPMS). [Ref. 19][Ref. 20]

The AMES sector handles many large complex and technical procurements of goods and services on behalf of client departments. [Ref. 20] On average, AMES buys a combined total of from C\$2 to C\$3 billion in goods and services each year for its many client departments and agencies. DND, AMES's largest client, uses AMES for acquisitions related to aircraft, ships, armored vehicles, weapons, munitions, electronics and communications systems, and associated equipment and spare parts. These procurements include acquisition of services that range from technical writing and field services to ship and aircraft repair and overhaul. AMES's acquisition functions are closely aligned with the respective DND materiel organizations that focus on acquisition planning and lifecycle support for several specialized DND mission functions, including land, maritime, and aerospace. [Ref. 20]

The ICPSS sector buys a wide range of custom-manufactured and Commercial Off The Shelf (COTS) products, such as furniture, drugs, and textiles, as well as goods-related services, such as snow removal and traffic management. [Ref. 19]

The SIPSS sector manages contracting for consulting, research and development, training, informatics services, and goods, such as electronic data processing systems and computer hardware, and software. [Ref. 29]

The SPMS is responsible for policy development and advice, planning, systems management, operations support, and client-supplier relations. SPMS also manages the contract for MERX™, the electronic bulletin board that advertises Government contracting opportunities to potential suppliers. [Ref. 19] MERX™ allows access to Canada's Government Electronic Tendering Service (GETS), which will be discussed in more detail in Chapter IV.

3. Department of National Defence and Canadian Forces

Figure 2 illustrates DND acquisition key players, relationships and principal internal organizations. Following this figure, the roles of some of these acquisition key players will be reviewed.

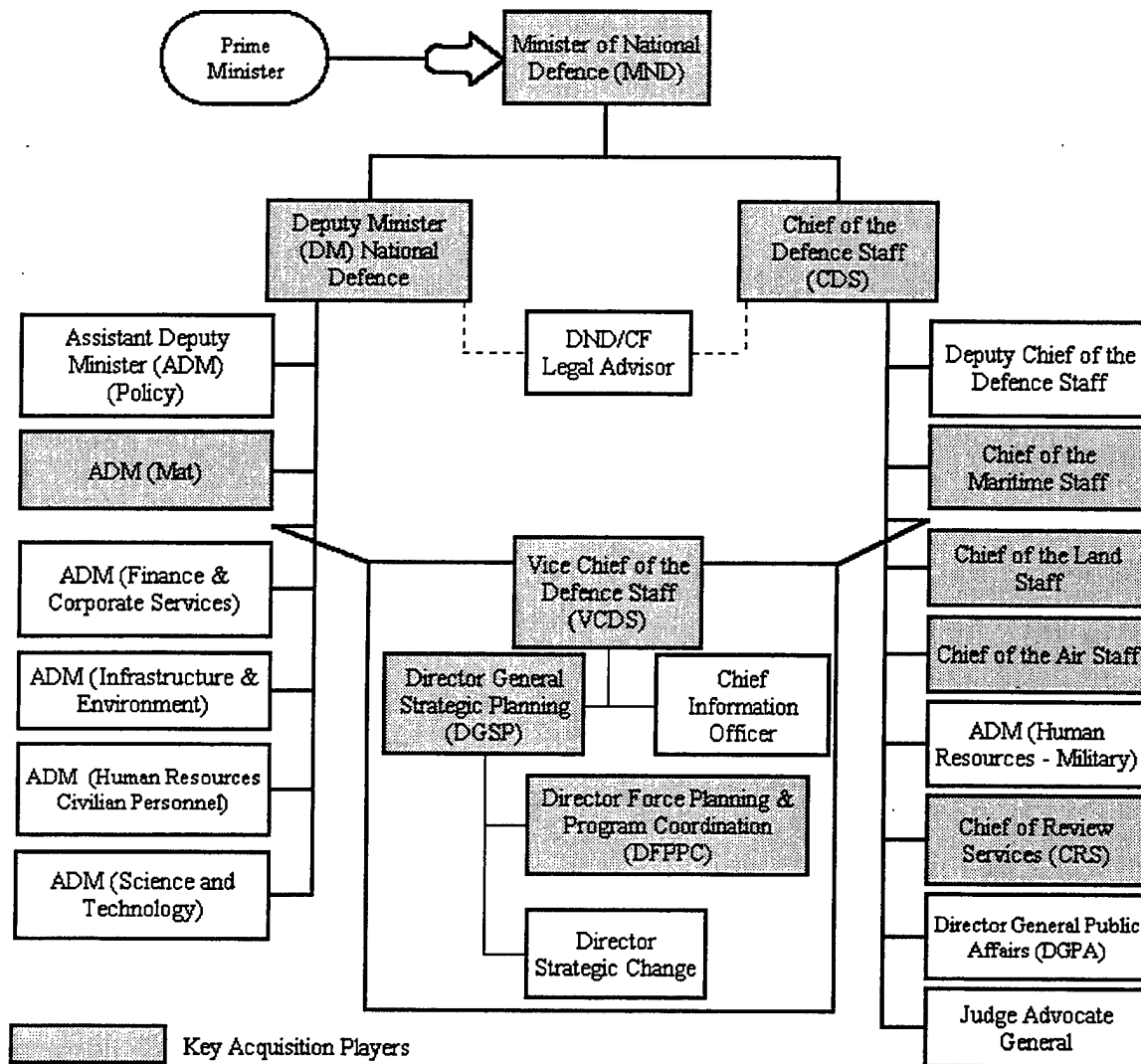


Figure 2. Department of National Defence [Ref. 21][Ref. 30]

The MND, the civilian leader of DND/CF, holds overall legal responsibility and is accountable to Parliament for the administration of the *National Defence Act* and seven other major acts relating to DND and Canadian Forces (DND/CF). As with all Cabinet ministers, the MND is appointed by the Prime Minister. The MND manages and directs the Canadian Forces and all matters relating to national defense, as well as civil preparedness in Canada for emergencies of all types. [Ref. 21] As with other heads of Government departments, the MND is ultimately responsible for any contracting authorities delegated to the department.

The Deputy Minister (DM), appointed by the Prime Minister, is the most senior civilian advisor to the Minister on all departmental affairs. The DM manages the department on behalf of the MND and coordinates interdepartmental activities. The DM has primary responsibility for departmental policy, resources, and international defense relations. [Ref. 21] As an appointee of the Prime Minister, the DM also may help leverage the Prime Minister's political views on acquisition-related issues and policy with the DND/CF.

The Assistant Deputy Minister (Materiel) [ADM(Mat)] is responsible for ensuring effective materiel acquisition and logistics support within DND/CF. This responsibility includes a major role in planning and implementing the Long-Term Capital Equipment Plan [(LTCP)(E)] and logistics planning and operations in general, [Ref. 21] including:

- contributing to the development of capital plans;
- managing the research and development program;
- developing logistics plans;
- developing and managing the materiel acquisition and support process for the Canadian Forces and the Department—including the warehousing and stockpiling of materiel;
- overseeing materiel defense relations with other Government departments and agencies, and with other Governments and international organizations;
- controlling and administering approved equipment projects;
- providing certain aspects of engineering and maintenance, repair and overhaul; and
- disposing of equipment.

ADM(Mat) has developed the *Materiel Acquisition and Support Desktop* (the *Acquisition Desktop*) as a primary source of policy, process, and practice for all DND/CF

stakeholders in the many materiel acquisition and support processes (MA&S). "The *Acquisition Desktop* contains documented best practices, examples, and templates, enabling access to the collective experience and knowledge base across the Department."

[Ref. 24] Figure 3 provides an overview of the ADM(Mat) organization.

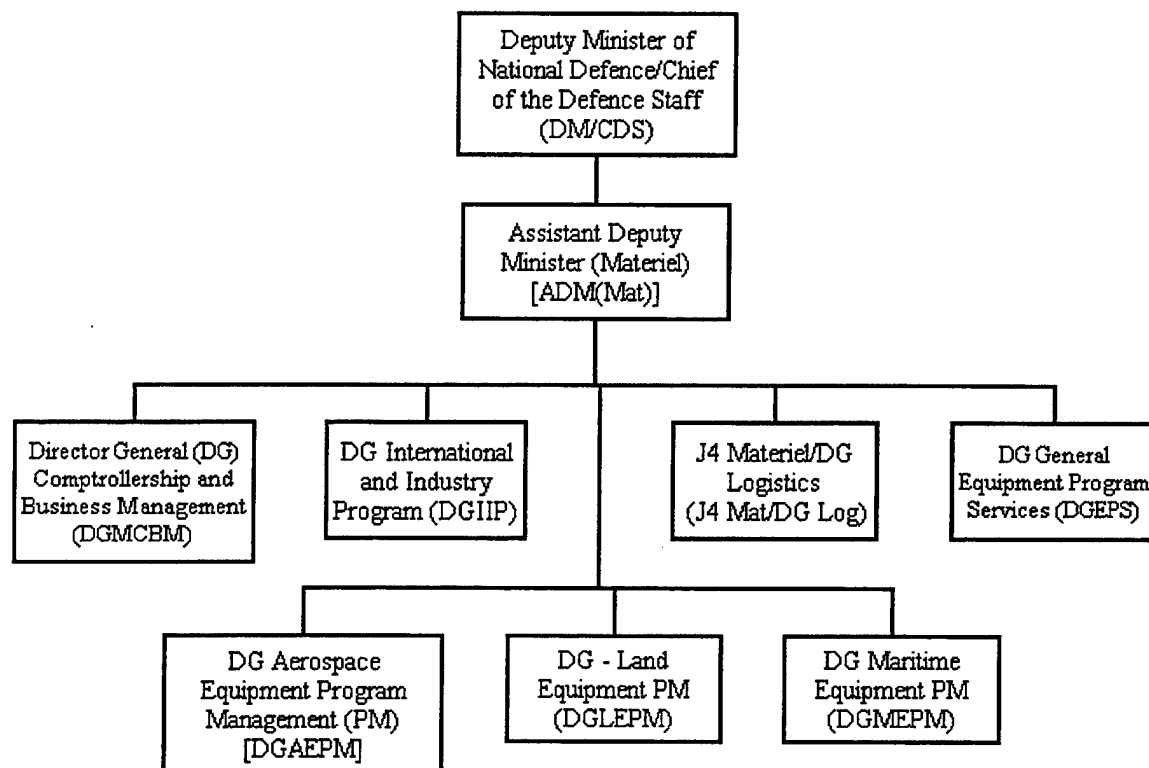


Figure 3. Material Group Organization [Ref. 24]

Within the CF, the Chief of the Defence Staff (CDS) is the most senior military advisor to the MND. The CDS is responsible for command, control, and administration of the CF. [Ref. 21]

The Vice Chief of the Defence Staff (VCDS) is the senior resource manager at National Defence Headquarters and is responsible for developing and overseeing the Department's strategic management and planning process and generating related planning options and guidance to meet overall defense objectives. [Ref. 21]

The Director General Strategic Planning (DGSP) assists the VCDS by:

providing objective analysis and sound advice on strategic planning options and resource allocations; coordinating the management of the Defence Services Program [DND's appropriated funds] and measuring and reporting on Departmental performance in executing the overall defence mission. [Ref. 30]

DGSP maintains the *Defence Management System (DMS) Manual*, a manual skewed towards, but not limited to, the capital project (program) approval process. The *DMS Manual* is:

intended to provide guidance and direction to DND/CF personnel on the processes and procedures in managing the overall defence program . . . with a goal of meeting the overall objectives set for the DND/CF within assigned resource levels. While some guidance/direction is presented which more appropriately deals with project management issues, it is raised herein to ensure linkage between the project objectives and the governing program objectives. [Ref. 31: Subpart 0.0.2]

ADM(Mat) and VDCS/DGSP cover some similar ground in procedural guidance regarding acquisition. However, ADM(Mat) focuses on the entire defense acquisition process, including additional detail on project management. ADM(Mat) incorporates DMS as a linked reference within its *Acquisition Desktop* program. This relationship approximates the U.S. Defense Federal Acquisition Regulation Supplement's (DFAR's) coverage of major systems acquisition. Part 234 of DFARS similarly incorporates, by reference, amplifying guidance provided by *DoDD 5000.1, Defense Acquisition*, and *DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs* (MDAPs) and *Major Automated Information System (MAIS) Acquisition Programs*. Collectively, these two instructions contain the DoD implementation of *OMB Circular A-109 Major System Acquisitions*. [Ref. 22: Subpart 234.003]

The Chief Review Services (CRS) provides assistance to senior level DND/CF managers and leaders by providing expertise and advice on management practices,

carrying out program evaluations, and conducting independent audits. [Ref. 21] As with DGSP and ADM(Mat), the focus of CRS attention is also skewed towards, but not limited to, capital projects. CRS works for the DM and CDS, although the VCDS can also request a CRS review; in fact, a CRS review was even requested by a magazine, *Esprit de Corps*. [Ref. 32] "Project Managers also have called in for CRS to conduct independent evaluations and assessments of languishing problems in acquisition projects." [Ref. 32]

The Chiefs of Land, Air, and Maritime Staff exercise command of their respective service areas in accordance with the Canadian Forces Organizational Orders and as directed by the CDS. [Ref. 21] As senior military officials within DND/CF, their influence on acquisition is exercised, principally, through the inputs that they provide to the development of force structure options that establish a baseline for acquisition requirements. [Ref. 21]

C. U.S. ACQUISITION ORGANIZATION

As in Canada, the military in the U.S. is subordinate to elected civilian officials in Congress and to the Executive—the President and Commander-in-Chief. The highest-ranking civilian military officials are, likewise, Executive appointees, who, in the U.S., are nominated for positions and approved by the Senate. The U.S. Secretary of Defense (SECDEF) is the highest-ranking of these appointees, leading the DoD military organization. Below the SECDEF, the Under Secretary of Defense for Acquisition, Technology and Logistics [USD(AT&L)] , also a political appointee, leads the DoD's acquisition organization.

Figure 4 illustrates the key players in the U.S. defense acquisition system. Included within this figure is the Navy's basic administrative reporting structure for weapon systems programs, for which USD(AT&L) serves as the Defense Acquisition Executive (DAE). USD(AT&L) will be used as the key organization in comparing the U.S. and Canadian acquisition organizations.

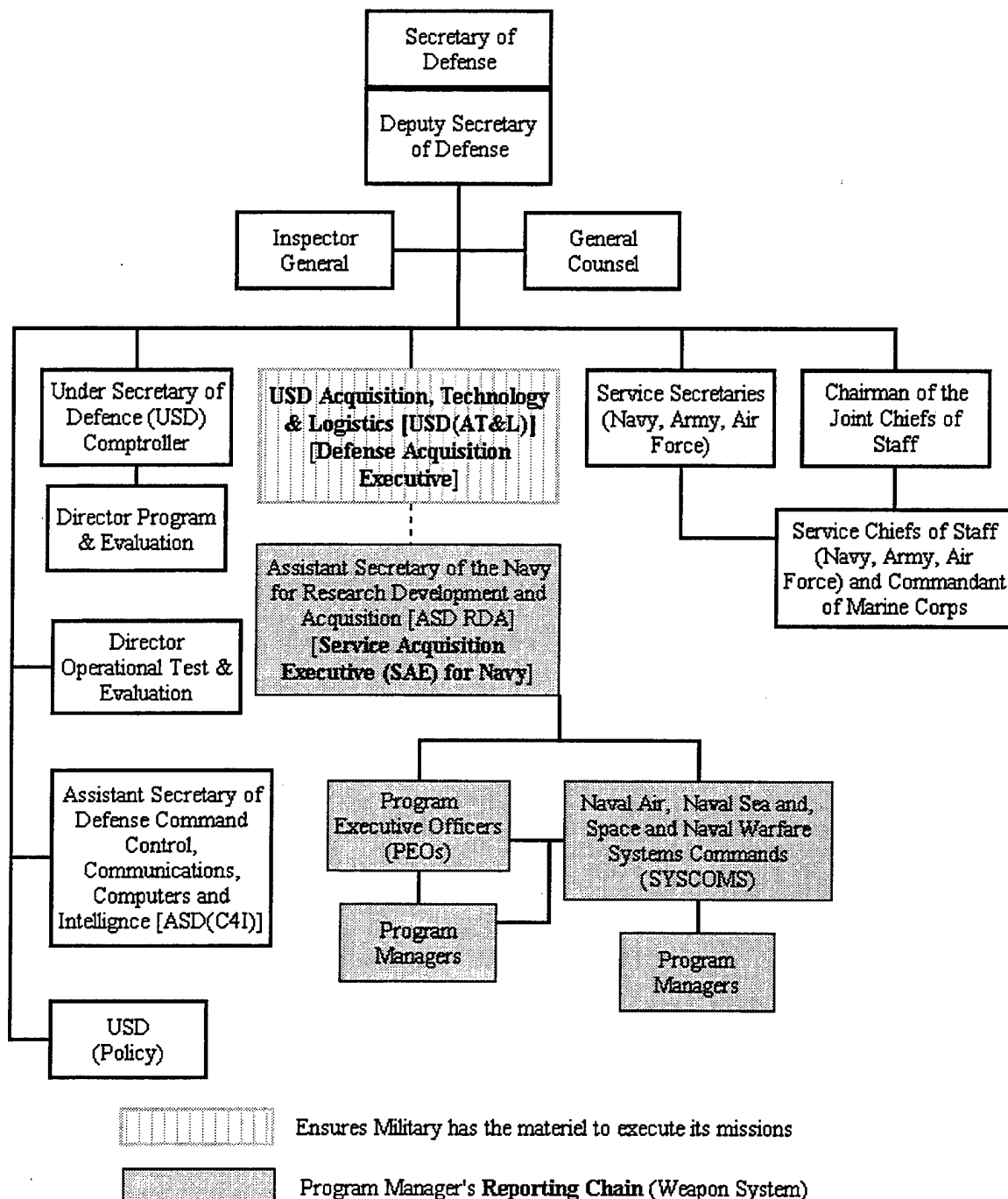


Figure 4. U.S. Acquisition System Key Players [Ref. 34][Ref. 35]

USD(AT&L) is the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for all matters relating to the DoD acquisition system, including research and development, advanced technology, test and evaluation, production logistics, military construction, procurement, economic security, and atomic

energy. [Ref. 34][Ref. 35] Below is a large excerpt of USD(AT&L) actions required for executing these responsibilities along with support personnel, and subordinate organizations. The majority of these tasks, personnel, and agencies will not be elaborated and are provided only to portray USD(AT&L)'s scope of responsibilities.

USD(AT&L) shall:

- Establish and publish policies and procedures governing the operations of the DoD Acquisition System and the administrative oversight of defense contractors.
- Serve as the Defense Acquisition Executive with full responsibility for supervising the performance of the DoD Acquisition System.
- Prescribe policies, in coordination with the IG, DoD, and the Under Secretary of Defense (Comptroller), for coordinated audit and oversight of contractor activities within the DoD.
- Establish policies and procedures, in coordination with the Under Secretary of Defense (Personnel and Readiness) (USD(P&R)), for the effective management of the DoD acquisition workforce.
- Coordinate research and development programs DoD-wide to eliminate duplication of effort and maximum resource use.
- Serve as the DoD Procurement Executive and chair the DoD Ethics Council.
- Prescribe the developmental testing and evaluation program (excluding those statutory test and evaluation responsibilities assigned to the Director, Operational Test and Evaluation).
- Establish policies and programs that strengthen DoD Component technology development programs.
- Develop acquisition plans, strategies, guidance, and assessments, including affordability assessments and investment area analyses, in support of the acquisition Milestone review and the Planning, Programming, and Budgeting System (PPBS) processes.
- Designate major defense acquisition programs as either DAB or Component programs, sign congressional certifications and reports to include Milestone authorization breaches, and administer the Selected Acquisition Report (SAR) and Unit Cost Report (UCR) systems.

- Develop, in coordination with the Under Secretary of Defense for Policy (USD(P)), agreements with friendly and Allied Nations relating to acquisition matters.
- Establish policies relating to the capability of U.S. defense industry to meet DoD needs.
- Establish and manage the cooperative research and development program. The above actions and other USD(AT&L) functions not listed are carried out with the support of the following key OSD personnel:
 - The Principal Deputy Under Secretary of Defense (AT&L);
 - The Director of Defense Research and Engineering;
 - The Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs);
 - The Director of Small and Disadvantaged Business Utilization;
 - The Deputy Under Secretary of Defense (Acquisition Reform);
 - The Deputy Under Secretary of Defense (Advanced Technology);
 - The Deputy Under Secretary of Defense (Environmental Security);
 - The Deputy Under Secretary of Defense (Industrial Affairs and Installations);
 - The Deputy Under Secretary of Defense (International and Commercial Programs);
 - The Deputy Under Secretary of Defense (Logistics);
 - The Deputy Under Secretary of Defense (Space).

In addition, the USD(AT&L) exercises authority, direction, and control over the following:

- Defense Logistics Agency (DLA);
- Assistant Secretary of the Navy (Research, Acquisition & Development);
- Assistant Secretary of the Army (Research, Acquisition & Development);
- Assistant Secretary of the Air Force for Acquisition;
- Ballistic Missile Defense Organization;
- Defense Advanced Research Projects Agency, through the Director of Defense Research and Engineering;
- Defense Special Weapons Agency through the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs);

- On-Site Inspection Agency through the Assistant to the Secretary of Defense (Nuclear and Chemical and Biological Defense Programs);
- Office of Economic Adjustment, through the Deputy Under Secretary of Defense (Industrial Affairs and Installations);
- Defense Acquisition University, through the Deputy Under Secretary of Defense (Acquisition Reform). [Ref. 34][Ref. 35]

Two agencies from the above listing, DLA and the Deputy Under Secretary of Defense (Acquisition Reform) [DUSD(AR)], will be discussed in more detail later. DLA will be reviewed within this chapter and DUSD(AR) will be discussed with Chapter IV's section regarding acquisition reform. One agency outside of USD(AT&L)'s acquisition organization that provides common-use supplies and services to DoD, the General Services Administration (GSA) will also be discussed later following DLA.

In comparing the scope of responsibility of USD(AT&L) and ADM(Mat), it is apparent that each of the eight principal areas of ADM(Mat) responsibility has an approximate equivalent within the scope of USD(AT&L)'s responsibilities. By applying the "rule of 10," one may envision a logical expansion of ADM(Mat) responsibilities to a scope and structure more comparable with that of the U.S. system. Otherwise, ADM(Mat)'s role is somewhat diluted when compared to USD(AT&L)'s. For example, one element of ADM(Mat) responsibility—"contribute to the development of capital plans"—seems like a much weaker version of USD(AT&L) comprehensive responsibilities with regard to DoD acquisition. ADM(Mat) seems to share more acquisition responsibility than does USD(AT&L), who seems more clearly "in charge" of DoD acquisition policies and procedures.

The U.S. weapons systems acquisition organization is also much more specialized than DND/CF, with in-house contracting functions under the direct control of individual

service program managers, subordinate to their over-arching acquisition organization.

The overlay on Figure 4 of a program manager reporting chain shows the general relationship between Naval Systems Commands and USD(AT&L) in matters where USD(AT&L) acts as the DAE (this role will not be expanded on here). The U.S. Army, Air Force and Marine Corps retain similar systems acquisition organizations, emulating the functions of the Naval Systems Commands, focusing, in the main, on service-specific platform acquisition.

Reflecting back to the earlier analysis of the DND and PWGC relationship, one can also see additional differences between the U.S. and Canadian philosophies on defense acquisition organization. As mentioned, USD(AT&L) is clearly "in charge" of DoD acquisition, within the legal and political parameters discussed in Chapter I. DND, however, uses PWGC as the CSO for acquisitions, with some exceptions for services and with the exception of credit card purchases. In the U.S., the General Services Administration is the major purchasing organization that falls outside of the umbrella of USD(AT&L). As noted in the review of the responsibilities of USD(AT&L), DLA is also under the organizational leadership of the USD(AT&L). DLA's and GSA's roles in fulfilling the commodity functions of PWGSC will be reviewed in more detail below.

DLA provides supply support, contract administration services and technical and logistics services to all branches of the military and to several civilian agencies. DLA provides military-specific consumable parts and commodities in much the same manner as SOSB branches would acquire similar items for DND/CF. A portion of DLA's mission is highly comparable to ADM(Mat)'s responsibility to "develop and manage material acquisition and support processes for the Forces and Department - including the

warehousing and stockpiling of materiel." [Ref. 21] DLA's support spans the entire acquisition cycle, from planning to disposal. [Ref. 25]

DLA's five inventory control points (ICPs) manage and purchase items used by all of the military services and some civilian agencies, including fuel, food, clothing, medical supplies, construction material, and hardware and electronic items used to maintain and repair military equipment. [Ref. 25] The parts inventories include or are supported by:

- a selection of more than 4 million items;
 - a distribution system;
 - specialized contract management services from pre-award to post-award;
 - worldwide property disposal services as well as information on available excess DoD property;
 - worldwide hazardous materiel disposal services and information on management of hazardous materials;
 - the latest logistics information from the Federal Catalog System, including sources, item descriptions and prices; and
 - technical logistics services, such as specialized product testing.
- [Ref. 25]

GSA is one of three central management agencies in the U.S. federal Government. (The Office of Personnel Management and the Office of Management and Budget are the others.) [Ref. 26] GSA shares a mission similar to that of Canada's SOSB, with similar responsibilities to the SOSB's sectors that procure common-use supplies and services, such as the ICPSS and SIPSS sectors. Both GSA and the "common-use" contracting sectors of SOSB acquire a wide range of supplies and services for the defense department and other federal Government agencies. GSA has 14,500 total employees

disbursed between its headquarters in Washington D.C., and 11 regional offices throughout the continental United States. GSA's central and regional office organization parallels that of PWGSC.

D. SUMMARY

A key difference between the Canadian and U.S. defense acquisition systems is the large degree of centralization of Canada's procurement authority within the SOSB. PWGSC has operated as a CSO to DND/CF, fielding all goods procurements over C\$25,000 and almost 92 percent (2,000 of 2,178) of all services acquisitions exceeding C\$25,000 in 1997. [Ref. 23:Slide 8] More recent summary data was not available from ADM(Mat) during this study, however the organizational relationship and contracting authorities represented by this data remain largely unchanged. PWGSC continues to provide contracting support for the majority of DND requirements greater than C\$25,000.

What the above information leaves out is that DND and PWGSC are teaming on acquisitions. [Ref. 36][Ref. 37] This fact has not made it into the TBS's *Contracting Policy Manual*, which still describes the two departments' acquisition relationship in a "stove pipe" manner discussed previously in the chapter. [Ref. 1: Subpart 8.9] The reform initiatives within each department address and encourage teaming, particularly for complex acquisitions—This and other reform initiatives will be discussed in broad terms in Chapter IV.

The U.S. system of defense acquisition has its critics, including prominent U.S. politicians, and as such, cannot be taken to be an ideal model suitable for transference. In addition, the size and complexity of DoD dwarfs those of other nations, including Canada. Canada's defense budget is approximately C\$10B, with 60,000 active-duty

military personnel, 20,000 civilian employees, and 30,000 reservists. [Ref. 40: p. 14]

Therefore, centralization and consolidation are probably more justifiable in the Canadian context. According to a May 30, 1999 Dayton Daily News article, U.S. House Budget Committee Chairman John R. Kasich (R-OH) stated that he would consolidate the purchasing authority of all military services into a single operation if he were elected President. [Ref. 33] This article also includes other pro-centralization opinions, such as that of Erik Pages, Vice President of Business Executives for National Security: "Most foreign Governments have a single acquisition agency—Britain, France. We're kind of the exception right now." [Ref. 33] Opposition to consolidation has been fierce; industry has voiced fears that fewer weapons programs would be sold, and some Washington officials fear that such a large organization would be unmanageable [Ref. 32]

Another acquisition organizational difference is that Canada lacks a centralized Contract Administration organization, such as the Defense Contract Management Command (DCMC), which is part of DLA. A discussion with an AMES SOSB contracting officer indicated that contracting officers managed their own contracts from award to post-award. [Ref. 36] A similar discussion with an ADM(Mat) senior staff member indicated that this management function was *shared* between PWGSC and ADM(Mat). [Ref. 37] In its *SOSB Business Process Renewal Blueprint* report, a PWGSC SOSB Project Team recognized the need for improvements to contract administration and recommended various refinements to the contract administration function. The team fell short, however, of recommending the establishment of a separate contract administration organization. [Ref. 5: p. 87] The next chapter will summarize and compare some broad

reform efforts in both countries and will conduct a broad comparison of selected contracting processes. However, contract administration will not be discussed in detail.

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IV. COMPARATIVE ANALYSIS: PROCESS

A. INTRODUCTION

The federal acquisition organizations of the U.S. and Canada are in a state of change. Some changes, such as those discussed in Chapter II, are mandated by external political and legal influences. Others are the result of acquisition processes naturally evolving to keep pace with changing environments, such as the growth of the Internet and electronic business. "Acquisition Reform" is the term commonly used to describe the broad-based efforts and compulsory programs that direct and promote acquisition changes in the U.S. and Canada. Many reforms call for adopting "best practices" from business *or* Government in order to improve efficiencies, given existing financial and associated human resources. Some reforms are adopted or sought in order to accomplish an anticipated amount of work *after* personnel resources have been decreased or to plan for anticipated decreases to the acquisition workforce.

This chapter will begin with an overview of several specific acquisition reform efforts. This discussion will help create an accurate portrayal of changing Canadian and U.S. acquisition processes, much as a good lens might assist in capturing a "snapshot" of a moving target. Following the introduction to reform, the chapter will explore some select elements of the basic contracting processes supporting defense acquisitions for Canada and the U.S. Significant similarities and differences between the processes will be discussed. The acquisition process template contained in the Federal Acquisition Process (FAP) guide will be used to establish a common framework for comparison. The U.S. *Federal Acquisition Regulation* (FAR), agency procedures, and other relevant guidance will be referenced to supplement the U.S. process information provided by the

FAP. Information for comparing U.S. and Canadian processes will come primarily from the *Public Works and Government Services Canada (PWGSC) Supply Manual*, along with the Department of National Defence (DND) *Acquisition Desktop* online guide, and other applicable Canadian regulations and guidance.

B. ACQUISITION REFORM

As discussed in Chapter II, U.S. federal acquisition reform efforts are directed principally by the Office of Federal Procurement Policy (OFPP). Within the U.S. Department of Defense (DoD), the Office of the Deputy Under Secretary of Defense for Acquisition Reform, DUSD(AR) is the principal agent in charge of acquisition reform. In Canada, the Treasury Board Secretariat (TBS) includes a Procurement Policy Division that monitors reform through its overall policy mission and membership on Government-wide reform oversight and steering committees. This policy division is not *dedicated* to guiding reform. [Ref. 3] DND acquisition reform is under the cognizance of the Assistant Deputy Minister (Materiel) [ADM(Mat)] and supported by parallel reform efforts in PWGSC.

Canada summarized some key reform efforts common to DND and PWGSC efforts in the "buying business" in a 1999 Defence Management Committee report. This report provides an excellent background for comparison with similar U.S. reform efforts. [Ref. 53] Some of the principal reform efforts include prime vendor, Integrated Product Teams, Commercial Off The Shelf (COTS) procurement, and Benefits-Driven Procurement (BDP). [Ref. 53: pp. 3-10] These efforts are only a small sampling of the wide range of reform initiatives in both countries, but they will provide a framework for comparing and contrasting the two countries' focus on reform.

1. Prime Vendor

Both Canada and the U.S. are actively using the prime vendor program—with similar objectives. Each country employs prime vendor as a way of consolidating requirements in a single contract for goods or services for award to a single or "prime" vendor.

2. Integrated Product Teams (IPTs)

Canadian Integrated Product Teams (IPTs) and U.S. IPTs are used in a similar manner. Both countries use IPTs with an emphasis on coordinating efforts of major players for certain acquisitions—usually of a more costly and complex nature, such as many weapons systems—with the objective of improving the "overall" acquisition process and end-product. In both countries, members of different functional organizations are brought together to be organized by project or program. [Ref. 50: p. 119][Ref. 53: p. 4] A distinction is that Canadian IPTs bring together members of different functional organizations that are also separated by department, the Contracting Officers (COs), and Project Managers (PMs). However, in the U.S., COs are normally assigned to activities that procure weapons systems. Chapter III explored this dynamic between DND and PWGSC and the organizational differences in this area between Canada and the U.S.

3. Commercial Off the Shelf Procurement (COTS)

The underlying philosophy of COTS is similar to one of the U.S. federal acquisition goals discussed in Chapter II: "maximizing the use of commercial products and services." The key distinction, however, is that this U.S. acquisition goal has firmly established itself into the regulatory language and implementing procedures that govern

the buying processes reflected in the FAR. The policy of FAR Subpart 12.101 speaks closely to the language of the DND report, which states that "effective market research is required to identify suitable solutions" and that there has been a "shift in mind-set from rigid adherence to strict military requirements." [Ref. 53.p. 5][Ref. 17: Subpart 12.101] More comparisons will be made in this area throughout this chapter, as details of the acquisition process are analyzed.

4. Benefits-Driven Procurement (BDP)

BDP can be described as a procurement process in which the contractor delivers a solution that meets the project's objectives. The U.S. General Accounting Office (GAO) highlighted BDP as a key Canadian reform effort, comparing it to U.S. Performance-based Service Contracting (PBSC). [Ref. 54: p. 14] BDP originally evolved out of the procurement process relating to information technology, where standard approaches to buying, such as Government attempts to provide detailed specifications, were failing. Later, the BDP concept was successfully transitioned into other acquisition areas. [Ref. 54: p. 14] Types of specifications used by the U.S. and Canada will be discussed later, and BDP will tie into that analysis.

One U.S. independent researcher stated that "information overload can result" from attempts to integrate and adopt into practice the multitude of reform guides, reform-related literature, and reform regulations within the acquisition workforce. [Ref. 54: p. 12] The researcher suggested that, in order to promote the success of current U.S. acquisition reform efforts, "firm clear direction from the top was necessary to implement the stream of working level tasks." [Ref. 53: p. 20] This point is brought out here to contrast this opinion with the opinions reflected in the Public Works and Government

Services Canada's (PWGSC) Business Process Renewal (BPR) Project Team report, which examined PWGSC's "working level" buying process within the Supply Operations Service Branch (SOSB). [Ref. 5] The BPR Project Team recommended the establishment of an empowered change organization within SOSB to lead reform initiatives. The team also recognized that senior management approval and support would be required, within the department, by the TBS, and by SOSB's major client, DND, in order to successfully implement reform recommendations. [Ref. 5: p. 6]

C. SYSTEM BASICS

1. General Contracting Methods

Before entering into a process analysis, some comparison between the basic underlying contracting procedures of the U.S. and Canada is necessary. The FAR breaks down U.S. acquisition types into three areas representing distinct procurement methodologies: part 13, Simplified Acquisition Procedures (SAP); part 14, Sealed Bidding; and part 15, Contracting by Negotiation. [Ref. 12: p. 6-3] Canada considers acquisitions to be either standard or complex. [Ref. 5: p. 11] And, although Canada develops local procedures for processing each (such as the use of IPT's for complex acquisitions), neither the *TBS Contracting Policy Manual* (or the regulations included in appendices to that publication) nor the *PWGSC Supply Manual* provides any significant procedural distinction between the two; nor does either manual devote separate sections to their coverage.

The U.S. solicitation documents and related follow-on contracting processes differ for each of the associated procurement methods. In issuing solicitations, U.S. COs generally use Requests for Quotations (RFQs) for simplified acquisition, Invitations for

Bids (IFBs) for sealed bidding, and Requests for Proposals (RFPs) for contracting by negotiation. [Ref. 12: p. 6-3] When buying commercial items as defined in FAR Subpart 2.101 and as described, procedurally, in FAR Part 12, U.S. COs may use *any* of these FAR procurement methods. More details will be provided later. [Ref. 12: p. 6-22]

Similar to the U.S., Canada uses three principal solicitation methods; all are considered "invitations for bids, verbal or written requests, made to prospective suppliers for their *quotation, tender or offer* on goods or services." [Ref. 10: Glossary] These solicitation types are described as follows:

- Request for Quotation (RFQ): Normally for requirements less than C\$25,000 and issued with the objective of accepting the *lowest-priced responsive* quotation. Negotiations should be avoided; however, when the requirement has not been adequately defined due to the constraints of time and cost, *some negotiations may be necessary* to obtain best value. [Ref. 10: Subpart 5.148]
- Invitation to Tender (ITT): Used when two or more sources are considered capable of supplying the requirement; when the requirement is adequately defined in all respects to permit the evaluation of tenders against clearly stated criteria; and when it is intended to accept the lowest-priced responsive tender without negotiations. [Ref. 10: Subpart 5.137] Of the possible solicitation methods, tenders are unique in that they can be opened publicly. [Ref. 10: Subpart 5.139]
- Request for Proposal (RFP): Used to request that offerors propose ways to meet a specific Government requirement. [Ref. 10: Subpart 5.142]

The Canadian RFQ, ITT, and RFP are analogous to the U.S. RFQ, IFB, and RFP, respectively.

Canada's terminology can be a bit confusing when doing a comparison. First, the word "tender" is also defined as "a proposal, bid or offer that is submitted in response to an *Invitation to Tender*, RFP, or RFQ." [Ref. 10: Glossary] Also, all the Canadian solicitations can be considered "bids" as discussed previously. However, in the U.S.

system "bid" implies a *specific form* of solicitation and contracting method analogous to the ITT, the sealed bidding method.

2. Influence of Trade Agreements

The influence of trade agreements will also require additional clarification before entering into a process analysis. Chapter I introduced the trade agreements and mentioned that Canada focuses on aligning its contracting functions with the goal of complying with trade agreements, each of which dictates that Government should undertake certain unique procurement functions. The majority of Canadian acquisitions above C\$25,000 are under the coverage of trade agreements, and the acquisition-related procedural rules of each agreement may vary. [Ref. 36] The analysis will address, as necessary, process distinctions between acquisitions within and outside the coverage of trade agreements. When a Canadian procurement is covered by more than one agreement, the CO is directed to follow the procedures considered the most rigorous.

[Ref. 10: Subpart 4.012] Below is a brief overview of these agreements:

- **NAFTA:** Sets out the commitments of Canada, the U.S., and Mexico to reduce trade barriers. Focuses on achieving greater competition for and transparency in Government procurement, eliminating protection of domestic products or suppliers or discrimination among foreign products or suppliers. [Ref. 10: Subpart 4.008]
- **WTO-AGP:** Aims to secure greater international competition for Government procurement. The national treatment and non-discrimination provisions and procurement procedures are similar to NAFTA's. [Ref. 10: Subpart 4.010]
- **AIT:** Focuses on reducing barriers to trade within Canada. [Ref. 10: Subpart 4.011]

The U.S. discusses its federal acquisition policy regarding NAFTA and WTO-AGP in FAR Subpart 25.4. WTO-AGP is included under the umbrella of the *Trade Agreements Act*, and NAFTA is covered as a separate category trade agreement. [Ref. 17:

Subpart 25.400] This section will provide a few details from FAR Subpart 25.4 to introduce some basic U.S. policies and procedures regarding implementation of the *Trade Agreements Act* and NAFTA.

Executive Order (EO) 12260 requires agencies to evaluate offers for products eligible under WTO-AGP—without regard to the restrictions of the *Buy American Act*—when the estimated value of the proposed acquisition will meet or exceed the threshold of \$186,000 for supplies and services. [Ref. 17: Subpart 25.402(1)] In a similar manner, Canadian supplies and services above \$25,000, subject to NAFTA, will also be exempted from the restrictions of the *Buy American Act*. [Ref. 17: Subpart 25.402(3)]

Specific contracting procedures required for U.S. acquisitions subject to the WTO-AGP or NAFTA include:

- COs shall comply with the requirements of FAR Subpart 5.203, Publicizing and Response Time.
- Agencies shall not impose technical requirements solely to preclude the acquisition of eligible products.
- Offers received in response to solicitations anticipating competitive negotiations shall be opened in the presence of an impartial witness, whose name shall be recorded in the contract file.
- Solicitations shall specify that offers shall be submitted in the English language and in U.S. dollars.
- Agencies shall give unsuccessful offerors from designated or NAFTA countries notice within three days after a contract award in accordance with FAR Subparts 14.409-1 and 15.503. [Ref. 17: Subpart 25.405]

Some of these requirements will be discussed further within the chapter analysis.

3. The Role and Authority of the Contracting Officer

Chapter II discussed the legal basis on which acquisition regulations are founded and also focused on the external political and legal influences that shape and empower

acquisition policies and procedures. Chapter III discussed organizations internal to the acquisition process, but did not extend the discussion to the role and authority of the CO. This section will provide some comparative background on the role of the CO.

In the U.S., the FAR vests the agency head with contracting authority, "unless specifically prohibited by another provision of law, authority, and responsibility." [Ref. 17: Subpart 1.601] Given this authority, the agency head can establish contracting activities and delegate contracting authority. [Ref. 17: Subpart 1.601] U.S. contracts "may be entered into and signed on behalf of the Government only by contracting officers." [Ref. 17: Subpart 1.601] These COs are either designated by position for certain high level officials, such as a head of a contracting agency, or designated and appointed in accordance with guidelines published in FAR Subpart 1.603. [Ref. 17: Subpart 1.601]

In Canada, the TBS, in a similar manner, delegates a certain dollar limit of contracting authority to specific agency heads, beyond which TB approval is required for the contract. [Ref. 1:Appendix B][Ref. 1:Appendix C] These agency heads include "the appropriate Minister," as defined in the *Financial Administration Act*, discussed in Chapter II. [Ref. 1:Appendix B] Following this delegation, the agency heads proceed to further delegate contracting authority within the levels of their authority by issuing agency regulations. PWGSC publishes this delegation as Annex 6.1 to the *PWGSC Supply Manual*. [Ref. 10:Annex 6.1.2]

The role of COs and their authority may be influenced by training and professional development within the acquisition workforce, in much the same manner as comparable positions in the private sector. In the U.S., the *Defense Acquisition*

Workforce Improvement Act (DAWIA) created a certification program for acquisition personnel. Canada is in the process of establishing a similar career development program that incorporates standards for training and levels of certification. Some of the motivation for these workforce improvements stems from the SOSB BPR Project Team recommendations [Ref. 5: p. F-123] The TBS has published a policy notice that formed an interdepartmental Materiel and Supply Management Steering Committee to guide efforts to develop this program. [Ref. 54]

This chapter's comparative discussion of reform, general contracting methods, trade agreements, and the role and authority of the CO should serve as a good background for beginning a analysis of selected pre-award acquisition processes. The political, legal, and organizational elements that were introduced and compared in Chapters II and III should also assist the reader during the remainder of this study. The analysis that follows will cover ten key functions, selected supporting elements and sub-functions that comprise the two pre-award phases of acquisition planning and contract formation.

D. ACQUISITION PLANNING

1. Acquisition Planning Overview

Chapter III discussed the contracting relationship between Canada's PWGSC (CSO) and DND, emphasizing how these departments were moving towards a teaming approach between their respective contracting and requirements organizations, particularly in regards to complex procurements. PWGSC can provide guidance or participate directly during acquisition planning, but DND plays the major role in developing the acquisition plan. ADM(Mat)'s *Acquisition Desktop* procurement planning

section states that "planning for procurement is essential regardless of the size, scope, or complexity of the requirement" and that "although planning has always been done, it has not been formalized or standardized." [Ref. 24] These statements imply that one purpose of the *Acquisition Desktop* is to formalize and standardize procurement planning within DND. Figure 5 below is DND's generic diagram for overall procurement planning.

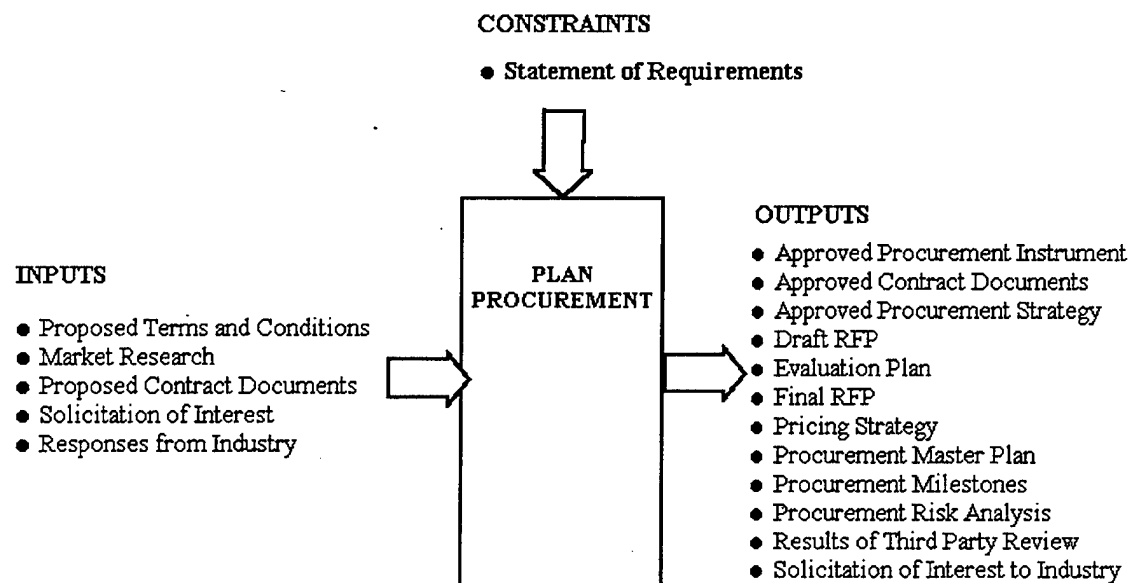


Figure 5. DND Acquisition (Procurement) Planning [Ref. 24]

The remainder of this section will compare the major components of the Canadian and U.S. acquisition planning phases, using the U.S. FAP framework as a template. [Ref. 12: p. 6-1] The major functions of the acquisition planning phase contained in the FAP include Determination of Need, Analysis of Requirement, Extent of Competition, Source Selection Planning, and Business Terms and Conditions. Many of the elements comprising the functions of FAP acquisition planning are represented, in some form, within the constraints, inputs, and outputs of Figure 5. As the researcher proceeds through the acquisition planning functions leading to contract award, the reader may

review Figure 5 when considering the broad similarities and differences between U.S. and Canadian acquisition processes.

2. Determination of Need

Three key processes or components within the Determination of Need function are Acquisition Planning, Market Research, and the Purchase Request.

a. Acquisition Planning

The Canadian overall acquisition planning model in Figure 5 begins with a Statement of Requirements (SOR). The TB defines a SOR as:

[t]he sponsoring department's documentation of the operational requirements stated as the performance objectives of the project in qualitative and quantitative terms. SORs are normally expressed in operational or mission terms related to the department's mandate or program accountability. [Ref. 42]

Following the preparation of the SOR, DND acquisition personnel prepare a Procurement Master Plan (PMP) using the inputs represented in Figure 5 as a guide. Figure 6 is a DND model for the development of the PMP. [Ref. 24]

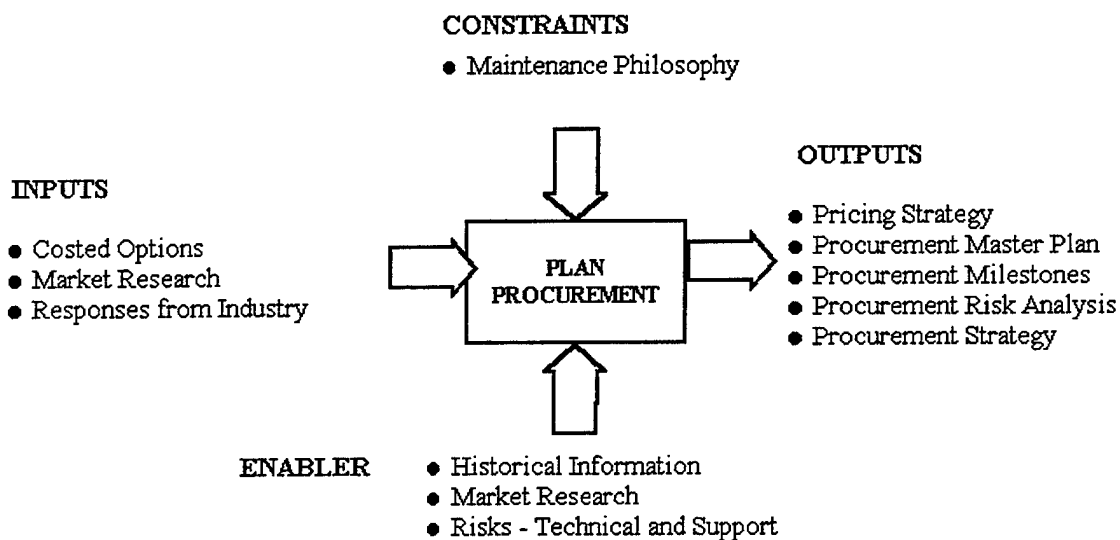


Figure 6. DND Procurement Master Plan [Ref. 24]

For comparison between Figures 5 and 6, below are some of the possible elements utilized for tailoring unique acquisition plans as per the U.S. FAR.

The first element is the statement of need:

- Applicable conditions. State all significant conditions affecting the acquisition, such as requirements for compatibility with existing or future systems or programs.
- Cost. Set forth the established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed such as Life-cycle cost, design-to-cost and should-cost.
- Capability or performance.
- Delivery or performance-period requirements.
- Trade-offs among cost, capability or performance, and schedule goals.
- Risks, including technical, cost, and schedule risks and risk management plan.
- Acquisition streamlining. If applicable, includes methods for encouraging industry participation by such methods as draft solicitations and presolicitation conferences.

The second element is developing a plan of action that addresses:

- Sources—prospective sources of supplies and/or services.
- Competition—how competition will be sought, promoted, and sustained.
- Source-selection procedures.
- Contracting considerations—including contract type selection.
- Product or service descriptions.
- Priorities, allocations, and allotments.
- Management information requirements—for monitoring contractor's effort.
- Test and evaluation.

- Logistics considerations—including discussion of quality assurance.
- Milestones for the acquisition cycle.
- Other considerations.

The third element is "additional requirements for major systems," which will not be elaborated on. [Ref. 17: Subparts 7.105 and 7.106][Ref. 12: p. 6-8]

There is a strong correlation between the typical elements of a U.S. acquisition plan (above) and the collective constraints, enablers, inputs, and outputs represented in Canadian acquisition planning (Figure 5) and in the PMP (Figure 6). The *Acquisition Desktop* states that the completed PMP should address the four principal areas of procurement strategy (with early industry engagement, as applicable), pricing strategy, major milestones, and risk analysis. [Ref. 24] All of these major elements, in some form, are contained within the U.S. guidance for formulation of an acquisition plan.

b. Market Research

In a 1998 article for *Contract Management* magazine, the authors discuss the importance of market research as an enabler for aligning defense acquisition more closely with commercial practices. [Ref. 43: p. 17] The authors state:

In some cases the adoption of commercial practices and the seeking of more commercial sources is a far more labor-intensive form of acquisition compared to pre-reform days. Contracting personnel now need to develop solicitations based on actual commercial practices, which vary significantly from industry to industry. Market research is time consuming and requires extensive technical understanding of products, services and industries. [Ref. 43: p. 17]

Market research is one of the first tasks that both countries undertake in developing acquisition plans. The *Acquisition Desktop* states that procurement planning

begins in the early stages of the project as market research identifies possible procurement options to be documented in the PMP. [Ref. 24] Figure 6 depicts market research as an enabler for the development of DND's PMP. The FAR states that appropriate market research should be conducted before developing new requirements documents for an acquisition, before soliciting offers for planned acquisitions estimated to exceed the Simplified Acquisition Threshold (SAT)—currently \$100,000—and as necessary and justified for acquisitions estimated at less than SAT. [Ref. 17: Subpart 10.001]

In both the U.S. and Canada, market research includes efforts to determine whether or not requirements can be met through commercial items. In the U.S., this decision process is termed a "commerciality determination," which will be discussed in more detail in subpart IV.D.4. DND's *Acquisition Desktop* states that "procurement methods range from buying an existing product through COTS to unique Government development." [Ref 24] The Canadian COTS definition is more synonymous with the U.S. general definition of commercial items.

The definition of commercial items is very important in the U.S., especially because COs are empowered with distinct contracting procedures, as described in FAR Part 12, when procuring commercial items. This streamlining of commercial item purchases in the U.S. is consistent with the FAR's goal of "maximizing the use of commercial products and services." [Ref. 12: Subpart 1.102] The following is an excerpt from the FAR's description of commercial items:

[A]ny item, other than real property, of a type customarily used for non-Governmental purposes and that (1) Has been sold, leased, or licensed to the general public; or (2) Has been offered for sale, lease, or license to the general public . . . [or] . . . [a]

nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments. [Ref. 17: Subpart 2.101]

A nondevelopmental item (NDIs) is:

any previously developed item used exclusively for Governmental purposes . . . or by a foreign Government with which the U.S. has a mutual defense cooperation agreement; any such item that requires only minor modification or modifications of a type customarily available in the commercial marketplace; or any such item being produced that does not meet these solely because the item is not yet in use. [Ref. 17: Subpart 2.101]

Market research seeks to find commercial item solutions, including NDIs, for acquisition requirements in both the U.S. and Canada, for reasons that include the potential for streamlining the total acquisition process. Later discussions of acquisition processes will provide additional comparative detail of how acquisition procedures may differ when procuring commercial items.

There are many techniques for conducting market research, and the U.S. and Canadian systems employ similar methods. Both countries focus on tailoring the scope of market research to the nature of the requirement. Only the U.S. directs the use of market research above a *specific dollar threshold*, SAT. However, the fundamental regard for market research is very similar in both countries. Some specific techniques for conducting market research in the United States include:

- Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.
- Reviewing the results of recent market research undertaken to meet similar or identical requirements.
- Publishing formal requests for information in appropriate technical or scientific journals or business publications.

- Querying Government databases that provide information relevant to agency acquisitions.
- Participating in interactive, online communication among industry, acquisition personnel, and customers.
- Obtaining source lists of similar items from other contracting activities or agencies, trade associations, or other sources.
- Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available online.
- Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process. [Ref. 17: Subpart 10.002(b)(2)]

In Canada, techniques for market research include:

- Contacting the user communities who are knowledgeable about the goods and services.
- Contacting allied militaries that may have similar requirements or projects underway.
- Consulting technical journals that publish product comparisons.
- Reviewing any unsolicited proposals that provide fully planned options.
- Attending trade shows and conferences and interviewing potential suppliers and product specialists.
- Contacting industry associations to obtain listings of companies specializing in specific areas.
- Using inventory locator service providers to acquire a range of needed parts.
- Reviewing electronic catalogue services developed by the U.S. DoD and others. [Ref. 24]

The above information illustrates the array of data sources available for market research and the common practices of obtaining information. Absent from the

U.S. list is "discussions with allies." Absent from the Canadian list is any specific mention of "other contracting activities" as a source of market research data. However, the role of PWGSC in aiding market research is most likely assumed by DND. As mentioned in Chapter III, one of PWGSC's primary responsibilities in contracting for its customers is to conduct market research. [Ref. 18] Both countries use the data gathered via market research during the formation of the acquisition plan, which serves as the foundation for the entire acquisition process that will be discussed further during the remainder of the chapter.

c. Purchase Requests (PR)

PRs within DND are issued to PWGSC as requisitions used for preparation of RFPs, ITTs or RFQs, discussed earlier in the chapter. On the subject of IPT use in requisition preparation, DND's *Acquisition Desktop* states that for large or complex procurements, the procurement instruments (requests) should be developed collectively by the various members of the IPT. [Ref. 24] For example, the DND Engineering and Technical Authorities, the DND Quality Assurance representative, the DND Procurement Officer, the PWGSC CO, and others may play a role in developing the PR. [Ref. 24] The typical elements of the PR are consistent with the previously discussed requirements of both countries' acquisition plans. Canada's system of generating and submitting PRs has evolved to accommodate the client-CSO relationship. In the U.S., parallels for this type of relationship may also be found. U.S. end-users may submit requisitions directly to GSA or DLA for common-use or defense-related commodities. In contrast, within a systems command, various members of an IPT, including the CO, may

work together to develop the PR. The elements of the PR will be discussed as they relate to "requirements documents" in the next section.

3. Analysis of Requirements

According to the FAP, the principal goal of requirements analysis is to "develop the Contract Schedule for the solicitation and resulting contract." [Ref. 12: p. 6-16] The discussion in this section will focus on the grouping of elements that represent key products of the Analysis of Requirement function, Requirements Documents.

Requirements documents include the specifications or statements of work and related *elements* of the Purchase Request. The following aspects or issues related to these documents will be addressed:

- Specifications and standards
- Methods for obtaining industry feedback
- Commerciality determinations

The U.S. uses three principal types of specifications: functional, performance, and design, either in their "purest form" or in some combination. The FAR requires the use of functional and performance specifications "to the maximum extent practicable," in lieu of design specifications. [Ref. 12: p. 6-18]

The least restrictive specifications, functional specifications, describe the deliverable in terms of performance characteristics and intended use. Functional specifications are a *variation* of performance specifications. [Ref. 50: p.171]

Performance specifications define the desired operational characteristics without specifying the materials and procedures to be used; that is, the contractor is given general discretion and election to detail, subject to the Government's rights of final inspection and

approval. [Ref. 50: p. 161] The most restrictive specifications, design specifications, establish precise measurements, tolerances, materials, etc., for which the Government assumes liability of design. [Ref. 12: p.6-18][Ref. 50: p.162]

Canada categorizes specifications as performance, detail, or "commercial item description." [Ref. 24] The performance specification as described in DND's *Acquisition Desktop* appears to accommodate the intent of both U.S. functional and *performance* specifications. A key tie-in between performance-based specifications and reform efforts is Canada's BDP. BDP was discussed in Subpart II.B as a possible analogue of a U.S. PBSC. DND detail specifications are analogous to design specifications and stipulate "how the requirements are to be achieved," using "build-to" technical data. DND issues detail specifications in "those rare cases where the Government is the *design* authority." [Ref. 24]. In U.S. terms, Canada's "commercial-item" specification is achieved by defining requirements in terms that encourage and enable commercial or NDI solutions. [Ref. 17: Subpart 11.002(a)(2)] In practical terms, DND's *Acquisition Desktop* demonstrates similar guidance regarding the preference and use of specifications as compared to the FAR. The *Acquisition Desktop* states: "[G]enerally, do not tell contractors how to design and build something." [Ref. 24]

Standards, as supplements to specifications, are generally incorporated by reference into U.S. solicitation documents. [Ref. 12: p. 6-19] The FAR ranks non-mandatory, Government-unique standards and specifications last in order of preference. [Ref. 12: p.6-19][Ref. 17: Subpart 11.101] U.S. COs can employ federal specifications (FED Specs), Military Specifications (MIL Specs), and Product Descriptions (PDs) to define solicitation requirements. [Ref. 12: p. 6-19]

The *PWGSC Supply Manual* states that "recognized Canadian standards or specifications should be used in the procurement of goods and services, except when not warranted by the volume or specific nature of the procurement." [Ref. 10: Subpart 6.096] The *PWGSC Supply Manual* also places the onus on the CO to assess the adequacy and applicability of any standards and specifications, as well as to identify the need for a new standard or specification. [Ref. 10: Subpart 6.099] Canada has established the Canadian General Standards Board (CGSB) to assist the CO and DND procurement officers in judging the suitability of U.S. or other international standards or specifications. [Ref. 10: Subpart 6.097] The *PWGSC Supply Manual* specifically mentions DND—its biggest customer—as an exception to the preference for use of Canadian standards. Yet, DND's *Acquisition Desktop* states that *international commercial standards are generally preferable to military standards*. In this instance, the *Acquisition Desktop* appears to contradict the guidelines in the *PWGSC Supply Manual*. The *Acquisition Desktop* also contends that the U.S. DoD's trend of canceling military specifications and of encouraging industry to develop replacement standards may have influenced development of International Organization for Standardization (ISO) standards. [Ref. 24]

Industry feedback concerning the requirements document may be obtained in similar ways in both the U.S. and Canada. The FAP lists presolicitation notices, presolicitation conferences, Requests for Information (RFI), draft RFPs, and one-on-one meetings as techniques for gathering industry feedback. [Ref. 12: p. 6-21] Some of these methods (e.g., one-on-one meetings) are similar to previously described techniques for acquiring initial market research data. This similarity can be explained in that, essentially, market research is a dynamic and ongoing process.

Without providing specific methodology, the *Acquisition Desktop* states that "some projects are engaging industry in both the development and refinement of specifications." [Ref. 24] From a fiscal perspective, the *Acquisition Desktop* also states that industry should be given an opportunity to confirm that requirements can be met—within budget—before formally issuing the RFP and that one method of doing so is to post the draft specifications on the Internet for comments. [Ref. 24]

Commercial items and "commerciality" determinations were introduced in the discussion of system basics in subpart IV.C and during the discussion of market research in subpart IV.D.2. Unlike the U.S.'s FAR, Canada's *TBS Contracting Policy Manual* does not include a preference for commercial items as one of the *goals* for Canadian federal acquisition; nor does the *PWGSC Supply Manual* include a commercial item goal in its guiding principles. [Ref. 1: Part 1][Ref. 10: Subpart 1.001] However, the *Acquisition Desktop* does stress commercial items as a potential source for satisfying DND requirements, as discussed previously. The principal distinction in the U.S. is that a finding of commerciality greatly expands the CO's "tool kit" of available contracting procedures. U.S. COs can use FAR Part 13, Part 14, or Part 15 procedures in fashioning commercial item procurements. [Ref. 12: p. 6-23]

One example of the flexibility and empowerment inherent in a U.S. commerciality determination is that when purchasing commercial supplies or services, under the "Test Program for Certain Commercial Items," U.S. COs are allowed to use simplified acquisition procedures for requirements up to \$5 million to the "maximum extent practicable." [Ref. 17: Subpart 13.500] This dollar level is well beyond the simplified acquisition threshold of \$100,000 and requires justifications or approvals only

if the acquisition is sole source. [Ref. 17: Subpart 13.500] An example of a constraint within this process is that only Firm Fixed Price (FFP) contracts or Fixed Price Contracts with Economic Price Adjustment (FFPEPA) can be utilized under FAR Part 12, Acquisition of Commercial Items. [Ref. 12: p. 6-23]

4. Extent of Competition

The Extent of Competition function includes Sources of Supplies and Services, Competition Requirements, and Set-asides. Chapter 5 of the *PWGSC Supply Manual* addresses sourcing strategy and methods for determining the extent of competition; this chapter also provides much of the information necessary for a broad comparison with the comparable U.S. processes within this function. This chapter of the *PWGSC Supply Manual* also addresses methods of soliciting competition, which, in part, correlate to the "competitive approach." Specific solicitation methods will be discussed later.

a. Sources of Supplies and Services

The FAR provides a prioritized list of supplies and services that the CO must consider when planning and executing a procurement. These sources should be considered, ideally, as soon as a requirement emerges. The FAR's priorities for sources of supplies are (priorities are top to bottom, highest to lowest):

- Agency inventories;
- Excess from other agencies;
- Federal Prison Industries, Inc.;
- Products available from the Committee for Purchase From People Who Are Blind or Severely Disabled;
- Wholesale supply sources;
- Mandatory Federal Supply Schedules;

- Optional use Federal Supply Schedules; and
- Commercial sources (including educational and nonprofit institutions).

The FAR's priorities for sources of services are:

- Services available from the Committee for Purchase From People Who Are Blind or Severely Disabled;
- Mandatory Federal Supply Schedules;
- Optional use Federal Supply Schedules; and
- Federal Prison Industries, Inc., or commercial sources (including educational and nonprofit institutions). [Ref. 17: Subpart 8.001]

The FAR also provides additional guidelines for using these sources of supplies and services, including details regarding exceptions to their use, such as in situations of unusual and compelling urgency. [Ref. 17: Subpart 8.001(b)] Canada also has some requirements for considering certain sources of supplies and services. However, Canada has no precedence list, as does the FAR, and the usage of the recommended sources is non-compulsory.

Not including set-asides, which will be discussed later, and certain special programs, the *PWGSC Supply Manual* discusses three primary sources of supplies and services for consideration in filling a requirement. These sources of supplies and services include established Standing Offers (SOs), Supply Arrangements (SAs), and the Correctional Service of Canada's CORCAN program, equivalent to the U.S. Federal Prison Industries, Inc. [Ref. 36] SOs and SAs are non-mandatory and will be discussed in more detail during the analysis of procurement business terms and conditions. The general requirements for CORCAN, based on Cabinet Decision 320-74RD, state that COs, *whenever possible*, "should provide CORCAN with adequate, stable, and

continuing market outlets for items or product lines." [Ref. 10: Subpart 9A.1] PWGSC can establish goals for CORCAN set-asides within the department's business plan; however, PWGSC is not committed to honoring these planning targets. Thus, CORCAN is not a true "set-aside" and will not be discussed in the later section on that subject.

b. Competition Requirements

Both the U.S. and Canadian systems seek to promote competition. The U.S. publishes its competition procedures in FAR Part 6, which begins by outlining acquisitions that are *not* subject to full and open competition (FAOC). For example, contracts awarded under simplified acquisition procedures of FAR Part 13, orders placed under requirements or definite-quantity contracts, and contracts awarded under other contracting procedures expressly authorized by statute are all categories of procurement exempted from the requirement for FAOC. [Ref. 17: Subpart 6.001] In general, the extent of competition in the U.S. depends on a balance between desires for FAOC and other goals that may limit competition, such as:

- Requirements of law or regulation designating the use of specific suppliers.
- Requirements of "maximum practicable" versus "full and open" competition.
- Requirements to set-aside procurements. [Ref. 12: p. 6-29]

Under the Canadian system, for procurements *not subject to* NAFTA, WTO-AGP, or AIT, the TBS's *Government Contracts Regulations* (GCR) require the competitive solicitation of bids before any contracts are entered into, with the following exceptions:

- The need is one of pressing emergency in which delay would be injurious to the public interest.

- The estimated expenditure does not exceed C\$25,000; or C\$100,000 for other category acquisitions [details omitted].
- The nature of the work is such that it would not be in the public interest to solicit bids—This provision is normally reserved for dealing with security considerations or to alleviate some significant socio-economic disparity.
- Only one supplier (person or firm) is capable of performing the contract. [Ref. 10: Subpart 5.002][Ref. 1:Appendix B]

The seven U.S. exceptions are similar to the above Canadian ones for acquisitions not subject to the trade agreements. [Ref. 12: p. 6-33][Ref. 17: Subpart 6.302] There are a few key differences. First, the U.S. has a separate category of acquisitions, known as simplified acquisition procedures, that are subject to competition to the "maximum extent practicable" and excluded from the considerations for "maximum" or FAOC. [Ref. 12: p. 6-32] Second, the Canadian system has different, albeit similar, exceptions to maximum competition (discussed later) for acquisitions subject to the trade agreements. Third, the U.S. has an exception for some sources of supply lumped under "*authorized or required by statute*," which includes Federal Prison Industries, Inc., while Canada does not have a similar exception category.

Within the types of acquisitions subject to the trade agreements, Canada utilizes three categories of competition: open, limited, and selective tendering. [Ref. 10: Subpart 5.050] Open tendering is the equivalent to U.S. FAOC and allows any eligible supplier to submit a bid or offer. [Ref. 10: Subpart 5.050(a)]

There are two types of selective tendering. One type uses a two-step process—not to be confused with the U.S. two-step sealed bid method that will be discussed later—in which suppliers have to first meet qualifications for participation as

published, in the first step, within a Notice of Proposed Procurement (NPP). [Ref. 10: Subpart 5.050(b)] Step two involves issuing the solicitation documentation to the suppliers who met the qualifications. [Ref. 10: Subpart 5.050(b)] The second form of selective tendering involves using a qualified suppliers list when releasing solicitations. However, other potential suppliers who *request* a solicitation must also be considered. Additionally, an annual notice announcing the source list must be published. [Ref. 10: Subpart 5.050(b)]

Limited tendering is the non-competitive approach used for the procurement process under the trade agreements and can include elements of selective tendering. Limited tendering allows *deviations*, or exclusions from "maximum competition" within the competitive process, including the ability to contact a single supplier or a number of suppliers individually. [Ref. 10: Subpart 5.030] Canadian COs utilize standard Contract Award Process (CAP) codes "to ensure that the comparable limited tendering reason for each of the agreements are in a consistent manner." [Ref. 10: Subpart 5.030] Annex 5.3 of the *PWGSC Supply Manual* lists CAP codes, including codes that apply to exceptions to "maximum competition." Two of several possible exceptions, applicable to all trade agreements, include:

- where, for reasons of extreme urgency brought about by events unforeseeable by the entity, the goods or services could not be obtained in time by means of open or selective tendering procedures; (CAP Code 81)
- for additional deliveries by the original supplier...where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services....(CAP Code 74) [Ref. 10: Subpart 5.031]

In general, Canada's exceptions to maximum competition under the trade agreements are largely consistent with non-trade agreement exceptions and similar to the U.S. exceptions to FAOC. Although the U.S. does not use codes to document exceptions to FAOC, the U.S. CO is required to complete a detailed justification that includes citing the specific authority for the exception. [Ref. 17: Subpart 6.303-2] One key distinction between the U.S. exceptions and both groups of Canadian exceptions is that the FAR allows for exceptions to FAOC to be approved on a class basis. [Ref. 17: Subpart 6.303-1]

c. Set-Asides

Canada has two set-aside programs, neither of which encompasses the broad-reaching scope of the small business set-asides established in the U.S. [Ref. 17: Subpart 6.203][Ref. 36] FAR Part 19 is directed to Small Business Programs and implements the acquisition-related sections of the *Small Business Act*. Two general categories of small business set-asides discussed in the FAR include acquisitions reserved exclusively for small business concerns or small business concerns in Historically Underutilized Business (HUB) Zones. [Ref. 12: p.6-35] FAR Part 19 also discusses other small business programs or related requirements such as 8(a) procurements and requirements regarding small disadvantaged businesses and women-owned small businesses—additional details are available in the FAR. One specific example of the U.S.'s broad set-aside guidance is that "simplified acquisitions between \$2,500 and \$100,000 are generally reserved for small business concerns." [Ref. 12: p.6-37]

The two Canadian set-aside programs discussed in the *PWGSC Supply Manual* are the Land Claims Set Aside (LCSA) and the Set-aside Program for Aboriginal

Business (SPAB). Both programs are established under provisions in NAFTA and WTO-AGP that allow for domestic set-asides for small and minority businesses. [Ref. 10: Subparts 4.009 and 4.010]

The Land Claims Set-aside policy establishes procedures for setting aside procurements covered by NAFTA and the WTO-AGP that are subject to Comprehensive Land Claims Agreements (CLCAs), National Park Agreements, or DND Co-operation Agreements. [Ref. 10: p. 9M.010]

SPAB allows requirements designated by client departments to be set-aside to qualified aboriginal (native) businesses. [Ref. 10: Section 9M]

For the SPAB, "the decision to set aside a procurement is the responsibility of the client department." [Ref. 10: Subpart 9L.020] For LCSA, "the extent of preferences to the claimant group is restricted to the Federal Government's obligations under the applicable land claims agreement(s)." [Ref. 10: Subpart 9M.020] This SPAB takes precedence over LCSA. Therefore, the LCSA policy does not apply to any procurement that has already been set aside under the SPAB. [Ref. 10: Subpart 9M.020][Ref. 10: Subpart 4.009]

The general distinctions regarding set-asides are that the set-aside programs of Canada and the U.S. target different socio-economic segments or programs and that the U.S. policies appears more complex and far-reaching in breadth of focus. The details of implementation for the specific set-aside programs of both countries can be extensive, particularly if including the elements of defining a business's eligibility for a set-aside and discussing specific organizational roles and responsibilities regarding set-asides. Within these details there may certainly be some overlap between the groups that each country targets.

5. Source Selection Planning

Source selection planning includes Assignment of Evaluation Factors and Selection of Method of Procurement. This section compares components and methodologies in both these areas.

a. Assignment of Evaluation Factors

The *PWGSC Supply Manual*, under the section *Bid Evaluation Criteria*, focuses on providing general guidance regarding source evaluation factors for RFPs. In an interview conducted with a PWGSC Aerospace, Marine, and Electronics Systems (AMES) Sector CO, he stated that the majority of PWGSC bid evaluation criteria are directed at selecting the lowest priced, technically compliant proposal. [Ref. 36] U.S. style "best value" evaluation criteria, in his estimation, were used in less than 10 percent of total purchases. [Ref. 36]

The Canadian non-price evaluation criteria are categorized into "competence measures" and "technical factors." These are explained as follows:

Competence measures include such factors as managerial structure, key personnel, prior industrial experience, facilities, and financial strength. Technical factors include the proposed work breakdown structure, identification of key technical problems and outlines of solutions, proposed schedule of milestones, and quality and time control systems to be employed. [Ref. 10: Subpart 6.143]

The *PWGSC Supply Manual* does not "publish a practical methodology for implementing existing past performance policy" as an evaluation criteria. [Ref. 5: p. 26] Additionally, the *PWGSC Supply Manual* does not discuss methods for structuring best value evaluation criteria except for two broad points of guidance. First, the manual states that "if the intent is to award the contract on the basis of best value, the criteria and the methods that will be used to determine the best value must be developed." [Ref.

10:Subart 6.146] Second, if a *service* contract is to be awarded based on best value, supplier's qualifications, "over and above" the mandatory qualifications, must be an evaluation factor specified in the RFP. [Ref. 10: Subpart 6.146]

In the U.S., "establishment of evaluation factors and significant sub-factors that apply to an acquisition and their relative importance are within the broad discretion of agency acquisition officials." [Ref. 17: Subpart 15.304(c)] In addition to price or cost and quality, the FAR requires consideration of one or more non-cost factors, to be addressed in every source selection when contracting by negotiation. [Ref. 17: Subpart 15.304(c)(1)] One of these non-cost factors is past performance. Although the CO, as an allowable exception, can document why Past Performance Information (PPI) is not appropriate as an evaluation factor, PPI shall, otherwise, "be evaluated in all negotiated competitive acquisitions expected to exceed \$100,000." [Ref. 17: Subpart 15.304]

The area of PPI use is perhaps the most significant difference between U.S. and Canadian evaluation criteria. The SOSB BPR Team recognized that to establish best value in any procurement, "an evaluation of a contractor's proposal must take into account the company's record of performance." [Ref. 5: p. 26] The BPR Team states that:

settling for the lowest compliant bid hardly seems in the taxpayers' best interest in all cases, if a Government evaluation team determines that it can get a better overall value by doing business with a higher priced supplier, with an excellent track record. [Ref. 5: p. 27]

The BPR Team includes the implementation of a PPI system as one of 16 principal areas of recommended procurement process improvements. [Ref. 5: p. C-104] Also, a DND internal memorandum, *Procurement Reform: A Comparison of Canadian and United*

Kingdom (UK) Initiatives, stresses the need for PPI use. This memorandum refers to the UK's in-process development of a PPI-use model and to the U.S.'s existing PPI system as a basis for stressing the need for Canada to implement its own automated PPI system.

[Ref. 44: p. 8]

A final significant distinction between the U.S. and Canadian systems is in the degree of detail required by the U.S. in spelling-out evaluation factors in the solicitation. The U.S. requires a statement of the relative weights of *all* evaluation factors in comparison to cost or price, while no such statement is required in Canada. In the U.S., the solicitation must state, at a minimum, whether:

all evaluation factors other than cost or price, when combined, are significantly more than cost or price; approximately equal to cost or price; or significantly less than cost or price. [Ref. 17: Subpart 15.304(e)]

To complete the discussion of evaluation factor assignments during acquisition planning requires one to pause and reflect on the nature of "broad discretion" as previously stated in the U.S. approach to tailoring evaluation factors. In this area, discretion seems to be similarly descriptive of both countries' systems. Thus, there is not necessarily a "one size fits all approach," and both the U.S. and Canada rely on their source selection teams and source selection officials to produce an evaluation plan that best fits the requirement.

b. Selection of Method of Procurement

Methods for procurement or purchasing were introduced in subpart IV.C that provided system basics before beginning the analysis of specific procurement processes. System basics discussed the general U.S. procurement or purchasing methods of FAR Parts 13 (RFQs), 14 (IFBs), and 15 (RFPs) and compared the general scope of

these U.S. methods to Canadian RFQs, ITTs, and RFPs. System basics also presented the basic Trade agreements, AIT, NAFTA and WTO-AGP, which apply to the majority of Canadian acquisitions above C\$25,000. This section will expand on these earlier discussions through selection of method of procurement but will reserve details of the solicitation process for later analysis.

RFQs are used in a similar manner in both countries with a few principal distinctions. Both countries' COs can place RFQs in writing, by telephone (T-buys), and electronically. [Ref. 10: Subpart 5.150] However, Canada restricts telephone RFQs to C\$10,000 even though the first trade agreement threshold requirement to synopsise, C\$25,000, has not been reached. [Ref. 10: Subpart 7.051] RFQs above this amount can be placed via telephone but require approval of the CO's director. [Ref. 10: Subpart 7.051] Canada has no mandatory requirements for advertising below the first threshold requirement for synopsizing, C\$25,000. [Ref. 36] However, the FAR, with certain exceptions, requires COs to "disseminate," via various possible methods, proposed contract actions expected to exceed \$10,000, but not expected to exceed \$25,000. This U.S. requirement begins at a point not later than the date that the solicitation is issued and extends out for at least 10 additional days or until after quotations have been opened (whichever is later). [Ref. 17: Subpart 5.101] In general, Canada's restrictions on telephone RFQs are opposite to the U.S. general philosophy of allowing oral solicitations to "the maximum extent practicable for purchases not exceeding the simplified acquisition threshold." [Ref. 17: Subpart 13.106(c)]

The sealed bid method is used in a similar manner in both countries with two principal distinctions. One distinction is that, in the case when Canada uses the

sealed bid method in an acquisition, *not subject to* NAFTA or WTO-AGP, where "urgency is a major factor," the sealed bid method can be used as the basis for entering into negotiations with bidders. [Ref. 10: Subpart 7.450(b)] Also, Canada does *not* use an equivalent to the two-step sealed bidding approach used by the U.S. Under the trade agreements, Canada's two-step method is used primarily to obtain qualified suppliers for participation in the subsequent release of a solicitation. [Ref. 10: Subpart 5.050] Whereas, the objective of the U.S.'s two-step method—same name but different intent—is to:

permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that *subsequent* [emphasis added] acquisitions may be made by conventional sealed bidding. [Ref. 17: Subpart 14.501]

The U.S. two-step method has potential usefulness in "acquisitions [sealed bid] requiring technical proposals, particularly those for complex items." [Ref. 17: Subpart 14.501]

RFPs are used similarly in Canada and the U.S. One principal difference in RFP use is that Canada does not have explicit procedures that allow oral proposals to substitute for elements of written proposals; the U.S. FAR allows oral presentations to substitute for or augment written information. [Ref. 17: Subpart 15.102] During a round-table seminar that included several senior members of the Space and Naval Warfare Systems Command, using oral proposals as substitutes for written proposal information, was validated as an effective mechanism for source selection. [Ref. 45][Ref. 17: Subpart 15.102(b)] Attendees at this seminar with experience in oral proposals indicated that they felt oral proposals expedited the award process with scoring tending to be much quicker and that the process often made it easier to determine a "clear winner." [Ref. 45] The two disadvantages that were brought up included that oral proposals were "too boring" and

that oral proposals made it "easier to start mixing people up." [Ref. 45] Additional details of RFP negotiations will be discussed later in the section on proposal evaluations. The next section, Business Terms and Conditions, will complete the analysis of the acquisition planning phase, after which the contract formation phase will be addressed.

6. Business Terms and Conditions

The Business Terms and Conditions function of acquisition planning adds the final elements required for completion of the solicitation package in preparation for the release of the solicitation. Key components of this function include Contract Types, Recurring Requirements and Special Contract Instruments, and Contract Financing. [Ref. 12: Subpart 6.5]

a. Contract Types

The U.S. uses several basic contract types, many which are essentially variations of cost reimbursable and fixed price contracts. Eleven basic U.S. contract types outlined in the FAP are listed in Table 2. Also included in this table are general types of contracts used in Canada. [Ref. 10: Subpart 6.521][Ref. 12: p. 6-52]

U.S. Contract Types	Canadian Contract Types
Firm Fixed Price (FFP)*	Firm Price
Indefinite Delivery (ID)	Firm Price with Economic Price Adjustment
Fixed Price Economic Price Adjustment (FPEPA)	Fixed Time Rate
Fixed Price Award Fee (FPAF)	Cost Reimbursable with Incentive Fee
FP Prospective Redeterminable (FPPRD)*	Cost Reimbursable with Fixed Fee
Fixed Price Incentive (FPI)*	Cost Reimbursable with Fee Based on Actual Cost (Cost Plus)
Cost Plus Fixed Fee (CPFF)*	Cost Reimbursable (No Fee)
Cost Plus Incentive Fee (CPIF)	
Cost Plus Award Fee (CPAF)	
Cost and Cost Sharing	
Time and Materials (T&M)	
*Note: These contract types have variants.	

Table 2. U.S. and Canadian Contract Types [Source: Developed by Researcher]

Both Canada and the U.S. focus on managing acquisition risk, in part, by the selection of a contract type appropriate to the requirement. Although the U.S. possesses several more contract types, it does not use one of the basic contract types employed in Canada, "Cost Plus." [Ref. 36] The Cost Plus Percentage of Cost (CPPC) contract type, analogous to Canada's "Cost Plus," is illegal in U.S. federal Government contracting. [Ref. 39: Subpart 5.3.3] A quick analysis will show that Canada's *Cost Plus* contract is truly analogous to the CPPC type banned in the U.S.

The FAI's *Federal Contract Pricing Reference Guide (CPRG) Volume 3*, states that a CPPC contract can occur when the contractor is allowed to increase fee by increasing cost, "thereby creating a negative cost control incentive." [Ref. 39: Subpart 5.3.3] One of the areas that the CPRG mentions as an indicator of whether a proposed contractual arrangement will result in a CPPC is if the fee will be paid based on a predetermined percentage fee rate instead of an identified dollar value. [Ref. 39: Subpart 5.3.3] Such is the case with Canada's Cost Plus contract, based on the contract type's description. According to the *PWGSC Supply Manual*, the Cost Plus contract provides

for reimbursement to the contractor "for costs incurred in performance of the work... together with a fee *based on* the actual costs incurred." [Ref. 10: Subpart 6.560]

U.S. award fee contracts are also absent from the Canadian contract "tool box." According to some U.S. researchers, award fee contracts have been found to be more effective than incentive fee contracts in improving contractor performance. [Ref. 41: p. 255] These research findings are attributed to the periodic performance evaluations conducted under award fee contracting. [Ref. 41: p. 255] A potential downside to award fee contracts is the increase in technical and managerial oversight and contract administration required during contract performance.

b. Recurring Requirements and Special Contract Instruments

One of the questions that should be asked early in the development of the acquisition plan was whether or not a recurring requirements instrument was in place to utilize for filling the requirement. The U.S. FAR provides several instruments to choose from:

- Standing Price quotations; [Ref. 17: Subpart 13.103]
- Blanket Purchase Agreements (BPAs); [Ref. 17: Subpart 13.303]
- Basic Agreements (BAs); [Ref. 17: Subpart 16.702]
- Basic Ordering Agreements (BOAs); [Ref. 17: Subpart 16.703]
- Indefinite Delivery Type contracts (e.g. delivery order & task order); [Ref. 17: Subpart 16.5]
- Multi-year contracting; [Ref. 17: Subpart 17.1]
- Options; [Ref. 17: Subpart 17.2]
- Some combination of the above or none of the above. [Ref. 12: p. 6-54]

From the above list of U.S. instruments for recurring requirements, four have approximate equivalents discussed within the *PWGSC Supply Manual*. These four are BPAs, multi-year contracts, BAs, and BOAs. Counterparts to three of these, BPAs, BAs, and BOAs will be discussed below.

A Standing Offer (SO) is similar to a U.S. BPA. A PWGSC SO allows a department and its authorized clients (e.g. DND) to purchase frequently ordered commercial and non-commercial goods and services directly from suppliers at prearranged prices, under set terms and conditions: no contract exists until a call-up is made against the SO. [Ref. 10: Subpart 5.158]

Canada uses a Supply Arrangement (SA) in a similar manner to a U.S. BOA or BA. SAs allow PWGSC clients (e.g., DND), under the negotiated framework of the Arrangement, to solicit bids from a pool of prescreened vendors. The intent of the SA is to expedite the processing of legally binding contracts for goods or services through pre-negotiated terms—the SA itself is not a contract. But, instead, "SAs establish a minimum set of terms and conditions which would apply to each contract." [Ref. 10: Subpart 5.165]

Another type of contract instrument is available in both countries for use in special circumstances, usually of compelling urgency, requiring the commencement of work prior to completion of full (definitized) contract terms. A "Letter Contract," in the U.S., is this type of instrument. [Ref. 12: p. 6-59][Ref. 17: Subpart 16.603] The equivalent to this type of contract instrument in Canada is called a *Letter of Intent*:

A Letter of Intent is issued subsequent to approval of those terms and conditions, which have been already agreed to, but before obtaining approval of all appropriate terms and conditions of the proposed contract. [Ref. 10: Subpart 7.652]

According to an interview conducted with a PWGSC AMES CO, Letters of Intent have been used only on rare occasions. [Ref. 36] The U.S. Naval Air Systems Command (NAVAIR) Assistant Commander for Contracts expressed a similar view and his own sentiments regarding the use of Letter Contracts in the U.S. when he stated that Letter Contracts, at NAVAIR were "used sparingly *and* managed closely." [Ref. 49]

Both countries have some similar, specific conditions relating to the use of letter contracts. A maximum liability amount must be stated and senior level approval must be obtained. In the U.S., senior level approval resides with an agency head or designee, and in Canada, the PWGSC Deputy Minister (DM) must approve the use of a Letter of Intent. [Ref. 10: Subpart 7.654][Ref. 12: p. 6-59] One principal distinction is that the *PWGSC Supply Manual* does not articulate a timetable for definitization, as does the FAR. [Ref. 17: Subpart 16.603] Although perhaps in practice this may be done, since Letters of Intent "must be prepared by Legal Services with the Canadian COs cooperation" and the use of a timetable for definitization would be logically expected. [Ref. 10: Subpart 7.652]

c. Contract Financing

Two principal types of finance payments, progress payments and advance payments, are available both in the U.S. and Canada. Advance payments are rarely used in either Canada or the U.S. [Ref. 10: Subpart 6.585][Ref. 12: p. 6-63] In Canada, advance payments require TB approval. [Ref. 10: Subpart 6.585] However, within the U.S. DoD, the CO can authorize an advance payment on the provision of adequate security and based on his or her determination that statutory requirements and those of the FAR Part 32 and DFARS Part 232 are met. [Ref. 46: para. 050102(C)(2)] Two other

types of financing are available in the U.S. but have no equivalent in Canada. These are commercial advance payments and commercial interim payments. [Ref. 12: p. 6-61] The guidelines for use of U.S. commercial payments will not be elaborated here.

Progress payments in Canada are similar to progress payments in the U.S. The *PWGSC Supply Manual* provides the following guidance regarding the preferred use of progress payments:

When a progress payment is to be used, milestones, when possible, should be specified to relate payments to measurable progress on the contract. Technical or other contractual yardsticks may be used as milestones. The value of each milestone should be negotiated before contract award. When progress payments against milestones are not possible ... payments may be made at set periods of time on a calendar basis (time payment method) or based upon actual, certified, costs incurred.
[Ref. 10: Subparts 6.592-6.593]

Canada also permits a combination of milestone and costs incurred progress payments to be made for different contract phases. [Ref. 10: Subpart 6.594] No specific provision appears in the *PWGSC Supply Manual* for performance-based payments, which are possible in the U.S. However, the Canadian description of progress payments seems to allow for the flexibility to make progress payments on the accomplishment of defined events or other quantifiable measures of results required for a performance basis to payment. [Ref. 12: p. 6-63] The *PWGSC Supply Manual* provides various limits on progress payments ranging from 75 percent to 100 percent of total allowable costs, depending on the specific contract type. For comparison, the U.S. customary range for progress payments, excluding construction, is 80 percent (or 85 percent for small business). The U.S. considers progress payments above 80 or above 85 percent for small business as unusual. [Ref. 12: p. 6-63]

E. CONTRACT FORMATION

1. Solicitation of Offers

The methods by which offers are solicited reflect the underlying focus on competition and other socio-economic objectives of federal acquisition. The Solicitation of Offers function of Contract Formation will compare U.S. and Canadian methodologies for solicitation-related activities or functions regarding the process of publicizing proposed contract actions. General rules for issuing U.S. synopses and solicitations will be discussed first, followed by a summary table that compares the U.S. and Canadian processes. Following the table, the Canadian elements will be discussed and compared with those of the U.S.

In the U.S., the manner and timeframe for publicizing proposed contractual actions are, in part, dependent on the type of requirement (such as a commercial item) and the dollar amount expected to be awarded in the contract. In Canada, the dollar thresholds established in the trade agreements determine when many proposed contract actions will be synopsized and solicited.

In the U.S., proposed contract actions for the acquisition of supplies and services expected to exceed \$25,000, other than those covered by certain FAR exceptions or special situations, are publicized in the *Commerce Business Daily* (CBD) for at least 15 days as a synopsis, prior to the release of the solicitation. [Ref: 17: Subpart 5.201] The synopsis briefly describes the supplies and/or services to be acquired. [Ref: 12: p. 7-5] In addition to the mandatory *requirements* for synopsizing in the CBD, the FAR also allows for optional uses of a CBD synopsis, such as "for a proposed contract action in any amount when advantageous to the Government." [Ref. 17: Subpart 5.201]

Following the synopsis period, and with the possible exception of commercial items, the CO must allow at least another additional 30 days for offerors to respond, following the issuance of the IFB or a RFP solicitation. [Ref. 12: p. 7-6] Exceptions to the synopsis include, if the proposed contract action is:

- Not expected to exceed the simplified acquisition threshold *and* solicitations are made through a single, Government-wide point of entry that permits electronic responses.
- Of a nature that disclosure would compromise national security.
- Expressly authorized or required by statute to be made to another Government agency or from a specific source.
- An order being placed against a requirements contract.
- An order made under the terms of an existing contract, previously synopsized in sufficient detail.
- Subject to under any of the remaining exceptions of FAR Subpart 5.202 apply—some of these remaining exemptions tie into the FAR Subpart 6.302—Circumstances Permitting Other Than Full and Open Competition, that were discussed in thesis subpart IV.D.4. [Ref. 12: Subpart 7.1][Ref. 17: Subpart 5.202]

In the U.S., proposed contract actions expected to exceed \$10,000 but not expected to exceed \$25,000 are required to be publicly displayed for at least 10 days using any of several optional methods prescribed in the FAR. [Ref. 17: Subpart 5.101(a)(2)]

When the proposed contract is for a commercial item, where a synopsis requirement would normally apply, the U.S. allows COs to reduce the issuance period of the solicitation or to use the streamlined, combined synopsis-solicitation which considers the solicitation "issued" on the synopsis date. [Ref. 17: Subparts 5.203 and 12.603] The combined method allows the CO to eliminate the 15 day CBD publication period.

Including the combined synopsis-solicitation method, the FAR also mentions other variations to the basic "at least 30 days" theme for synopsisizing in the CBD." [Ref. 17: Subpart 5.203] One such variation is that "in addition to other requirements...for acquisitions subject to NAFTA or WTO-AGP the period of time between publication of the synopsis and receipt of offers shall be *no less than 40 days*." [Ref. 17: Subpart 5.203(h)] Table 3 summarizes the U.S. and Canadian requirements for synopsis and solicitation timeframes. The table is not intended to be exhaustive in nature but does provide a reasonable summary for comparison. The Canadian system will be discussed in more detail following the table.

Procurement	Goods	Services	Minimum Synopsis-Solicitation
Method or Requirements Type	Threshold	Threshold	Period Normally Required
Canada			
CLCA	Any	Any	15 Calendar days
NAFTA (1,4)	C\$34,100	C\$72,600	40 Calendar days
NAFTA (2,4)	C\$363,300	C\$363,300	40 Calendar days
WTO-AGP (4)	C\$254,100	C\$254,100	40 Calendar days
AIT (3,5)	C\$25,000	C\$100,000	15 Calendar days
Non-trade Agreement (6)	-	-	Reasonable time
U.S.			
Supplies & Services per notes (7,10,11)	\$25,000	\$25,000	45 days
Supplies & Services per note (8,9)	\$10,000	\$10,000	10 days
Notes			
(1) C\$ thresholds for procurement by a federal government entity.			
(2) C\$ thresholds are for procurement by a federal government enterprise.			
(3) For mixed procurements, C\$ is the amount of the 'highest' portion, goods or services.			
(4) If subject to NAFTA and/or WTO-AGP must be advertised in GBO and GETS.			
(5) AIT procurements are advertised on GETS only.			
(6) Bids can be solicited via GETs or other methods.			
(7) All proposed contract actions other than those exempted by FAR Subparts 5.202 or 5.205.			
(8) All proposed contract actions expected >\$10,000 and < \$25,000; exemptions at FAR 5.202.			
(9) In addition to exemptions at FAR 5.202, display not required if using FAR 5.101(a)(2)(ii).			
(10) For commercial items the issuance period for the solicitation may be shortened or a combined synopsis-solicitation may be used.			
(11) If for R&D and expected > SAT, allow 45 days minimum synopsis-solicitation.			

Table 3. Summary of U.S. and Canadian Synopsis and Solicitation Requirements
[Source: Developed by Researcher]

Canada uses both the Government Business Opportunities (GBO) and the Government Electronic Tendering Service (GETS) to advertise proposed contract actions. The GETS is PWGSC's "preferred notification process for most competitive procurements." [Ref. 10: Subpart 7.160] Table 3 and its footnotes summarize the relationships between the various trade agreements and the associated advertising methods. AIT, for example, uses the GETS as the only recognized medium for public advertising. [Ref. 10: Subpart 7.160] The GETS is PWGSC's "online business opportunity identification and bid document distribution service." [Ref. 10: Subpart

7.164] The GBO is published twice per week and is the recognized media for public advertising under NAFTA and WTO-AGP. [Ref. 10: Subpart 7.160] GETS and the GBO correspond, approximately, to the U.S. electronic points of entry and the CBD; however the use of these forms of communication, as can be seen from Table 3 alone, shows significant differences.

Canada utilizes a Notice of Proposed Procurement (NPP) discussed in subpart IV.D.4, as an approximate equivalent to a U.S. synopsis to advertise on the GETS and in the GBO in accordance with relationships summarized in Table 3. The NPP, the solicitation, and the GETS and GBO publication methods are all timed or delayed to coincide. [Ref. 10: Subpart 7.183] There are no separate periods as with the U.S.'s synopses and solicitations. The NPP is posted on the GETS at the same time as the related solicitation document. [Ref. 10: Subpart 7.187] For proposed contracts under NAFTA and WTO-AGP, "the commencement of the publishing period coincides with the publication of the NPP in the GBO." [Ref. 10: Subpart 7.183]

Canada uses GETS and the GBO for a unique process that seems to have no direct counterpart in the U.S. Both GETS and the GBO may be used, subject to the requirements of the proposed contract, to publish Advanced Contract Award Notices (ACANs) that alert suppliers to upcoming non-competitive procurements. [Ref. 10: Subpart 8.005] ACANs are generally mandatory in non-competitive procurements, subject to certain exclusions. [Ref. 10: Subpart 8.017] The ACAN provides suppliers the opportunity to challenge the proposed procurement. [Ref. 10: Subpart 8.017] This challenge process is distinct from protests and, in some ways, similar to the process by which the U.S. CO may consider a late proposal, which will be discussed later. ACANs

are open from 7 to 15 days. [Ref. 10: Subpart 8.107] ACANs seem to allow for significant streamlining of the acquisition process, in particular, when no challenges are received. [Ref. 36]

Under their recommendations for streamlining the Canadian standard procurement process, the SOSB BPR recommends reducing NAFTA and WTO-AGP open bidding period from 40 to 25 days. [Ref. 5: p. G-133] The SOSB BPR also recommends the creation of a special section on the GETS with preset Terms and Conditions (T&Cs) for RFPs greater than C\$25,000 that will be open for 4 days only. [Ref. 5: p. G-133] Special cases in the TBS's *Contracting Policy Manual* allow for NAFTA and WTO-AGP publishing dates of 24 calendar days for second or subsequent publications relating to recurring contracts or as little as 10 days where "a state of urgency can be substantiated." [Ref. 1: p. U-25]

2. Bid Evaluation

The term bid, as used in this section, refers solely to sealed bidding. However, the basic procedures for initial handling of "sealed bids" and proposals in Canada are almost the same with the principal exception that sealed bids are opened publicly.

The actions taken during the Bid Evaluation period are critical. This point in the Contract Formation phase represents the culmination of a great deal of effort by both the Government and the offerors. The rules for bid handling must be precise and strictly enforced in order to demonstrate fairness to all bidders. Focus will be addressed towards the key events or functions that include, Bid Acceptance Periods, Modifications and Withdrawals, Late Offers, and Responsiveness.

a. Bid Acceptance Periods

Bid acceptance periods are used in both countries but in a slightly different context. Canada specifies a standard bid validity period of 60 days, unless otherwise indicated in the solicitation. [Ref. 10: Subparts 7.339 and 7.460] In the U.S., the solicitation *may* establish a minimum acceptance period. [Ref. 12: p. 7-18] Similarly, in both countries, bids that offer less than the minimum solicitation time for acceptance are non-responsive since they do not meet all of the terms and conditions of the solicitation.

b. Modifications and Withdrawals

The U.S. "firm bid rule" precludes bid modification and withdrawal *after opening*. The otherwise similar Canadian rules apply *after closing*—the key distinction between the two countries. In the U.S., the general rule when using a sealed bid procurement is that:

after disclosure [emphasis added] of the offer is made at bid opening, an offeror cannot either withdraw or modify the bid or recover a deposit made. On occasion, this doctrine has been relaxed by the courts where there are special circumstances, such as obvious honest mistakes on the bidder's part or a misleading action on the part of the Government. [Ref. 47: Subpart 12.1(B)]

Thus, U.S. COs are allowed to provide relief to bidders according to the detailed guidance provided in FAR Subpart 14.407, *Mistakes in Bids*. These exceptions are, in broad terms, similar to the Canadian treatment of bid mistakes and withdrawals.

Canada publishes far less detail in its guidance regarding handling mistakes in bids, compared with the U.S. After bid closing, Canada allows withdrawals for bids submitted with security, subject to PWGSC director-level approval, on the occasion of "significant error on the face of the bid, in such cases, following a public opening, all bidders must be advised, under signature of a director, of this decision."

[Ref. 10: Subpart 7.347] Canada provides four general areas in which modifications, *after closing*, are *not* permitted. In general, these prohibited areas include any changes that modify substantive elements, change the relative position of the bid in relation to others, add items, or that provide an advantage that can be construed as unfair or that detracts from the integrity and impartiality of the process. [Ref. 10: Subpart 7.345] *Before* the bid closing period in Canada and before the bid opening period in the U.S., both countries allow bids to be modified or withdrawn. [Ref. 10: Subpart 7.267][Ref. 12: p. 7-18]

c. Late Offers

As mentioned previously, in the U.S. bids not received before *opening* are considered late, with some exceptions. In Canada, bids received after the *bid closing date and time* are considered late and will not be accepted at the PWGSC Headquarters Bid Receiving Unit (BRU) in Ottawa. However, PWGSC allows for local procedures to be adapted in other areas, such as in its regional offices. [Ref. 10: Subpart 7.304]. Within the U.S., RFPs are considered late if received after the solicitations closing date, in a similar manner to Canada. [Ref. 10: Subpart 7.304][Ref. 12: p. 7-19] RFP handling will be discussed later.

d. Responsiveness

In evaluating bid responses, the *PWGSC Supply Manual* states that "bids are non-responsive if they fail to meet any mandatory requirement set out in the bid solicitation. The reasons for declaring a bid non-responsive must be clearly described by the CO and documented on the contract file." [Ref. 10: Subpart 7.360] The "failure to comply with the essential requirement of the IFB" is also a reason for finding a bid non-

responsive in the U.S. and rejecting the bid. [Ref. 12: p. 7-22] The next section will discuss RFP evaluation.

3. Proposal Evaluation

In both countries, proposal evaluation may be relatively straightforward for simpler acquisitions, or, for complex acquisitions, may involve many Government personnel in the challenging task of choosing the best value proposal among many offerors.

This section will consider several aspects of the proposal evaluation process including Receipt and Handling, Initial Review, Application of PPI, Negotiation Techniques, and Profit Considerations. Specific details of price and non-price analysis and tradeoffs will not be discussed. The bibliography includes a reference to the text *Competitive Negotiation: The Source Selection Process* for consultation regarding additional details of the U.S. process for competitive negotiation.

a. Receipt and Handling

In Canada, the general process for receiving and handling proposals, prior to *closing*, is basically the same as that for sealed bidding, which was discussed and compared in the previous section. For example, the *PWGSC Supply Manual* states that late offers are not to be accepted and will be returned. "Records will be maintained of all returned bids or proposals." [Ref. 10: Subpart 7.304] After the proposal closing period, the Canadian proposals are removed and opened by a designated official, in the presence of a witness. The official and witness record the proposal. [Ref. 10: Subpart 7.321] The U.S., under acquisitions subject to the terms of NAFTA and WTO-AGP, also utilizes this recording procedure. [Ref. 17: Subpart 25.405] In the U.S., proposals and proposal

modifications are late if received after the exact time specified but can still be considered within certain guidelines. [Ref. 17: Subpart 15.208(b)] For example, a CO receiving a late proposal or modification shall:

promptly notify any offeror if their proposal, modification, or revision was received late and shall inform the offeror whether or not the proposal will be considered, unless contract award is imminent. [Ref. 17: Subpart 15.208(c)]

b. Initial Review

In outlining the requirements for the CO's initial review of proposals, the FAP states that "if a proposal departs in any respect from the terms and conditions of the solicitation, such variances must be identified and addressed in fact-finding or discussions with the submitting firm." And, that, "in some cases the FAR provides for rejection of a proposal if the offeror is unwilling to comply with provisions and clauses required in the acquisition." [Ref. 12: p. 7-25][Ref. 17: Subpart 3.405] Likewise, Canadian COs are encouraged to seek "clarifications" and cautioned to ensure that the clarification process does not provide any offeror an advantage over another and that the process cannot alter the price quoted, with an exception for mathematical errors or any substantive element of the offer. [Ref. 10: Subpart 7.389] Also, in a similar manner to the U.S., the Canadian CO reviews proposals to ensure suppliers confirm their compliance with provisions and clauses, such as those, in Canada, incorporated into the solicitation from the PWGSC *Standard Acquisition Clauses and Conditions (SACC) Manual*. [Ref. 10: Subpart 7.003]

The term "clarification" in the U.S. has a different connotation than it does in Canada. In the U.S.:

clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated. [Ref. 17: Subpart 15.306]

In Canada, clarification speaks to the initial review of proposals before entering into negotiations. Technically, the Canadian system allows for awards to be made without discussions as the possibility exists for this to occur, given the guidelines in the *PWGSC Supply Manual*. For example, a solicitation, with the exception of an RFQ, constitutes, "an offer which becomes a contractually binding commitment when it is accepted *without deviation* [emphasis added] by PWGSC." [Ref. 10: Subpart 7.339] However, in the U.S., the concept of award without discussion is *specifically* addressed in guidelines that mandate that the solicitation should state that the Government *intends* to make awards without discussions when evaluating proposals. [Ref. 17: Subpart 15.306]

Once the initial review has been conducted, the technical and price proposals are evaluated in a similar manner in both countries. Designated members of the evaluation team review the technical proposal. Specialists, within or outside the contracting office or within the requisitioning agency, may review the price proposal. Likewise, both the U.S. and Canada may use specialists for field-pricing or related audit support, such as provided by the USD(Comptroller)'s Defense Contract Audit Agency (DCAA) or PWGSC's Audit and Review branch. [Ref. 38: p. 36][Ref. 18] The evaluation is conducted solely in accordance with the factors and significant sub-factors established in the source selection plan and as published in the solicitation. [Ref. 10: Subpart 7.359][Ref. 17: Subpart 15.305]

Subpart IV.C.6, Source Selection Planning, discussed the principal similarities and differences between the two countries' evaluation criteria. Both countries

agree that the evaluation should be consistent with those criteria. The FAR provides some additional detail, absent from the *PWGSC Supply Manual*, regarding the flexibility of the evaluation (e.g. scoring) within the tailored framework. "Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings." [Ref. 17: Subpart 15.304(a)]

c. Application of PPI

Basic differences regarding each country's consideration of PPI were established earlier. Additionally, the FAR calls for the source selection team to consider the "past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns." [Ref. 17: Subpart 15.304(a)(2)(v)] This particular policy actually represents an enforcement of a U.S. socio-economic goal, for which Canada does not have an exact counterpart.

d. Negotiation Techniques

Overall, the FAR provides many more details for mandatory and recommended guidance applicable to conducting negotiations. Canadian negotiation techniques differ, depending on whether or not the acquisition is subject to the trade agreements. Based on a comparison of the FAR, *PWGSC Supply Manual*, and DND's *Acquisition Desktop*, several key distinctions were identified in the negotiation process for RFPs for Canadian acquisitions *not* subject to NAFTA or WTO-AGP. The U.S. specifically allows the establishment of a competitive range, which can be reduced further for purposes of efficiency—this concept is expressed differently in Canada. In competitive negotiations not subject to the trade agreements, Canada selects the winning proposal and moves to enter negotiations with the winning offeror, whereas the U.S.,

after the final round of proposal revisions have been received based on *individual* negotiations, moves to make an award without revisions. [Ref. 17: Subpart 15.307(b)] The Canadian negotiation method (non-trade) is similar to an amalgam of the processes of U.S. negotiations using RFP and RFQs. For example, using RFQs as a basis for competitive discussions with multiple vendors under FAR Part 13, the CO can negotiate an agreement for the vendor "in line for award" without soliciting a final round of quotations from other vendors with whom negotiations were held. [Ref. 12: p. 7-40]

When Canada conducts an acquisition under NAFTA or WTO-AGP, the distinctions between the U.S. negotiation procedures and its own are much less pronounced. The trade agreements also introduce broad principles of negotiation that seem to allow for the flexibility to establish a competitive range and reduce the competitive range for efficiency, as the U.S. allows, especially when combined with "selective or limited tendering" discussed during the section on Extent of Competition. For example, an excerpt from the NAFTA text below states, "carry out any elimination of suppliers in accordance with the criteria set out in the notices and tender documentation." [Ref. 10:Annex 4.1 Article 1014] For all Canadian procurements subject to NAFTA or WTO-AGP, the CO may only enter into negotiations if one of the two conditions specified in either agreement is present, and these negotiations must proceed in accordance with the steps outlined in the agreements. [Ref. 10: Subpart 7.449] NAFTA and WTO-AGP have very similar negotiation procedures, and NAFTA's will be presented here to support the previous comparison. An excerpt from NAFTA Article 1014, *Negotiation Disciplines*, is provided below:

1. An entity may conduct negotiations only: (a) in the context of procurement in which the entity has, in a notice published in accordance with Article 1010, indicated its intent to negotiate; or (b) where it appears to the entity from the evaluation of the tenders that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation. 2. An entity shall use negotiations primarily to identify the strengths and weaknesses in the tenders. 3. An entity shall treat all tenders in confidence. In particular, no entity may provide to any person information intended to assist any supplier to bring its tender up to the level of any other tender. 4. No entity may, in the course of negotiations, discriminate between suppliers. *In particular, an entity shall: (a) carry out any elimination of suppliers in accordance with the criteria set out in the notices and tender documentation; (b) provide in writing all modifications to the criteria or technical requirements to all suppliers remaining in the negotiations; (c) permit all remaining suppliers to submit new or amended tenders on the basis of the modified criteria or requirements; and (d) when negotiations are concluded, permit all remaining suppliers to submit final tenders in accordance with a common deadline [emphasis added].* [Ref. 10:Annex 4.1 Article 1014]

e. Profit Considerations

Ensuring that offerors receive a reasonable profit is an objective of both countries' acquisition systems during both competitive and non-competitive acquisitions. The DCAA Contract Audit Manual captures the essence of the idea of reasonable profit by stating:

[I]t is in the Government's interest and therefore the general policy of DoD and civilian agencies to offer contractors opportunities for financial rewards sufficient to stimulate efficient contractor performance, attract the best capabilities of qualified contractors, and maintain a viable industrial base. [Ref. 48: Subpart 9-901]

The U.S. and Canada both have policies regarding the computation of profit for price proposals. Within these methodologies, each country's interpretation of a suitable profit amount for adequate "financial rewards" differs somewhat as will be discussed in broad terms here. Both countries also establish methods for commercial

pricing, where profit is determined by market forces that establish adequate price competition. [Ref. 10: Subpart 10.006][Ref. 17: Subpart 15.404-4(c)(1)] Also, when computing profit levels for negotiation, both countries employ techniques that recognize capital cost of money, business risk (performance risk), and contract-type risk. [Ref. 10: Subpart 10.012][Ref. 22: Subpart 215.404-71-1(a)] The specific profit discussion that follows pertains to situations where profit analysis is required. Other exceptions to profit analysis—aside from commercial pricing—will not be elaborated.

Canada has a very specific policy regarding profit ceiling that is more broadly applied than in the U.S. The *Cost and Profit* chapter of the *PWGSC Supply Manual* states "the total amount of profit awarded under all factors shall in no event exceed 20 percent of the total contract costs" for negotiated contracts. [Ref. 10: Subpart 10.021] The U.S. has certain contract types where a profit ceiling is established. An example is:

For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee—profit for cost-reimbursement contracts [emphasis added]—shall not exceed 15 percent of the contract's estimated cost, excluding fee. [Ref. 17: Subpart 15.404-4(a)(4)]

In general, however, the U.S. uses an approach that determines a profit "objective" for used during negotiations. This distinction will be discussed further in the analysis section of the chapter.

4. Contract Award

Contract award, as the final function of Contract Formation incorporates concepts, key events, and functions that include Notifying Unsuccessful Bidders, Debriefing

Unsuccessful Offerors, Responsibility Determination, Subcontracting Requirements, Mistakes in Offers, and Protests.

a. Notifying Unsuccessful Bidders

The *PWGSC Supply Manual* does not specifically address how notifications will be provided to unsuccessful bidders when bids are not opened publicly. In the U.S., the CO must notify unsuccessful bidders in writing or electronically within three days after contract award. [Ref. 17: Subpart 14.409] Also, when the U.S. acquisition falls under NAFTA, the CO will include in the notification to Canadian bidders the dollar amount of the successful bid and the name and address of the successful bidder. [Ref. 17: Subpart 14.409-1(a)(2)] When providing this additional information to Canadian bidders would interfere with normal operations of the contracting office, the CO need only provide the location of the abstract of offers. [Ref. 17: Subpart 14.409-1(b)]

b. Debriefing Unsuccessful Offerors

Debriefings to unsuccessful offerors, in Canada, are available on request but only *after* contract award. [Ref. 10: Subpart 7.698] Under certain circumstances, Canada may *notify* unsuccessful offerors before award. [Ref. 10: Subpart 7.486] In the U.S., due primarily to the distinction of "competitive range" previously discussed, *debriefings* are available, for acquisitions under FAR Part 15, both prior to award and post-award. For U.S. acquisitions under FAR Part 13, below the Simplified Acquisition Threshold, *notifications* are provided "only if requested or as required by FAR Subpart 5.301." [Ref. 17: Subpart 13.106-3(c)]

The timeliness of debriefings is more rigid in the U.S. than in Canada. Canada does not establish a specific time period for debriefing unsuccessful offerors. However, Canadian COs must *notify* unsuccessful offerors "as soon as possible after contract award" when large expenditures are involved or when considerable resources must be held in reserve. [Ref. 10: Subpart 7.710] This notification is conducted by sending a "regret letter." [Ref. 36] In the U.S., post-award debriefings should:

be requested, in writing within three days after the offeror has received notification of contract award and to the maximum extent practicable, the CO should conduct debriefings within 5 days after receipt of the written request." [Ref. 17: Subpart 15.505]

Under eligible NAFTA or WTO-AGP acquisitions by U.S. agencies, COs, as discussed in section IV.C.2, are required to advise unsuccessful offerors within three days after contract award. [Ref. 17: Subpart 25.405(e)] U.S. requirements for *pre-award* debriefings will not be discussed further since the *PWGSC Supply Manual* does not provide detailed terms, for comparison, beyond the allowance for "unusual case" notifications.

The content of debriefing in Canada, per the *PWGSC Supply Manual*, includes "an outline of the reasons the bid (offer) was not successful, making reference to the evaluation criteria." [Ref. 10: Subpart 7.698] The U.S. has a much more detailed list of requirements for debriefing. The one point that *Canada* emphasizes is absent from the U.S. list of discussion items. In the event that the offer is dissatisfied after the briefing, the Canadian CO is required to articulate the offerors' rights to and related procedures for protest. [Ref. 10: Subpart 7.698]

c. *Responsibility Determination*

A determination concerning the responsibility of a prospective contractor needs to be made by the CO prior to contract award. [Ref. 10: Subpart 7.507][Ref. 17:

Subpart 9.103] The U.S. and Canada have similar standards for responsibility determination. The PWGSC factors for responsibility stem from TB policy that states "firms considered qualified (responsible) are those that have the technical, financial and managerial competence to discharge the contract." [Ref. 10: Subpart 7.507] These Canadian factors are all embodied in a more detailed list found in FAR Part 9. The U.S. goes further to explicitly state, in terms of financial, production, construction, and technical equipment and facilities resources, that the prospective contractor can possess or "have the ability to obtain" these resources. [Ref. 17: Subpart 9.104-1] Also, the U.S. is alone in emphasizing that the contractor must have a "satisfactory performance record" and "satisfactory record of integrity and business ethics." [Ref. 17: Subpart 9.104-1]

However, these two terms could be considered, broadly, to fall under the factors of managerial competence required under the Canadian system. The DFARS provides one example of how DoD may perceive Canadian responsibility determinations. When the Canadian Commercial Corporation (CCC), a Crown (Government-owned) corporation that assists Canadian businesses in several areas, including international Government-to-Government sales, provides a responsibility determination to the U.S. for a Canadian business, DoD seems potentially unwilling to fully accept the determination without independent analysis by U.S. COs:

Generally, the CCC's proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the CO, the CO shall request from CCC and any other sources whatever additional information as necessary to make the responsibility determination. [Ref. 22: Subpart 209.104-4]

d. Subcontracting Requirements

Canada, like the U.S., has requirements for some acquisitions that enforce adherence to certain socio-economic programs by mandating that successful offerors establish subcontracting plans to support the programs' objectives. Canada does not have the same statutory small business and disadvantaged programs as the U.S., but uses a similar process to enforce its own. For example, in enforcing its Set-Aside Program for Aboriginal [native] Business, Canada requires that the offeror certify (when subcontracting is used) that at least 33 percent of the value of the work performed under the contract will be performed by Aboriginal business. [Ref. 10:Annex 9.1] In a similar U.S. example, according to the NAVAIR Assistant Commander for Contracts, his department routinely mandates, via the terms of the solicitation, that prime contractors prepare sub-contracting plans that award 30 percent of subcontracts to small businesses. [Ref. 49]

e. Mistakes in Offers

"Mistakes in Offers" is discussed within the FAP as a subset of our current function of procurement process analysis, Contract Award. Earlier in the chapter, within subparts IV.E.2 and IV.E.3, Bid Evaluation and Proposal Evaluation, the handling of pre-award mistakes in bids and proposals was described. The process for handling *post-award* mistakes is not specifically discussed in the *PWGSC Supply Manual*. The manual does mention that Legal Services should be consulted, if, after bid closing, "the bidder [offeror] wishes to withdraw a bid for any reason other than a significant error on the face of the bid." [Ref. 10: Subpart 7.347] It is probable that Canadian COs would, likewise, consult Legal Services, since a mistake or withdrawal request after award would certainly

fall under the category of a significant error. The FAR in Subpart 14.407-4 (*Mistakes After Award*) and Subpart 33.2 (*Disputes and Appeals*) provides extensive guidance to the CO regarding handling and documentation of post-award mistakes, which will not be reviewed here, other than to highlight the difference between the U.S. and Canadian purchasing regulations' coverage in this area.

f. Protests

The U.S. and Canadian legal influences in acquisition were discussed in Chapter I. CITT was determined to hold comparable authority to U.S. organizations such as the BCA and the GAO's Office of the Comptroller General. The Contract Claims Resolution Board (CCRB) was also introduced in Chapter I as an internal PWGSC organization involved in the coordination, between PWGSC and CITT, of procurement challenges. Earlier, the point was made that Canadian COs are required to inform unsuccessful offerors who remain dissatisfied following a debriefing of their rights to protest.

The CCRB provides unique dispute resolution services for PWGSC. The board acts as an appeal and review agency for all procurement-related disputes and claims arising from commercial, construction and consulting contracts, with the exception of challenges [protests]. [Ref. 11] CCRB's Contracts Settlement Board (CSB) is an independent review body that resolves disputes concerning extra cost claims and contracts that are terminated for convenience by the Canadian *or* U.S. Government. [Ref. 11] CCRB's Contract Disputes Advisory Board (CDAB) is an independent review board that provides an informal and rapid form of resolution (non-binding arbitration) for

contract-related disputes, primarily regarding construction and consultant services. [Ref. 11]

As introduced in Chapter I, the U.S. has more rigorous legislation regarding disputes and protests, such as the *Contracts Disputes Act* that created the Board of Contract Appeals and EO 12979 that established rules for agencies regarding the internal handling of protests. However, the Canadian systems for handling disputes and protests seem to be comparable and, given the statistics mentioned in Chapter I (0.08 percent overall for sustained CITT challenges), effective.

The impact on contract award of a protest filed with the GAO's Comptroller General is similar to the impact of a protest filed with CITT. Both agencies can delay the award of a contract pending the resolution of protests. However, in the U.S. this delay is automatic, whereas in Canada, CITT "may order" the Government to postpone award until the complaint is resolved. [Ref. 7: p. 15][Ref. 17: Subpart 33.103(f)(1)] In both countries, there is a mechanism for COs, based on urgency as a common factor, to proceed with award. [Ref. 7: p. 15][Ref. 17: Subpart 33.103(f)(1)] Under the U.S. system, protests can also suspend or terminate an award, if the notice is received within 10 calendar days following award. [Ref. 12: p. 7-52] This post-award aspect of protests is not addressed in the *PWGSC Supply Manual* or in the *Guide to the CITT*. [Ref. 6][Ref. 10]

F. ANALYSIS

After examining significant elements of the acquisition processes of the U.S. and Canada, numerous similarities and differences were noted between the two countries' buying processes. Possible answers as to why these similarities and differences exist may be formulated by answering the first three research questions:

- What are the political and legal influences that shape the defense acquisition systems of Canada and the U.S.?
- What is the objective and what are the goals of the Canadian and U.S. defense acquisition systems, and to what extent are these similar or different?
- What organizational structures and resources are in place to accomplish the goals of the defense acquisition systems of Canada and the U.S., and what are the similarities and differences in these structures?

These answers will be reserved for Chapter V's conclusions and recommendations. The analysis here will focus on a critical review of the key similarities and differences discovered during Chapter IV's comparative analysis of selected acquisition process elements. Additionally, this analysis may tie in other subject matter insights derived during the research process or other relevant experience that may not have been previously articulated in the structured chapter analysis.

Procurement reform in both countries is a topic of both great interest and great debate. The general consensus among Canadian Government personnel, military and civilian, interviewed during the course of this research was that Canada lagged behind the U.S. in implementing reform efforts. However, even if this were so, there could be a justifiable reason in that, by observing the U.S. efforts, Canada can draw conclusions as to which specific reforms may be advantageous within their own organizations. In other words, Canada is in a position to learn from the money-saving successes *and* costly

mistakes of its larger neighbor. So, a wait-and-see attitude regarding reform may be a good strategic decision in some cases.

Mixed signals were obtained during interviews, discussions, and other research regarding the TBS's role in guiding reform. TBS is definitely empowered, via its policy-making role, to guide reform. Appearances are that TBS allows DND and PWGSC to champion reform efforts within and across their departments, while remaining nominally in charge of reform, through its central administrative authority in the Canadian Government and its representation on interagency reform committees. Nonetheless, Canada seems to be making progress on implementing reforms that may prove beneficial to the acquisition community.

Reform measures relating to the professional development of the acquisition workforce were discussed under the umbrella of CO Roles and Authorities but appear to be the most critical towards ensuring the success of buying process reforms such as BDP and COTS. The probability of successfully implementing Canadian reforms, with or without a "champion" to guide the process, may be increased by enhancing the knowledge-base and professional qualifications of the personnel within the DND and PWGSC acquisition workforces.

The role of the trade agreements within Canadian acquisition adds significant complexity to a comparative analysis of acquisition procedures. Thankfully, the processes are sufficiently similar in nature between the trade agreements, Canadian-unique acquisition processes, and U.S.-unique processes that comparative analysis is possible. Both Canada and the U.S. manage to use the same basic contracting approaches

of requesting quotations, offers, or sealed bids often within only slightly different sets of rules.

Market research is handled in a very similar manner between the U.S. and Canada at a practical level. Market research is seen as an enabler to acquisition planning in both countries and the techniques for acquiring data are fundamentally the same. Where distinctions are present is, primarily, within the regulatory language associated with market research. The U.S. attaches much greater emphasis to market research as a tool for assisting COs in commerciality determinations and provides regulatory language in the FAR to this effect. The U.S. FAR also *mandates* the use of market research above a certain dollar amount, the SAT. Canada's own acquisition procedures do not discuss either of these issues aside from emphasizing market research in order to find "commercial solutions."

Canada does not appear to modify its contracting procedures for commercial item acquisitions in any significant manner. By contrast, a "commerciality determination" has major implications on the acquisition authorities and rules provided to the U.S. CO. Discussions with DND officials indicated that DND pursued acquisition of commercial items from the project [program] manager's perspective of reducing the timeframe required in project planning and execution by finding a reasonable commercial solution.

Purchase requests in both countries are prepared in a similar manner. Canada uses IPTs for complex acquisitions, as does the U.S. The key difference is organizational. Canadian COs are temporarily assigned by PWGSC to work on project [program] IPTs, and U.S. COs are assigned permanently to major DoD acquisition organizations. Discussions with DND military and civilian personnel and PWGSC staff

seemed to indicate that the current relationship between PWGSC and DND in preparing purchase requests was satisfactory. PWGSC seeks to align its COs with systems specialists within the DND acquisition organization, such as naval weapons systems. Accordingly, even if the PWGSC CO is not actively engaged in an IPT, he or she is available to assist in preparation of PRs for the DND area commonly serviced.

The use of specifications and standards appears to be similar between Canada and the U.S. Canada does not "spell out" a functional specification type. However, their system seems to allow for the use of a functional specification as a variant of a performance specification.

Both the U.S. and Canada seem to be moving towards international or commercial standards based on emphasis of their respective defense departments. Canada seems to have a disconnect between PWGSC and DND in regards to Canadian standards and specifications. The *PWGSC Supply Manual* stresses the use of Canadian standards while the *Acquisition Desktop* stresses international commercial standards.

Canada does not have a list of mandatory sources of supply. The U.S., by comparison, mandates a required sources of supplies and services to be consulted and utilized, as appropriate, given the nature of a requirement. Last on this list, for supplies, is commercial sources. The U.S. also has many exemptions from using this prioritized list, which may, in practical terms, allow for the flexibility to avoid using a higher-level source, such as excess from other agencies.

Canada and the U.S. have different set-aside programs. Both mandate set-asides for small business groups but the U.S.'s set-asides are much broader in scope. Canada's small business set-aside programs are targeted at the country's Land Claims Agreements

(LCSA) and aboriginal businesses. The U.S. set-asides are targeted at small business concerns or small business concerns in HUBZones. However, the U.S. has a *socio-economic* program, the Indian Incentive Program, that implements 25 U.S.C. 1544 and provides an incentive to prime contractors that use Indian [aboriginal] organizations and Indian-owned economic enterprises as subcontractors.

The U.S. and Canadian set-aside programs differ due to the unique socio-economic goals of each nation's Government. A CO within PWGSC did indicate that Canada had some "policies" regarding broad set-asides to small business but was unable to elaborate regarding them. The 1998-1999 PWGSC Departmental Performance Report also provides statistics relating to small businesses which indicate that 71 percent of contracts were awarded to small business in 1998-1999. However, this published statistic is not related to a goal or set-aside basis for the awards. [Ref. 38: p. 16]

Canada strives for "maximum competition" on similar terms to U.S. efforts to achieve "full and open competition." Both countries have exceptions to full competition that are similar in nature. The following are some key distinctions:

- Canada has different competition procedures for trade and non-trade agreement acquisitions.
- The U.S. allows competition to the "maximum extent practicable" when using simplified acquisition procedures.
- The U.S. exempts some mandatory sources of supply whereas Canada has no such exemption.
- Canada uses CAP codes for documenting exceptions to "maximum competition" under the trade agreements.
- The U.S. allows exceptions to competition to be approved on a class basis.

The assignment of evaluation factors seems, broadly, to have a similar focus in Canada and the U.S. Both countries have goals or guidance that address seeking "best value" in acquisitions. Both the U.S. and Canada establish similar price and non-price related evaluation factors when developing the source selection plan. Where the differences show up is in the details and, in particular, in the fact that PWGSC does not publish a practical methodology for PPI use. The FAR includes PPI use among two aspects of its significantly greater guidance concerning how to assign evaluation factors, which the *PWGSC Supply Manual* does not begin to address. These differences relate to the following mandatory FAR procedures:

- Requirement for PPI to be considered as a non-cost factor.
- Mandates regarding relative weighting of evaluation factors in relation to cost or price.

Both Canada and the U.S. use contracting methods that request quotations, solicit sealed bids, or solicit proposals. For the initial process of solicitation using each method, both countries also employ similar disciplines. There are five key differences:

- Canada has no advertising requirement below C\$25,000, the first trade agreement threshold, whereas the U.S. has procedures that, minus certain exceptions, require advertising between \$10,000 and \$25,000.
- Canada restricts telephone RFQs to C\$10,000, whereas the U.S. allows the use of oral solicitations to "the maximum extent practicable" for purchases not exceeding the simplified acquisition threshold.
- Canada's sealed bid method for acquisitions not subject to the trade agreements can be used as a basis to enter into negotiations in certain exceptional circumstances.
- The U.S. uses an optional two-step method for sealed bidding that facilitates using sealed bidding for technical requirements, whereas Canada does not.
- The U.S. has procedures for oral solicitations to substitute for elements of written proposals, whereas Canada does not.

The U.S. two-step sealed bid method and the U.S. procedures regarding oral proposals both would seem to be possible candidates for adoption by Canada. Neither seems to add much of an administrative burden and both allow streamlining of the acquisition process.

The U.S. possesses a wider array of contract types than Canada does. All of the Canadian contract types have counterparts within the U.S., with the exception of the Cost Plus contract type, which is prohibited in U.S. Government contracts. One contract type that Canada could potentially benefit from adopting, given sufficient personnel to administer it, is the award fee type contract. The chapter analysis cites research that supports award fee contracts as being more effective than incentive fee contracts in improving contractor performance.

Canada and the U.S. both possess several instruments for use in filling recurring requirements. The U.S. uses a few types, such as Indefinite Delivery Type Contracts, not discussed specifically within the *PWGSC Supply Manual* but for which some of the other types of Canadian contract instruments may be flexible enough to emulate. A key distinction noted was that the guidance provided for the Canadian equivalent of the U.S. Letter Contract does not articulate the establishment of a definitization timetable; however, the description does discuss contacting PWGSC's Legal Services when preparing a Letter Contract. One possible observation that can be made concerning this lack of detail and the requirement for contacting Legal Services is that Canadian COs are not currently prepared or trained in the preparation of Letter Contracts and that this expertise resides solely within the legal staff of PWGSC.

The methods of finance payments used in Canada and the U.S. are similar, barring some specific details for use unique to each country and two key distinctions. Both

countries use progress payments, and, upon senior-level approval for some unique cases, advance payments. Aside from different percentage ranges on the use of progress payments, one key distinction is that Canada does not specifically address performance-based payments. However, the description for using progress payments seems to allow the flexibility to tailor them to a performance-based environment. The second key distinction is that the U.S. has finance payment types specific to commercial items, whereas Canada does not.

Methods for advertising proposed contract actions between the two countries have some several key similarities and key differences. Due to the number of each, they will be listed below for interpretation. The key similarities are:

- The U.S. and Canada both use the same minimum synopsis-solicitation time period (40 days) for acquisitions subject to the trade agreements.
- Both countries have electronic and non-electronic points of entry for publication of proposed contract actions.
- Both countries allow exceptions to standard publication dates.

The key differences are:

- Canada issues its synopsis and solicitation at the same time; there are no separate periods as in the U.S.
- The U.S. has rules that allow deviations of standard synopsis-solicitation timeframes for commercial items.
- Canada uses its equivalents to U.S. electronic points of entry and the CBD to publicize Advance Contract Award Notices (ACANs), a concept unique to Canada.

The combined synopsis-solicitation *period* that Canada employs may require delaying the initial announcement of the proposed contract action in order to time the concurrent release of the solicitation. ACANs seem to be an effective tool for streamlining

acquisition. However, the "challenge" process regarding ACANs may make this overall process cumbersome or negate some of the possible benefits from using an ACAN. Overall, Canada seems to have more robust systems than the U.S. for utilizing *central* electronic points of entry.

The overall methods and conditions for sealed bid acceptance periods, allowable modifications and withdrawals by suppliers, late offers, and evaluation of responsiveness are very similar in the U.S. and Canada, with some significant differences. One difference is that Canada's procedures are developed around a sealed bid *closing* period as a cut-off for acceptance, whereas U.S. procedures are written around the sealed bid *opening* as a cut-off for acceptance. A difficulty encountered in reviewing sealed bidding procedures was terminology. Canada refers to all of its equivalents to RFQs, RFPs, and IFBs as "bids," and the *PWGSC Supply Manual* assumes some degree of familiarity by the user in how the manual is structured to explain procedures for all three. In some areas of the manual, the uninitiated may have trouble distinguishing which method is being discussed. The following are some key similarities in the handling of sealed bids:

- Both countries consider the sealed bid non-responsive if it offers less than the minimum time period for acceptance by the Government or fails to meet other requirements of the solicitation.
- Both countries allow suppliers to modify or withdraw their bids under similar, stringent conditions generally consistent with the U.S. "firm bid rule."

The following are some key differences in the handling of sealed bids:

- Canada specifies a standard sealed bid validity period of 60 days whereas the U.S. *may* establish a minimum sealed bid acceptance period.
- Canada publishes far less detailed guidance concerning the handling of mistakes in sealed bids.

- Canada considers sealed bids late and rejects them if they are not received by the bid closing date and time, whereas the U.S. policy considers them late if received after opening.

Canadian procedures for receipt and handling, initial review, application of PPI, negotiations, and profit considerations regarding proposals have the same *advertised* overall objective as the U.S., i.e. best value. A few more specific similarities and differences were noted.

The key similarities are:

- The basic scope of the CO's initial review of proposals is very similar in both nations.
- The basic roles of the evaluation team members and context for evaluation of proposals is very similar (e.g. in accordance with published evaluation/source selection criteria).

The key differences are:

- Canada rejects proposals received after the designated closing period, whereas the U.S. allows the CO to exercise judgment and possibly consider proposals received after the exact date and time specified in the solicitation.
- Canada does not have procedures unique to award without discussions, although the published procedures do not specifically preclude award without discussions.
- The FAR publishes significantly more detailed guidance on how to structure proposal evaluations.
- Canada has different negotiation techniques for acquisitions subject to trade agreements than for those that are not.
- Canada does not publish specific procedures relating to the establishment of a competitive range or further reductions of the competitive range; however, the language *of the trade agreements* may allow COs to tailor these types of arrangements via the solicitation.

The U.S. and Canada have similar consideration for profit as an "adequate financial reward." Canada's broadly-applied profit ceiling precludes profit from

exceeding 20 percent of total contract costs for all negotiated contracts requiring profit analysis. The U.S. has some cases where a profit ceiling is specified as discussed earlier in the chapter. However, in general, the U.S. establishes less rigid "profit objectives" through weighted guidelines, modified weighted guidelines, or approved structured methods for most negotiated contract types. U.S. COs are empowered to raise the guideline's profit objective when it is insufficient to move to contract award.

Canada has a much more general approach in its procedures for debriefing unsuccessful offerors. In fact, the *PWGSC Supply Manual* is silent on many of the aspects relating to debriefings that the U.S. stresses in mandatory FAR procedures. If Canada continues to move towards more complex contracts, policies and procedures for debriefings may require more attention. In general, the current Canadian debriefing procedures seem inadequate and end in what could be perceived as a negative "reading of rights" to protest. The following are some key differences in debriefings:

- The U.S. stipulates a timeframe for receipt of requests for post-award debriefings and a timeframe for conducting the debriefing, whereas Canada does not.
- The U.S. has detailed requirements for the content and conduct of debriefings, whereas Canada does not.
- Canada has no policies for pre-award debriefings; instead, Canada only allows *notifications* (similar to U.S. FAR Part 13 procedures).
- The *PWGSC Supply Manual* mandates that the CO provide protest rights and guidelines to unsuccessful offerors who are dissatisfied with a debriefing, whereas the U.S. has no similar requirement.

The standards for responsibility determinations used in the U.S. and Canada are generally similar. Both countries review the technical, financial, and managerial

competence of offerors when making responsibility determinations. These are the principal distinctions:

- The U.S. language regarding a responsibility determination, states that having the ability to obtain required resources, rather than on-hand, will still allow the offeror to be considered responsible.
- The U.S. specifically states that a satisfactory performance record *and* satisfactory record of integrity and business ethics will be considered in responsibility determinations.

The absence of this language from Canadian responsibility procedures does not necessarily indicate that these are true distinctions in the actual process, only that they are *potentially* so. The distinctions are only supported by review of the written language of FAR and the *PWGSC Supply Manual*.

Protest procedures were reviewed, both in this chapter and in Chapter II, that provided more details regarding the legal background of the U.S. and Canadian systems for protests. Both systems were determined to be similar in their objectives and procedures but distinct in structure. There is one key process difference in the two systems that could be substantiated by the literature review. This difference is that protests filed in the U.S. automatically delay the award of a contract. In Canada, the CITT *may* direct the CO to postpone award. The *PWGSC Supply Manual* does not address post-award protest procedures.

Summarizing the key similarities and differences between the two countries' systems produced a few common themes. In general, both the U.S. and Canada have acquisition systems that promote fair competition, broad access to business, and socio-economic objectives. Both countries have procedures that allow for limitations to full and open [maximum] competition in order to balance the need for competition with other

Government goals and dynamic operational environments. Also, both countries seem to have an acquisition system in place that provides a reasonable and functional structure for acquiring goods and services given the objectives and goals reviewed in Chapter II.

A common thread running through the description of differences between the two systems was that the U.S. system generally provided much more detail in regards to purchasing procedures. In some cases, the Canadian system seems flexible enough to execute or adopt, if necessary or chosen, some of the additional procedural detail from the U.S. system. In other cases, the "extra details" in the FAR really do not lend themselves for tailoring or incorporation within the Canadian system. The cases where additional requirements in the Canadian system seemed warranted were of some concern to the researcher.

This analysis did not set out to compare the organization of the purchasing regulations themselves; however, the researcher found the *PWGSC Supply Manual's* organization to be cumbersome. The material in the manual seemed poorly integrated with the three trade agreements that the manual attempts to incorporate and bereft of clarifications in some areas where more detail would seem to add value. According to informal discussions with PWGSC officials, a previous version of this manual used to provide significantly more detail; some PWGSC COs still maintain outdated copies of the previous manual for consultation and refer to "deleted content" when engaged in various aspects of the acquisition cycle.

Interestingly, the current manual sometimes provides excess detail. In one section, the manual incorporates a large listing of part numbers of material available through CORCAN. This list may have been outdated even at the time of printing and

seems to add little value in a chapter that discusses processes. The researcher also encountered an obvious error: two references concerning the process for telephone quotations (T-buys) where dollar values for "competitive" and "non-competitive" were switched between the references. The researcher does not contend that the FAR's approach or specificity is superior, only that the *PWGSC Supply Manual* has some potential flaws worthy of attention.

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V. CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION

The primary purpose of this research was to conduct a macro-level comparison of the acquisition systems supporting the defense departments of Canada and the U.S. The purpose of this broad overview was to identify policies and procedures that contributed to the effectiveness of the respective systems. Accordingly, the study's goal was to make recommendations for adopting or modifying policies and procedures to contribute to more effective and efficient processing of future acquisitions in both countries.

The research questions were crafted to satisfy this purpose, and the answers provide a summary of the research. Subsidiary questions will be answered first, as each contributes to answering the primary research question: what are the similarities and differences between the defense acquisition systems of Canada and the U.S., and what are the reasons for these similarities and differences? The primary research question will be addressed in the conclusions and followed by recommendations.

B. RESEARCH QUESTIONS AND ANSWERS

1. Political and Legal Influences

What are the political and legal influences that shape the defense acquisition systems of Canada and the U.S.?

Chapter II provided an overview of political and legal influences on each country's acquisition system. Both Canada and the U.S. have executive, legislative and judicial systems that influence acquisition processes. Both within Government and outside of Government (i.e., public participation), each country has similar political and legal organizations that influence acquisition. This section's question will be answered

by briefly discussing a selection of the principal political and legal elements influencing each country's federal acquisition, as described in Chapter II.

a. The Executive Branch

The Canadian Prime Minister and the U.S. President both hold positions, as leaders of the Executive Branch, that can significantly influence acquisition policies and procedures. For example, U.S. Presidents, through Executive Orders (EO) and by political appointments—such as appointing the Administrator of the Office of Federal Procurement Policy—can and do frequently wield considerable acquisition influence. The Canadian Prime Minister, via Cabinet appointments and influence in Cabinet, can develop regulations that approximate EOs. Both leaders of the Executive Branch hold many other powers, as discussed in Chapter II, which can also influence federal acquisition.

b. The Legislative Branch

The Canadian Parliament and the U.S. Congress make up the legislative branch of Government. However, in Canada, the Cabinet [executive] effectively controls Parliament so long as a majority Government is in power. Chapter II emphasized the role that Parliament and Congress play in developing legislation that influences acquisition policies and procedures. Congress was found to be much more prolific in generating acquisition-related legislation. Nearly 500 U.S. statutes apply to one or more aspects of federal acquisition. Canada cites fewer than two dozen acts in its federal acquisition policy manual, and interviews support the contention that legislation in Canada is much less pervasive than legislation in the U.S.

c. *Common and Administrative Law*

The role of common law or Judicial Branch courts in acquisition matters is less prevalent than the role of administrative law entities in both countries. Canada uses the Canadian International Trade Tribunal (CITT) in much the same manner as the U.S. uses Boards of Contract Appeals (BCAs) or the General Accounting Office's (GAO's) Comptroller General to hear acquisition related cases.

**d. *The Office of Management and Budget (OMB) and
The Treasury Board Secretariat (TBS)***

OMB and TBS play roughly equivalent roles regarding federal funding, which was an area not elaborated on within the thesis, but worthy of mention for comparison here. The Office of Federal Procurement Policy (OFPP) is OMB's arm for executing procurement policy and leading acquisition reform. TBS also maintains a Procurement Policy Division with a similar positional role to OFPP's. However, OFPP seems much more active in guiding procurement policy and reform efforts than TBS's Procurement Policy Division.

2. *Acquisition Objectives and Goals*

What is the objective and what are the goals of the Canadian and U.S. defense acquisition systems, and to what extent are they similar or different?

Chapter II compared the objectives [vision] and goals of both countries' federal acquisition systems. Each derives its goals from one objective, or in the case of the U.S., one "vision"—the thesis will refer to both terms as an "objective," for clarity. Following the objective, each country has four broad goals along with any additional elements or enablers for the goals. When each country's objective and goals are broken down into individual elements, then compared, the overall focus is similar. Instead of repeating

these objectives and goals, the question will be answered by comparing similarities and differences. The key similarities are:

- Both emphasize best value as a desired output of the overall acquisition objective.
- Both seek to promote competition as an objective or goal.
- Both seek to satisfy the customer or, as Canada states, "ensure the preeminence of operational requirements."
- Both seek to conduct business in a manner that inspires public trust or that can withstand public scrutiny, such as with integrity, fairness, and openness.
- Both seek to fulfill public policy (socio-economic) objectives as a goal of acquisition.

The key differences are:

- Canada has a goal of compliance with the trade agreements.
- The U.S. addresses teamwork and empowerment as enablers of its broad acquisition objective.
- Canada stresses aboriginal [native] economic and regional development as elements of its goal to promote public policies.
- The U.S. has a goal of maximizing the use of commercial products and services.
- The U.S. has a goal of using contractors with successful past performance or who demonstrate a superior ability to perform.
- The U.S. has a goal of minimizing administrative costs.

Summarizing these similarities and differences is less challenging than drawing conclusions as to the extent or *degree* to which the objectives and goals are similar or different. Clearly, Canada seems to align its acquisition functions more definitively towards compliance with the trade agreements. The U.S. places emphasis on the acquisition of commercial items, using past performance information, teaming, and

empowerment, that is not articulated in Canada's objective or goals. However, given these and other differences, the similar emphasis on many key points, such as competition and best value, would seem to place both countries on largely common ground. For example, Canada uses cross-functional teams in complex acquisitions in much the same manner as the U.S., even though their use is not articulated in TBS's objective or goals.

3. Organization

What organizational structures and resources are in place to accomplish the goals of the defense acquisition systems of Canada and the U.S., and what are the similarities and differences in these structures?

Chapter III compared acquisition organizations that support the defense departments in Canada and the U.S. The chapter's focus was on comparing both countries' organizations within and outside the defense departments that oversee acquisition activities or engage in actual contracting. These organizations and their roles are summarized in Chapter II. Some key distinctions and similarities are discussed below, within the context of contracting authority and scope of responsibilities.

a. Contracting Authority

The major difference between acquisition processes in Canada's Department of National Defence (DND) and in the U.S. Department of Defense (DoD) is that DND has significantly less contracting authority than DoD, as discussed in the Chapter II. Canadian contracting authority is much more centralized than that of the U.S. DND uses Public Works and Government Services Canada (PWGSC)—Canada's Common Service Organization (CSO) for contracting—for most acquisitions. PWGSC

purchases all of DND's goods above C\$25,000 and the majority of DND's services above C\$25,000.

Within the U.S., contracting authority is dispersed among the different federal agencies and their components. The U.S. Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)], the Defense Acquisition Executive, holds administrative authority over all DoD contracting functions, including defense-unique materiel purchased by the Defense Logistics Agency (DLA). The primary exception to USD(AT&L)'s "umbrella" of authority in contracting is the General Services Administration (GSA). The relationship between the U.S. DoD and GSA is much the same as that between DND and PWGSC.

b. Scope of Responsibilities for Defense Acquisition

The Assistant Deputy Minister (Materiel) [ADM(Mat)] organization is Canada's equivalent to the U.S. USD(AT&L). ADM(Mat)'s major functions are represented within the extensive responsibilities and functions of the USD(AT&L). However, ADM(Mat)'s organizational authority and, particularly, its scope is much more narrow than USD(AT&L)'s. This finding is to be expected, given the relative differences in size of each country's defense forces and the centralization of Canadian authority discussed above in section a.

USD(AT&L) exercises administrative authority over—via the Service Secretaries—the DoD activities that conduct major systems acquisitions within each military department and defense agency. Within the Department of the Navy, these activities include Naval Air, Naval Sea and Space and Naval Warfare Systems Commands. In Canada, DND has internal organizations that specialize in equipment

categories that could be associated with many of these DoD military department acquisition centers. For example, the Assistant Deputy Minister (Material) [ADM(Mat)] organization includes the Directors General of Land, Aerospace, and Maritime Equipment Program Management that parallel the responsibilities and roles of U.S. major systems organizations.

4. Process

What are the defense acquisition processes of Canada and the U.S., and what are similarities and differences in these processes?

This question was addressed in Chapter IV, which compared a selection of Canadian and U.S. pre-award processes. The chapter presented dozens of similarities and differences between the processes compared. Some of the principal similarities and differences are presented below.

a. Acquisition Reform

Reform, in and of itself, is not an acquisition process; however, reform introduces new processes and modifies existing ones. Both Canada and the U.S. were determined to be active in reform efforts. Canada appears to lag behind the U.S. and have less-focused federal leadership for reforms that are primarily spearheaded by DND and PWGSC. Canada's monitoring of U.S. efforts in reform was determined to be a potentially sound strategy for avoiding costly reform pitfalls and selecting proven reform measures.

b. Trade Agreements

Both Canada and the U.S. are signatories to WTO-AGP and NAFTA. Canada seems to define its federal acquisition regulations, using these international trade

agreements and its Agreement on Internal Trade (AIT) as a sort of a foundation on which the regulations are based. The U.S. approach is to incorporate the trade agreements as authorized exceptions or modifications to its more pervasive federal acquisition regulations. Canada's emphasis on trade agreements can be traced back to its distinct federal acquisition goal.

c. Competition

Both countries have similar emphasis on competition that can be traced back to similar federal acquisition goals. Each emphasizes full and open competition (maximum competition) with similar allowable exceptions. The U.S. has different approaches to competition for acquisitions below and above the simplified acquisitions threshold of \$100,000. Canada has different approaches to competition above and below the first trade agreement threshold of C\$25,000. When using an exception to limit competition in situations where full and open (maximum) competition is normally required, both countries must document the exception. The U.S. allows exceptions to full and open competition to be approved on a class basis, whereas Canada has no similar provision.

d. Contract Types

Canada's contract types, with the exception of the "Cost Plus" contract—outlawed in the U.S.—are a subset of the U.S.'s broader array of contract types. One category of contract—the award fee type contract—is used by the United States, but not by Canada. This type of contract may be of particular interest to Canada since some research has shown award fee contracts to be more effective than incentive fee contracts in improving contractor performance.

e. Past Performance Information (PPI)

The use of PPI was a primary distinction between U.S. and Canadian processes—only the U.S. stresses the use of PPI—that can be traced to differences between the two countries' federal acquisition goals. The primary distinction is that the U.S. clearly articulates criteria for the use of PPI, such as within the establishment of evaluation factors and during the source selection process. Canada allows for PPI use in very generic terms, such as in selecting the "best value," but does not define the criteria for PPI use.

f. Commercial Items and Services

Many differences were found between U.S. and Canadian processes with regard to commercial items. Again, the differences can be traced to distinct federal acquisition goals. Only the U.S. mentions a goal for maximizing the use of commercial items and services. Chapter IV explores many of these differences, which will not be repeated here. In general terms, the U.S. adopts or modifies procedures that are intended to streamline the acquisition of commercial items, whereas Canada does not provide established procedural distinctions that apply to contracting for commercial items.

C. CONCLUSIONS

Collectively, the answers to the four subsidiary research questions lead to the answer to the primary research question: what are the similarities and differences between the defense acquisition systems of Canada and the U.S., and what are the reasons for these similarities and differences?

The breadth of the research brought forth numerous similarities in the areas of political and legal influences, acquisition goals, organization and processes. Together, these are the similarities and differences that answer the first part of the primary research question. The answer to the second part of the primary research question—what are the reasons for these similarities and differences—can also be drawn, for the most part, from the responses to the subsidiary questions.

Different political and legal influences, goals, organizations and processes will undoubtedly result in different outcomes. Therefore, the similarities and differences exist because of similarities and differences in each of these components, which have been discussed in previous chapters. *Why* these underlying political and legal systems, goals, organizations and processes are different is an even more challenging question. The answers may have to do with the relative differences in scale (i.e. populations and defense departments) and differences in the two countries' histories.

Canada and the U.S. differ significantly in population and in the size of their military and their acquisition workforces. The comparative details of these differences were not specifically explored, but certainly affect acquisition organizations and functions. For example, many of USD(AT&L)'s responsibilities have no counterparts in Canada, simply because what might be a comparable area either does not exist or is small enough to not require central leadership from ADM(Mat).

Canada and the U.S. have different histories that led to different systems of Government and distinct relations between the federal Government and state [provincial] Governments. The U.S., for example, does not have an equivalent to Canada's AIT. The role of the U.S.'s federal Government seems to be more strongly defined and may lend

itself more to placing this same sort of defined emphasis on federal regulations regarding acquisition. This procedural emphasis, much of it derived from an extensive statutory basis, is the primary distinction between the U.S. and Canadian federal acquisition regulatory systems.

D. RECOMMENDATIONS

1. Canadian Vision

Earlier, the word "objective" was used as a combined term for vision and objective. However subjective, "vision" may actually imply more than "objective." A vision is a shared goal that starts at the top and permeates an organization. The TBS should consider redefining its objective as a vision for federal acquisition; it should ensure that the vision and related goals are adequate and common throughout Canadian federal acquisition and that the terms are embodied in implementing regulations. Chapter II pointed out a potential "disconnect" between the current TBS objectives and the guiding principles being used in PWGSC. TBS should also address this disconnect when reviewing Canada's vision and implementing goals for federal acquisition.

2. Canadian Acquisition Regulations

The implementing details of TBS's *Contracting Policy Manual* are developed within the *PWGSC Supply Manual*. The researcher found the *PWGSC Supply Manual* to provide insufficient details in some areas, articulated in Chapter IV's analysis, where additional details might be warranted. Also, the researcher found the integration of the trade agreements with existing domestic contracting procedures to be sometimes cumbersome or confusing. TBS should consider initiating a review of the *PWGSC*

Supply Manual that focuses on clarifying current procedures and on better integrating the trade agreements.

The researcher found other areas that could use further development; these include better articulating the use of PPI and providing debriefings to unsuccessful offerors. These and other thesis recommendations, along with recommendations of the Supply Operations Service Branch Business Process Renewal team—elements discussed in various parts of the thesis—should be considered when reviewing current written procedures.

3. Canadian Reform Initiatives

TBS should consider strengthening its role in guiding acquisition reform and policy development. This role may tie into the recommendations for promoting a shared vision and procedural reviews. The TBS maintains a Procurement Policy Division that could be strengthened to take on the task and provide leadership to federal acquisition reform initiatives.

4. Canadian Advance Contract Award Notices (ACANs)

The U.S. should explore Canada's process for issuing ACANs. ACANs do not appear to be without potential pitfalls, as the challenge process could be cumbersome. However, the ACAN idea is worthy of discussion since it may hold promise for further streamlining of U.S. acquisition procedures.

E. AREAS FOR FUTURE RESEARCH

The thesis covered a wide range of acquisition-related subjects, ranging from political and legal influences to the actual details of federal acquisition procedures. This

broad scope generated a plethora of questions and left some related acquisition areas largely untouched. Specifically, the following areas are worthy of future research:

1. Contract Administration

What are the similarities and differences between the contract administration systems of Canada and the U.S., and what are the reasons for these similarities and differences?

2. Cooperative Acquisition Relationships

The defense organizations of Canada and the U.S. have enjoyed a unique and close relationship since the signing of the Ogdensburg Agreement in 1940. In addition, the two nations benefit from the world's largest trading relationship and very close cultural, social and economic ties. What are the cooperative acquisition relationships that exist between the U.S. and Canada? What can be established regarding the nature of these relationships that may lead to recommendations for improvement? Should any additional cooperative relationships be established?

3. International Trade

How well does the U.S. acquisition system provide access to foreign suppliers under the terms of NAFTA and the WTO-AGP? What recommendations can be made for improvements that may enhance or facilitate acquisitions under NAFTA and the WTO-AGP?

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