



Treasury Board of Canada
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Canada

Contractual Arrangements

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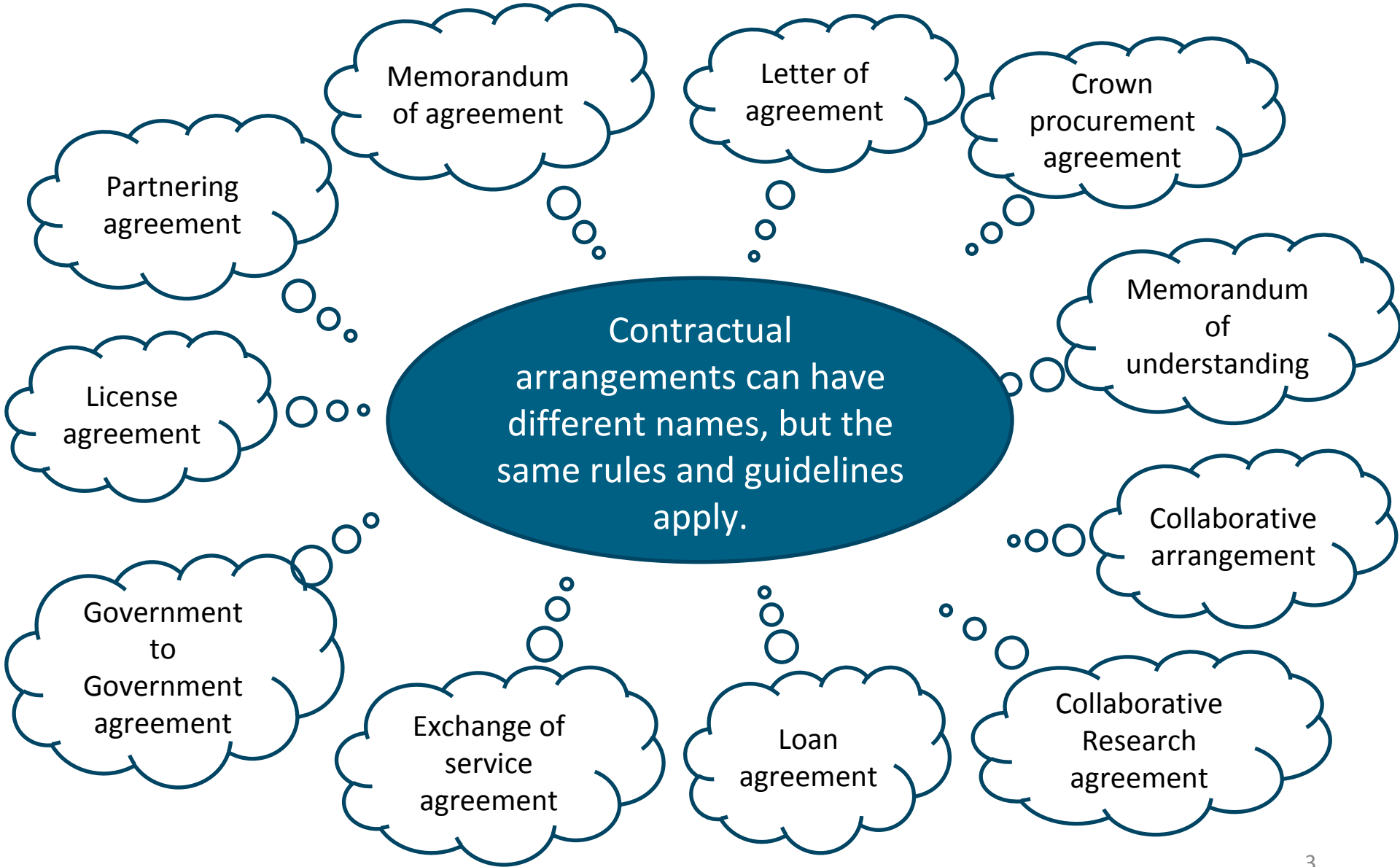
CIPMM Webinar

March 3, 2021

Objectives


To improve your understanding of the defining characteristics of contractual arrangements and the policy principles and requirements that support them

What is a contractual arrangement?



Definition

“Contractual Arrangement” is a policy term to differentiate this type of agreement from a Contract. It is not a legal term.



An updated definition is coming!

Contractual arrangement is currently defined under the *Contracting Policy* as:

An **agreement** between a contracting authority and an entity of the Crown (e.g., Crown corporations, provincial governments or municipalities) to provide a good, perform a service, construct a work or lease real property for appropriate consideration. These types of agreements are not contracts in the true sense but are still subject to certain limits or constraints imposed by the Treasury Board.

Characteristics of Contractual Arrangements

Not contracts in the true sense but are **still subject to the limits and requirements** in the Treasury Board Contracting Policy



Contract = legally binding whereas Contractual Arrangement = “morally” binding



No requirement to solicit bids → Automatically non-competitive



Typically with public sector organizations, other levels of local or international government, non-governmental organizations or supranational organizations (e.g. the United Nations)



The defining characteristics of a contractual arrangement can typically be determined by the nature of the other party and intent of both the department and the other party



They can vary widely in nature, complexity, risk and value, but are typically low risk, non-controversial procurements

Key Principles

Public Servants must exercise their delegated authority to negotiate and conclude contractual arrangements with prudence and probity, within the letter and spirit of the *Government Contracts Regulations*, *TB Contracting Policy*, government procurement policies, and trade agreements.



Maintain a clear audit trail



Document the reason for using a contractual arrangement



Document how best value will be obtained



Consult departmental legal, financial and procurement expertise early, and other departments substantively as required (e.g. PCO, IC, CIRNA, GAC, PSPC, etc.)



Departments typically use the same processes and controls for both contracts and contractual arrangements

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Rules for Contractual Arrangements

GCRs

Government Contracts Regulations do not apply, therefore there is no legal obligation to solicit bids

TB Entry Limits

Contractual arrangements are non-competitive for the purpose of the entry limits in the Contracting Policy

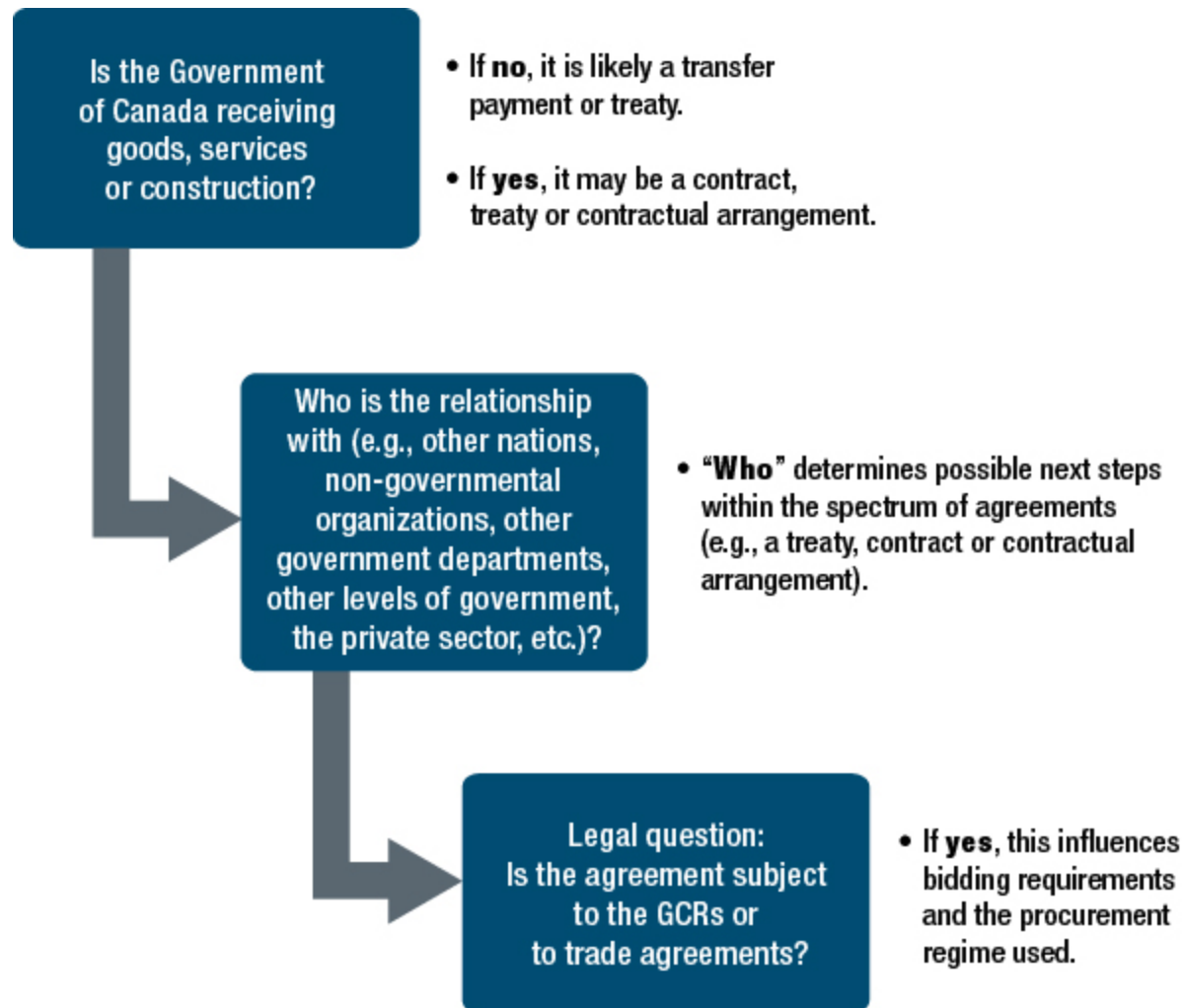
Other Requirements

Policies related to the limitation of liability and intellectual property do not apply, but be mindful of their principles and seek any exceptions as appropriate

Reporting

Contractual Arrangements are excluded from Proactive Disclosure of Contract reporting requirements.

Key considerations for contractual arrangements



Support

PSPC	Legal services	TBS	Guidance
<p>Procures goods, services, and constructions to meet the needs of departments including by using contractual arrangements</p>	<p>It is a best practice to consult with your legal services unit to ensure a contractual arrangement is the best approach and to ensure that the final agreement does not have the hallmarks of a contract</p>	<p>TBS can advise you before entering into a contractual arrangement whether Treasury Board approval is required</p>	<p>The <i>Guidelines on Contractual Arrangements</i> on the TBS website provide additional information</p>

Next Steps and Policy Suite Reset

New!

Objective

The objective of PSR for contractual arrangements is to calibrate and streamline approvals to the associated risk to ensure oversight where its required and enable departments to manage more low-risk procurements.

New definition

The proposed new definition for contractual arrangement is:

- A written arrangement to procure goods, services, or construction, for payment or other appropriate consideration, that is subject to Treasury Board contracting limits, and that is signed by a contracting authority and a representative of one or more government entities, countries or international organizations, or other public entities.

New limits

The proposed *Directive on the Management of Procurement* introduces a single limit of \$500K for all departments, with a higher limit set for PSPC of \$25M.

Guidance

We are working on new guidance for contractual arrangements to address feedback from the community and to support the implementation of the new *Directive on the Management of Procurement*.

Questions?

