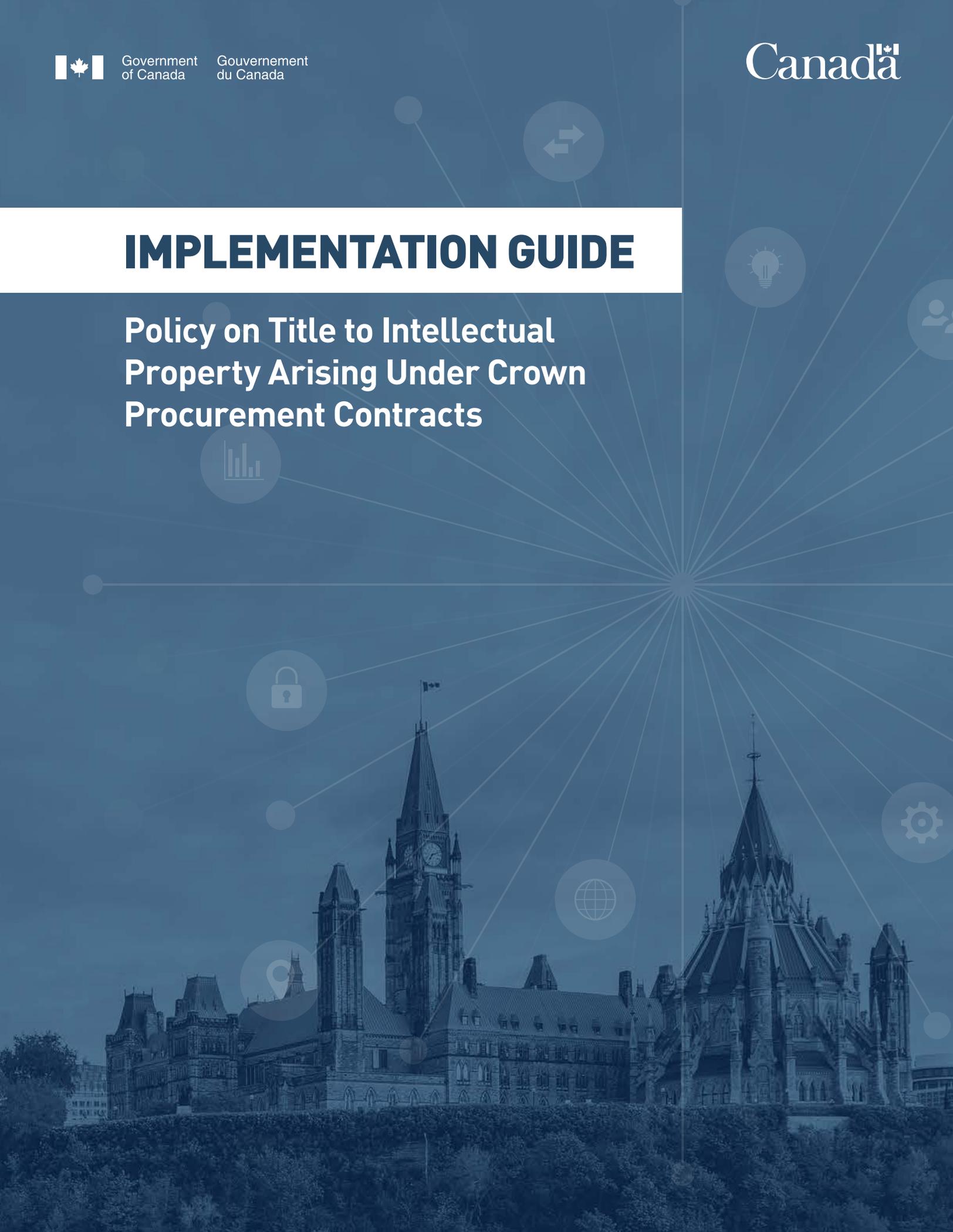




IMPLEMENTATION GUIDE

Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts



This publication is available online at:

<https://ised-isde.canada.ca/site/policy-title-intellectual-property-crown-procurement/en/implementation-guide-policy-title-intellectual-property-arising-under-crown-procurement-contracts>

To obtain a copy of this publication, or to receive it in an alternate format (Braille, large print, etc.), please fill out the Publication Request Form at www.ic.gc.ca/Publication-Request or contact:

ISED Citizen Services Centre

Innovation, Science and Economic Development Canada

C.D. Howe Building

235 Queen Street

Ottawa, ON K1A 0H5

Canada

Telephone (toll-free in Canada): 1-800-328-6189

Telephone (international): 613-954-5031

TTY (for hearing impaired): 1-866-694-8389

Business hours: 8:30 a.m. to 5:00 p.m. (Eastern Time)

Email: ISED@ised-isde.gc.ca

Permission to Reproduce

Except as otherwise specifically noted, the information in this publication may be reproduced, in part or in whole and by any means, without charge or further permission from the Department of Industry, provided that due diligence is exercised in ensuring the accuracy of the information reproduced; that the Department of Industry is identified as the source institution; and that the reproduction is not represented as an official version of the information reproduced or as having been made in affiliation with, or with the endorsement of, the Department of Industry.

For permission to reproduce the information in this publication for commercial purposes, please fill out the Application for Crown Copyright Clearance at www.ic.gc.ca/copyright-request or contact the ISED Citizen Services Centre mentioned above.

© His Majesty the King in Right of Canada, as represented by the Minister of Industry, 2023.

Cat. No. Iu37-1/2023E-PDF

ISBN 978-0-660-48197-5

Aussi offert en français sous le titre *Guide de mise en œuvre : Politique sur les droits de propriété intellectuelle issus de marchés conclus avec l'État.*

TABLE OF CONTENTS

- 1. Introduction 1**
 - Objective of the Policy 1
 - Implementation Guide: Context 1
 - PSPC Standard Acquisition Clauses and Conditions (SACC) 1
 - Managing Intellectual Property in Defence and Marine Procurement 1
 - Responsibilities..... 1

- 2. Understanding Intellectual Property (IP) 3**
 - What is IP? 3
 - “Background” and “Foreground” IP 3

- 3. Application of the Policy 5**

- 4. Decision Tree..... 6**
 - Step 1 7
 - Step 2 7
 - Step 3 8
 - Step 4 10

- 5.Determining Potential for Commercial Exploitation 12**

- Appendix FAQ 13**
 - Intellectual Property 13
 - Data Collection for IP Contracts Management Information Systems 15

1. INTRODUCTION

a) Objective of the Policy

The [Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts](#) (the Policy), addresses the ownership and licensing of intellectual property (IP) arising during procurements. The [Directive on the Management of Procurement](#) states that the objective of the procurement of goods, services and construction is to obtain the necessary assets and services to support the delivery of programs and services to Canadians. This includes ensuring best value to the Crown.

The Government of Canada believes that commercial exploitation of IP contributes to economic growth and job creation, and that such exploitation is best achieved by the private sector. Thus, the Policy establishes the default position of the contractor owning the IP arising under Crown procurement contracts. The Crown may take ownership of the foreground IP by invoking any of the listed exceptions in Appendix A of the Policy. If the Crown wishes to own the IP for a reason not listed, Treasury Board (TB) approval for an exemption from the policy is required. In the case of contractor ownership, the Crown can require the contractor to provide it with a licence that allows the Crown to use the IP for its intended government purposes.

b) Implementation Guide: Context

This Implementation Guide is intended solely for the use of public servants (e.g., managers, procurement officers, IP advisors, etc.) to assist with the application of the Policy. It illustrates, step by step, the process for determining the ownership or licensing of IP arising under Crown procurement contracts. A decision tree summarizing the decision-making process is provided, along with guidance on assessing potential for commercial exploitation.

c) PSPC Standard Acquisition Clauses and Conditions (SACC)

The Public Services and Procurement Canada (PSPC) Standard Acquisition Clauses and Conditions (SACC) Manual¹ is intended for the use of PSPC contracting officers. Departments doing their own contracting may refer to the PSPC SACC Manual to assist in the drafting of clauses concerning IP. Clauses relevant to ownership and licensing of IP can be found at the following link: [Annex: Intellectual Property - Buyandsell.gc.ca](#). Departments are advised to consult their legal services prior to drafting their own clauses.

¹ SACC Manual Includes instructions on how to use procurement clauses and general conditions.

2. UNDERSTANDING INTELLECTUAL PROPERTY (IP)

What is IP?

IP “refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.”² In the course of Crown procurement, IP rights may, or may not, be generated. Some IP rights, like copyright, are automatically protected upon creation. Others, like patents and industrial designs need to be applied for and granted by a national IP office such as the Canadian Intellectual Property Office (CIPO).

Examples

- The Crown purchases an off-the-shelf product; no IP is created.
- The Crown procures research and development services, and the contractor (a private lab) produces a novel research product in the form of an invention that could be patented; IP is created.
- The Crown buys a one-year subscription to a nanotechnology journal. While IP exists in the journal, no new IP is created through the procurement (subscription purchase).

“Background” and “Foreground” IP

Section 4 of the Policy defines Background IP and Foreground IP.

Foreground IP means IP first conceived, developed, produced or reduced to practice as part of the work under a Crown Procurement Contract.

Background IP means all Intellectual Property that is not Foreground IP, including that of the Crown and of the contractor.

The following examples aid in distinguishing between Background and Foreground IP:

Examples

- A contractor uses their own software application (Background IP) under a Crown procurement contract for development of an interface (Foreground IP) for a government database.
- A firm develops a speech (under contract) for the Minister, which is the Foreground IP. Any pre-existing data, reports, or newspaper articles that the contractor incorporates are considered Background IP.

² WIPO, [What is Intellectual Property? \(wipo.int\)](http://wipo.int).

In complex situations, it may be challenging to distinguish between Foreground and Background IP.

Note: Before issuing solicitation documents (e.g., a Request for Proposals), departments should identify in the terms and conditions, the IP expected to be generated and its intended use, the ownership and necessary licences/permission to use the Foreground IP and the Background IP.

Contracting authorities must include the above elements in the contract. In many cases standard PSPC SACC clauses or the department's own standard clauses are used to address the IP arising in Crown procurement. An example, although not a requirement, of a PSPC SACC clause that could be used is (K3200T).³ This clause addresses the basis for Canada's ownership of IP. Modifications to the standard contractual clauses of each individual department may be necessary to properly reflect the department's needs. Legal services should be engaged in the modification of clauses.

If a contractor requires a licence to Crown Background IP to perform the Work, the Contracting Authority should ensure the contract: (1) identifies the Crown Background IP and (2) limits the contractor's use of the Crown Background IP for the purpose of the contract.

The reason for the Crown's ownership must fall within one of the exceptions in Appendix A of the Policy, otherwise, an exemption to the Policy must be obtained from Treasury Board via a TB Submission (see Step 3).

³ Basis for Canada's Ownership of Intellectual Property , online: <[Section 5.K.K3200T - Ownership of Intellectual Property - Buyandsell.gc.ca](#)>.

3. APPLICATION OF THE POLICY

The Policy applies to:

- all departments listed in Schedules I, I.1 and II of the Financial Administration Act unless specifically exempted by an Act of Parliament or by Treasury Board (e.g., Canada Revenue Agency);
- Foreground IP in procurement contracts;
- a procurement contract of any value.

The Policy does **not** apply to:

- the sale, transfer or disposal of existing Crown-owned IP, as the Policy deals only with the IP generated under a Crown procurement contract;
- contractual arrangements, including but not limited to, collaborative research and development agreements or Memoranda of Understanding (MOUs);
- prototypes or any other physical embodiments of intellectual creation that may be deliverables of a Crown procurement contract (the Policy deals with intellectual property, not tangible property);
- the ownership of, or the right to use, any trademarks or trade names;⁴
- personal information as defined under the *Privacy Act* (R.S.C.) c. P-21 or to Foreground IP in any compilation or database containing personal information or Crown supplied information, if that Foreground IP cannot be exploited without using that personal information or Crown-supplied information.

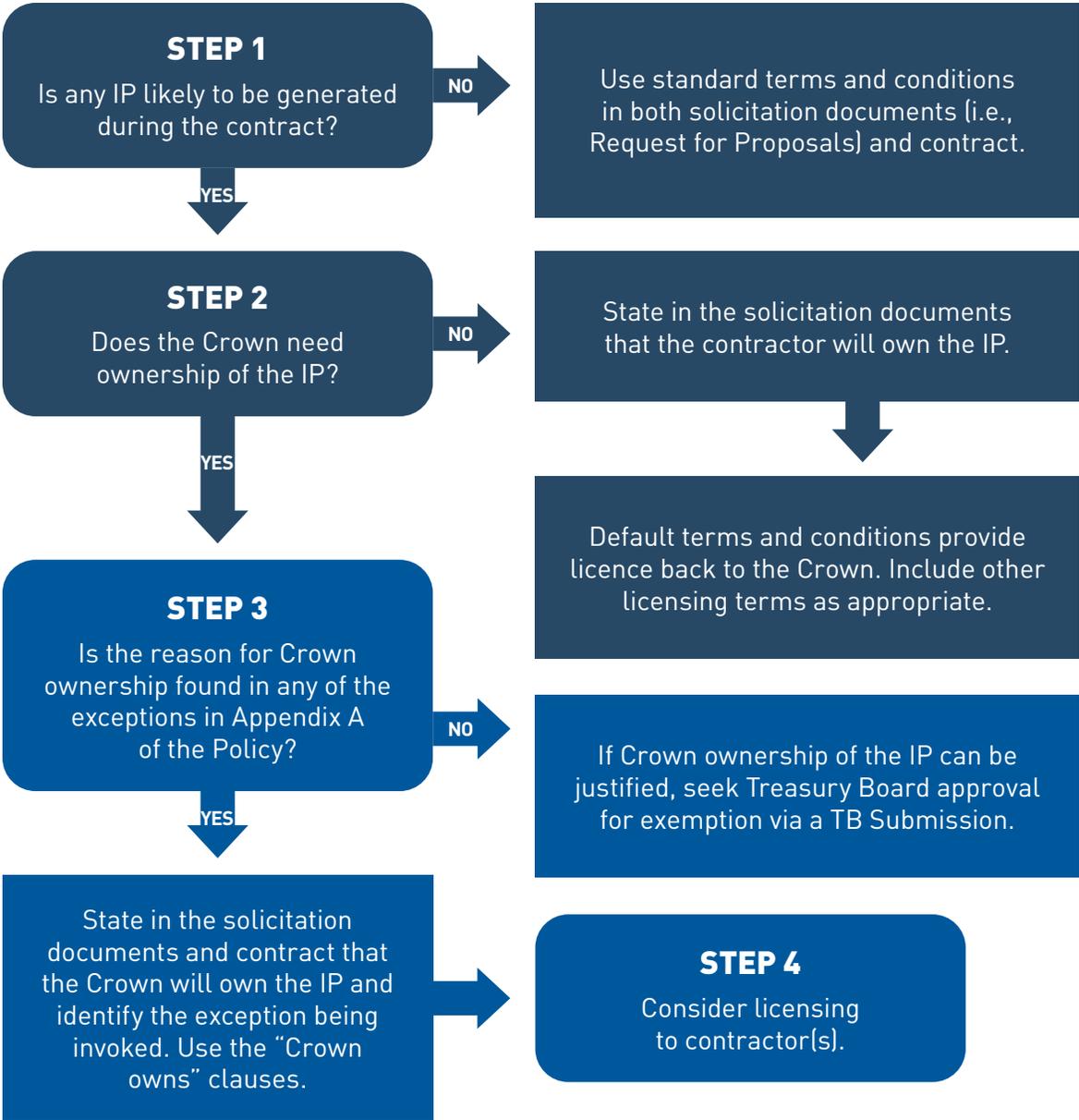
The Policy applies only to Crown entities. The Policy does **not** pertain to IP ownership rights between the contractor and any of its subcontractors. The source of the contractor's obligations is the contract. The contractor may obtain from its subcontractors those ownership or licence rights that the contractor agrees, in the Crown procurement contract, to provide to the Crown. One may consider including a PSPC SACC clause that requires that the Contractor must ensure that the subcontractor is bound by conditions compatible with and, in the opinion of the Contracting Authority, not less favourable to Canada than the conditions of the contract.

⁴ Departments may determine their own positions on the matter of ownership of trademarks and trade names, according to other relevant government policies. At some departments, deliverables which attract trademark protection are regularly procured.

4. DECISION TREE

When the Crown intends to enter into a contract, it is a requirement that the solicitation documents and the contract clearly specify who is to own the Foreground IP.

The below flow chart provides the key steps under the Policy.



- Steps for default process
- Optional steps for Crown IP ownership

Step 1: Is IP likely to be generated during the contract?

Before the solicitation document is generated, one or more of managers, technical authorities, IP experts and/or legal services, procurement officers and/or the contracting authority should be consulted to determine whether or not they believe IP will be created under the contract. Whether or not IP will arise, the [standard PSPC templates](#) can be used.

If no, use your department's/agency's standard contracting terms and conditions or appropriate clauses for ownership or a licence to the Foreground IP, in the case that IP does arise and consider Step 2.

Note: If IP is generated in the contract, even though none was anticipated, it will typically default to the contractor in the absence of a contractual provision to the contrary.

If yes, you can use your department's/agency's standard contracting terms and conditions or appropriate clauses for ownership or a licence to the Foreground IP and consider Step 2.

Step 2: A further step to creating the contract: Does the Crown need ownership of the IP?

If no, further state in the solicitation documents and include appropriate clauses in the contract indicating that the contractor will own the IP. Recall that the intention of the Policy is that the contractor should own the Foreground IP unless there is a reason for the Crown to own it. If the determination is that the contractor should own the Foreground IP, departments should include the licence for the Foreground IP in the contract.

In determining the type of licence required, one or more of the managers, project managers, scientists/researchers, IP experts, procurement officers, etc. shall consider current and future needs in a government-wide context. This includes the Crown's needs with respect to the Foreground IP and Background IP to use, operate, maintain and make improvements to the contract deliverables.

If yes, state in the solicitation documents and the contract that the Crown will own the IP.

If the determination is that the contractor should own the Foreground IP, departments should include the licence for the Foreground IP in the contract.

The reason for the Crown's ownership must fall within one of the exceptions in Appendix A of the Policy, otherwise, an exemption to the Policy must be obtained from Treasury Board via a TB Submission (see Step 3). Bid solicitation documents could include a clause describing the basis for the Crown's ownership.

Example

A Crown procurement contract to purchase a fleet of military armoured vehicles was awarded to Contractor A. Given the magnitude of the procurement, it is likely that the solicitation and contracting documentation would include IP terms relating to both ownership and licensing, in accordance with the document: *Managing Intellectual Property in Defence and Marine Procurement – Defence and marine procurement*.

Note: Departments may need to consult experts for advice on Crown ownership when trade agreements on intellectual property or agreements with a proposed requirement for commercial development in Canada are implicated. Relevant agreements include World Trade Organization–Agreement on Government Procurement (WTO-GPA), Canada-European Union Comprehensive Economic and Trade Agreement (CETA) and the Canadian Free Trade Agreement (CFTA).

Step 3: Is the reason for Crown ownership found in any of the exceptions listed in Appendix A of the Policy?

It is important to note, that just because an exception could be invoked as a basis for Crown IP ownership (which will then be subject to negotiation and mutual agreement with the contractor), this does not mean that the exception should be invoked.

For example, Copyright (Appendix A, exception 5 of the Policy) could potentially be invoked in a large number of circumstances. However, before invoking an exception, departments and agencies should consider whether they in fact need to own the IP (Step 2). Crown ownership of the Foreground IP may not be needed, even when there is an available exception.

If yes, insert the appropriate clauses into the solicitation documentation and procurement contract to clearly provide that the Crown is claiming Foreground IP ownership, as described in Appendix A of the Policy.

If no, see Treasury Board Exemption, Appendix A of the Policy. There may be cases in which Crown ownership of the IP could be justified, but none of the exceptions listed in Appendix A applies. In these cases, departments could request an exemption via a TB submission, which must be approved by Treasury Board for the Crown to claim ownership of the IP.

The following are the allowed exceptions listed in Appendix A of the Policy:

1. **National security.** The Policy allows the Crown to own the IP when it is judged that national security could be at stake.

Example

The Crown contracts for the services of a defence contractor to design and build a command-and-control system to operate a frigate of the Royal Canadian Navy. Knowledge of the contents of the system by non-NATO allies could jeopardize Canada's national security. Therefore, the Crown claims ownership of the foreground IP under this exception to restrict distribution of the foreground IP.

2. **Where statutes, regulations or prior obligations of the Crown to a third party or parties preclude contractor ownership of the Foreground IP.**

This exception covers two cases:

1. where laws or regulations preclude contractor ownership of the new intellectual property that the contractor creates in the course of the Crown procurement contract.
2. where the Crown has a pre-existing obligation to a third party regarding intellectual property (e.g., Memorandum of Understanding or Collaborative Research and Development Agreement, etc.) that may preclude vesting ownership of the IP to the contractor.

Example

Chemicals, which are protected by a patent owned by a company, are licensed to the Crown for a specific use in experiments. The Crown wishes to engage the services of a second company to modify the chemicals for a different use. This is allowable under the licence agreement, provided that any IP developed will be owned by the original company.

3. **When the contractor declares in writing that he/ she is not interested in owning the Foreground IP.**

It is important to keep a paper or electronic record of this declaration on file to be done at the beginning of the contracting process. Use of this exception does not preclude the contractor from seeking a licence.

Example

The protection of IP takes resources that many small and medium-sized enterprises (SMEs) may not possess. Rather than defend their IP from competitors, the contractor may prefer that the Crown own the IP and grant them a licence. In such a scenario, the contractor would have to state in writing that it does not want to own the IP in order for the Crown to use this exception.

4. Where the main purpose of the Crown procurement contract, or the deliverables contracted for, is:

1. **To generate knowledge and information** for public dissemination (but not necessarily free dissemination).

Note: Knowledge and information for dissemination should be considered for release onto the open government portal (open.canada.ca) under a non-restrictive licence (Open Government Licence - Canada Open Government, Government of Canada): [Open Government Licence - Canada | Open Government, Government of Canada](#) which maximizes the potential sharing and reuse for commercial and non-commercial use. To be eligible for release onto the open government portal, the IP must be owned by the Government of Canada, the government has permanent permission or authority to share the resource under an open government licence, or has been granted a licensed, non-exclusive right to publicly disseminate the asset.

Example

In some cases when information and knowledge created by a consultant, are created for public dissemination, for example as part of a national guide on nutrition and food allowances, permissions surrounding Crown copyright may still apply.

2. **To expand upon an existing body of Crown Background IP as a prerequisite to the transfer of the expanded Crown Background IP to the private sector, through licensing or assignment of ownership (not necessarily to the original contractor), for the purposes of commercial exploitation.**

This exception has three objectives:

1. to maintain the integrity of the resulting Foreground IP package;
2. to avoid the fragmentation of the IP package (i.e., multiple ownership of the various pieces of IP); and;
3. to simplify the process for transfer of the resulting Foreground IP package, at a later date, to the private sector for the purpose of commercial exploitation.

Example

Crown employees developed software (legacy system) several years ago, and the Crown owns the Background IP. A contractor is hired to re-code/modify the legacy system. To prevent fragmentation of the IP, and in order to facilitate transfer to the private sector for the purposes of commercial exploitation, the Crown needs to retain the ownership on the legacy system as well as any newly created Foreground IP.

Note: Research organizations may use contractors to augment parts of a research project by building on Crown Background IP. The Crown retains control of the Background IP. The research may be long-term and may eventually result in commercial exploitation. In the short term, the Crown may want to retain ownership of the resulting Foreground IP developed by separate contractors to be able to freely continue the research and maintain the integrity of the IP package. It is important for the purposes of the policy to treat each contracting situation separately and ensure the proper exceptions are applied and licenses granted. Retaining ownership of the Foreground IP allows the IP to be shared with collaborators (industry, academia, OGDs) to further develop the work, and as a prerequisite to the transfer of the IP to the private sector collaborator or another party for commercial exploitation.

- 3. To deliver a not-yet fully developed component or subsystem that will be incorporated into a complete system at a later date (Foreground IP deliverable to be a single component of a final product to be completed in the future by the Crown), as a prerequisite to the planned transfer of the complete system to the private sector, through licensing or assignment of ownership, for the purposes of commercial exploitation.**

Example

A device will be developed through Crown procurement contracts by two contractors. Both contractors will be developing Foreground IP for a system to be completed in the future by the Crown. The Crown requires IP ownership of the deliverables (from both contractors) in order to incorporate each deliverable into a complete system as a prerequisite to the planned transfer to the private sector for the purposes of commercial exploitation. In this example, if the Crown did not take ownership of the IP created in the deliverables by both contractors (using the fragmentation exception), IP rights in the complete system may be fragmented. If the IP in the deliverables was owned by the contractors (and not the Crown), the incorporation of the deliverables into a complete system could be hindered.

5. **Where the Foreground IP consists of material subject to copyright, with the exception of computer software and all documentation pertaining to that software.** This exception applies only to non-software material subject to copyright.

Example

If a consulting report is produced where dissemination is restricted, the Crown should claim ownership of the Foreground IP by invoking this exception of the policy. This is a very broad exception, and one should consider whether it is **necessary** for the Crown to own the copyright. For instance, one may not want to use the exception if it wants to permit a contractor to use teaching materials created under the contract.

Step 4: Consider licensing to contractor(s).

To encourage commercial exploitation of IP that has been generated by a contractor in circumstances where the Crown owns the IP, the department should consider licensing the Foreground IP to the contractor. To preserve the legal rights to a licence, bid solicitation documents and the resulting contract should include appropriate clauses to facilitate licensing IP in these circumstances.

The Crown can choose whether or not to grant a licence. However, if it chooses to do so, then it must grant the licence on a royalty-free basis if the two following conditions are met:

1. the Crown relied on the exceptions described in sections 4.2 and 4.3 of Appendix A to take ownership of the Foreground IP; and
2. the licence to the Foreground IP is not being granted as part of the transfer of the final product or complete system to the private sector.

In other cases, where the Crown grants a licence as part of the transfer of the final product or complete system to the private sector or when the Crown takes ownership through the use of any other exception, the Crown may require royalties. There is a PSPC SACC clause related to a commercial licence agreement.

5.DETERMINING POTENTIAL FOR COMMERCIAL EXPLOITATION

The Policy takes the potential for commercial exploitation of the IP generated under a Crown procurement contract into account. The Policy defines **Commercial Exploitation** (Exploitation commerciale) as— “any use, modification, transformation and/or dissemination of the Foreground IP that generates, or is intended to generate, revenues.” As part of the regular contracting process, the Responsible Department is required to make the determination whether or not the Foreground IP has commercial potential.

In cases where PSPC is the contracting authority for a client department, the decision to identify whether Foreground IP generated under a contract has the potential for commercial exploitation is the responsibility of the client department. If a PSPC contracting officer disagrees, they should contact the client department.

In making the determination of whether a contract will generate Foreground IP with the potential for commercial exploitation, departments may wish to consult with parties to the contract in an open, fair and transparent manner.

To help determine whether the IP has the potential for commercial exploitation, departments may wish to use this checklist:

- If the IP was made into a product, would there be a market for it?
- Are there similar products already in the marketplace?
- Is there an identifiable market for this IP (e.g., customers)?
- Would the IP provide a solution to an issue or problem that others are trying to solve?
- Does the IP build on the contractor’s existing product line or market strategy?
- Has the contractor expressed an interest in commercializing this IP?

A “yes” response to one or more of the questions above may indicate a potential for commercial exploitation.

APPENDIX FAQ

Intellectual Property

Q: When should IP ownership be decided?

A: The needs of the Crown (and whether it requires ownership of the IP) should be evaluated at the earliest stages in a major project delivery.

As such, decisions about the ownership of the IP need to be made before entering into a Crown procurement contract. In a competitive bidding situation, the Crown must identify in the solicitation documents its intention with regards to the ownership of the IP. In the case of a sole-source contract, the Crown should indicate whether the Crown or the contractor will own the arising IP before entering into negotiations with the contractor.

Q: What is the relationship between IP ownership and use?

A: The Crown does not necessarily need to own the IP in order to use it. The Crown should obtain a comprehensive licence⁵ to address the scope of the required use. Consultations with IP experts and legal services can help determine if the general contracting terms and conditions used by your department include the appropriate legal rights.

Q: Why is the default position of the government that contractors keep the ownership of the IP created in the course of a Crown procurement contract?

A: The Government of Canada believes that commercial exploitation is facilitated by the contractor owning the IP.

Q: Can the Crown jointly own IP ownership with the contractor?

A: It is generally considered inadvisable for the Crown to jointly own IP in a Crown procurement contract because it must then be jointly managed by the Crown and the Contractor. There are situations where IP is jointly owned under a collaboration agreement or Memorandum of Understanding.

Q: If IP is owned by the Crown, is it reported anywhere?

A: Yes. In accordance with section 6.2.3 of the *Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts*, departments and agencies must report all forms of IP ownership (Crown-owned or contractor-owned) for all contracts valued at greater than

⁵ An agreement by which an IP rights holder gives another entity the permission to exercise some or all of the rights associated with the IP (e.g., the right to exploit, make, use, sell, copy, display, distribute, modify, etc. the IP), whether in exchange for financial compensation or not.

\$10,000. The department must identify in both the contract and in its contract reporting system which exception justified the Crown retaining ownership. Additionally, departments are required to identify contracts that have the potential for commercial exploitation. Departments are also required to record the number of times the department retained the ownership of the IP, and the exceptions used to justify it. The data from the departmental systems is compiled in accordance with the standard detailed in Appendix A, sections 30 and 31 of the *Guidelines on the Proactive Disclosure of Contracts*, where departments provide data to the open data portal at TBS annually. It is important to note that in accordance with Appendix A section 30, if the National Security exception is used, it is **not** reported.

Q: Who can I contact in my department/agency to help decide on the ownership of the IP in the contract?

A: Your central contracting group, material management and IP managers would be good resources. Your organization's legal services unit can also provide assistance.

Q: How does the policy relate to government policy on open government?

A: Under section 86 of the *Access to Information Act*, departments are required to proactively disclose information on contracts and amendments with a value over \$10,000, and amendments to contracts that increase the contract value to over \$10,000 with limited exceptions or exclusions set out in Part 1 of the Act. This is also highlighted in the *Guidelines on the Proactive Disclosure of Contracts*.

Q: How does a department request a Treasury Board exemption from Appendix A of the policy?

A: Departments may draft a Treasury Board Submission to seek a TB policy exemption. Departments should consult with their TBS program sector analyst for advice on the process .

Q: What happens in the case of open source software?

A: Open source software creates certain challenges in distinguishing IP and IP ownership and in determining what an associated open-source licence permits one to do with the software and the results of its use. It is important to ensure that IP rights are respected, and to understand the nature of the Crown's rights to the Foreground IP. Advice should be sought from departmental IP specialists and legal services.

Q: If the contractor owns the Foreground IP, what has the Crown paid for?

A: The Crown has received the deliverable contracted for in the contract. The Crown can also obtain a licence that provides it with certain rights, such as: the right to make certain

uses of the deliverables of the contract without paying any more money to the contractor, and the ability to copy, translate or change the products without seeking permission from the contractor.

Q: If the department agrees that the contractor is to own the IP, does it have to go back to that contractor every time we need to change something or want more work?

A: Not necessarily, as long as the Crown obtains an appropriate licence to the IP upfront. This could be accomplished by appropriate licensing terms, whereby the contractor is required to provide the Crown with a perpetual, non-exclusive, royalty-free licence to use the IP for government purposes (which should be included in the contract). If the Crown has a licence that covers all the intended uses of the IP, then the department doesn't need to go back to the contractor.

Certain standard SACC clause language provides a broad licence to the Crown. One key licensing right is the right to provide the intellectual property to third party contractors in order to satisfy a follow-on contract. This avoids the need for further licensing arrangements.

Q: If the Crown agrees that the contractor is to own the IP, can the contractor be required to report on their use of the IP?

A: This type of obligation could be made a part of the contract. It is important that all obligations for the contractor are outlined in the Statement of Work which could include the requirement to deliver an IP Management Plan as defined in the SOW which will serve, in part, to identify and validate all of the IP associated with the deliverable.

In such cases, you may need to consult with your materiel management/ procurement specialists for the correct wording. Given that reporting can place a burden on the contractor, it is recommended that this requirement be used only in cases where the Crown believes that commercialization/use of the IP is likely.

Data Collection for IP Contracts Management Information Systems

Q: How does a department report on the cases where the Crown retains IP ownership?

A: The financial & procurement systems in departments and agencies record data on the ownership of the IP and the potential for commercial exploitation at the time of contract approval. This information, other than data on the use of the national security exemption, is then reported by departments and agencies to the TBS Open Government Portal under proactive disclosure of contract reports for contracts and amendments with a value over \$10,000, and amendments to contracts that increase the contract value to over \$10,000.

Q: What happens to data that is submitted?

A: An annual report is prepared by ISED and shared with the ADM Committee on Science and Technology (ADM CST) and by TBS to the Treasury Board Advisory Committee on Contracts (TBACC).

Q: How long does the department need to track what happens to the IP owned by the Crown?

A: Contracts are to be retained for a minimum period of time as is prescribed by respective departmental policies. Records of ownership and licences to IP need to be kept as long as the goods (including licensed software) or services for which the IP is relevant are in use.

Documentation (e.g., records, dated copies of drafts, emails or documents) of the IP created in the course of the contract will be essential in establishing ownership and securing/protecting rights. At the point when contract requirements are complete is an opportunity to review the information gathered and ensure its accuracy and completeness.