Federal procurements are governed by a combination of *Legislative*, *Regulatory*, and *Policy* requirements.

Requirements move from broad to specific, from overarching principles to specific direction.

Each level of requirement is subject to the requirements set out above it.
Legal Environment

Financial Administration Act

Governed by the spending of federal funds and provides authority for the Treasury Board to set conditions on federal government contracting. Also includes a commitment to fairness, openness and transparency in contracting.

Departmental Legislation & Common Law

Ministerial authority to enter into contract derives from enabling legislation of departments or from common law.

International Trade Agreements

Canada is signatory to a number of Trade Agreements, which include obligations for Federal procurement.

Comprehensive Land Claim Agreements

Canada is signatory to a number of treaties based on Aboriginal rights and title to lands traditionally used and occupied, which include obligations for Federal procurement.
The Government Contracts Regulations (GCRs), issued under the Financial Administration Act, require that bids be *publicly solicited* for all contracts except in four limited circumstances:

- **A Pressing Emergency**
- **Contracts less than $25K where not cost effective to solicit bids (or $100K for certain specific types of contracts)**
- **Not in the public interest to solicit bids**
- **Only one person capable of performing the contract**

The GCRs also require that the government protect its interests by requesting financial security from bidders, as appropriate.
At present, the major policy instrument devoted exclusively to procurement is the Treasury Board Contracting Policy.

The Contracting Policy governs procurement for all departments and agencies (with some exceptions for Agents of Parliament and independent commissions).

It articulates the Policy and alerts practitioners to all other statutory or policy instruments that may affect procurement, e.g. Competition Act, Official Languages.

Broadly speaking, the Treasury Board Contracting Policy requires government contracting to be conducted in a way that:

<table>
<thead>
<tr>
<th>Stands the test of public scrutiny in matters of prudence and probity</th>
<th>Encourages competition, reflects fairness, and ensures value for money in the spending of public funds</th>
<th>Ensures the pre-eminence of operational requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supports long-term industrial and regional development</td>
<td>Complies with Canada’s obligations as set out in Comprehensive Land Claims Agreements</td>
<td>Complies with Canada’s obligations as set out in international treaties and trade agreements.</td>
</tr>
</tbody>
</table>
Policy Environment (continued)
Sample Contract Entry Limits

<table>
<thead>
<tr>
<th>GOODS</th>
<th>MERX – competitive</th>
<th>Non-MERX competitive</th>
<th>Sole Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Dept PWGSC</td>
<td>- 40M</td>
<td>400K 10M</td>
<td>40K 2M</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SERVICES</th>
<th>MERX - competitive</th>
<th>Non-MERX competitive</th>
<th>Sole Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Dept PWGSC</td>
<td>2M 20M</td>
<td>400K 10M</td>
<td>100K 3M</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONSTRUCTION</th>
<th>MERX - competitive</th>
<th>Non-MERX Competitive</th>
<th>Sole Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Depts PWGSC</td>
<td>400K 40M</td>
<td>400K 20M</td>
<td>40K 1M</td>
</tr>
</tbody>
</table>

The Contracting Policy sets out limits up to which departments may contract without seeking TB approval. These limits vary by contract type – **goods**, **services**, or **construction**. The limits also vary by bid solicitation type – **electronic competitive**, **standard competitive**, or **sole-source** (non-competitive). Departments may always choose to seek TB approval for complex contracts, regardless of the value being within their authority limits, based on a risk assessment.

Departments may pursue procurements above their contract entry limits provided they seek Treasury Board approval prior to entering into any contracts or arrangements.
Leveraging Federal Procurement

There are a number of areas where the federal government may approve initiatives and strategies aimed at leveraging procurement to advance various socio-economic development objectives.

Departments sponsor socio-economic initiatives, which are linked to their program mandates.

Treasury Board becomes involved when socio-economic initiatives include administrative measures which are binding across federal organizations (ie. such initiatives may need separate TB approval for the program cost and/or administrative design details).
Operational Environment

Policy and reporting requirements seek to balance flexibility with scrutiny and control. Several processes are in place to ensure all Federal procurements are fair, open, and transparent, these include:

- All contract opportunities subject to one or more trade agreement, and notices of contract award, are published electronically on the Government Electronic Tendering System (GETS) – MERX is the trade name of the system;
- All contracts and amendments >$10K are proactively disclosed on departmental websites;
- Departments establish procurement governance regimes (including contract review committees) that are commensurate with the size and nature of the organization, and the volume/complexity of the organization’s procurements;
- Departments’ procurement governance regimes are assessed by TBS, on a rotating basis, through the Management Accountability Framework (MAF);
- Annual, Government-wide Purchasing Activity Reports are posted on TBS website
- Internal audits are posted on departmental websites
- Official notices of CITT complaints are posted on MERX and published in the Canada Gazette
- The Procurement Ombudsman has a mandate to review departmental procurement practices to assess their fairness, openness, and transparency and make recommendations to the relevant department for improvements.