

Right Of First Refusal

Issue

The Right of First Refusal (RFR) Policy was established by the Government of Canada (GoC) in 1945 to address the need to provide direct employment opportunities for Veterans. It requires federal departments to request guard services from the Corps of Commissionaires (the Corps) before seeking services from other security guard suppliers.

On April 1, 2023, Veterans Affairs Canada (VAC) implemented a new administrative policy to continue the RFR for three years to allow for a fulsome re-assessment and re-examination of the existing approach within the context of broader Veteran employment incentives. This includes an evaluation on the viability of the policy, and whether to continue offering the Corps a right of first refusal for the procurement of guard services for federal institutions to support Veteran employment, after March 31, 2026, or whether there are other tools that could more effectively support Veterans' employment.

Context

Following the Second World War in 1945, and in response to the need to support the employment of Veterans who lacked skills or qualifications, or who had work-limiting disabilities, the GoC established a procurement preference known as the Right of First Refusal (RFR) policy. The RFR policy, now known as the 'Policy on Procurement of Guard Services,' provides the Corps with prioritized access to supply guard services to federal institutions. The GoC has been relying on a public interest exception in paragraph 6(c) of the Government Contracts Regulations (GCR) to justify the sole source procurement of guard services from the Corps.

Today, the Corps has 15 divisions within Canada, with approximately 4,000 Veterans employed. As the largest single private employer of Veterans in Canada, the Corps has a social mandate to support Veteran employment, and continues to rely on work contracted through the RFR to maintain this mandate and sustain operations.

The Policy includes a requirement that Veterans work a minimum of 60% of the hours worked under RFR contracts in each fiscal year. Data provided by the Corps has shown that they have not been able to meet the 60% target for over ten years. The percentage of Veterans employed by the Corps has been decreasing over time, *redacted*.

The RFR was initially set out in Treasury Board's (TB) Common Services Policy (CSP). In 2018, the administration of the requirements regarding guard services were transferred from the Treasury Board Secretariat (TBS) to VAC due to its link to Veteran employment.

In early 2023, VAC was provided the authority to issue, administer, amend or rescind an administrative policy to implement the RFR for guard services from April 1, 2023, to March 31,

2026. Per the terms of that delegation, the RFR was to continue under a new policy issued and administered by VAC in the same way as it had been implemented under the previous Policy. VAC was also to provide TB with annual updates, until March 31, 2026, on the status of the re-assessment of the RFR policy.

On April 1, 2023, VAC's new RFR policy, the Policy on Procurement of Guard Services, came into effect with an expiration date of March 31, 2026.

Key Update

VAC has undertaken a re-assessment of the RFR with a focus on exploring its evolution and alternative strategies to promote Veteran employment, such as social procurement opportunities which could leverage the Government's purchasing power to support Veteran hiring. This included consultations with the guard services industry, interaction with the Corps, and internal consultations with subject matter experts from Public Services and Procurement Canada (PSPC), the Department of Justice, the Privy Council Office, as well as TBS. In addition, a cost-benefit analysis on the RFR was conducted by a neutral third party. The outputs of these activities were analyzed and formed the basis for the overall re-assessment of the RFR. The findings and options were communicated in Spring 2024 to the interdepartmental Assistant Deputy Minister-led RFR Governance Committee, which consisted of senior officials from key federal government departments.

redacted

The RFR is set to expire on March 31, 2026. *redacted*