

Contract No. - N° du contrat

Amd. No. - N° de la modif.

Buyer ID – Id. de l'acheteur

Client Ref. No. – N° de réf. du client

File No. - N° du dossier

CCC No./N° CCC – FMS No./ N° VME

REQUEST FOR PROPOSAL

FOR

REAL PROPERTY - 2

**PROPERTY MANAGEMENT SERVICES,
PROJECT DELIVERY SERVICES
AND
OPTIONAL SERVICES**

**PUBLIC WORKS AND GOVERNMENT
SERVICES CANADA
(PWGSC)**

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1 PART 1 – GENERAL INFORMATION

1.1 Introduction

The bid solicitation process and resulting contract document is divided into seven parts plus Annexes and attachments as follows:

- Part 1 General Information: provides a general description of the requirement;
- Part 2 Bidder Instructions: provides the instructions, clauses and conditions applicable to the bid solicitation process and states that the Bidder agrees to be bound by the clauses and conditions contained in all parts of the bid solicitation process;
- Part 3 Bid Preparation Instructions: provides bidders with instructions on how to prepare their bid;
- Part 4 Evaluation Procedures and Basis of Selection: indicates how the evaluation will be conducted, the evaluation criteria that must be addressed in the bid, if applicable, and the basis of selection;
- Part 5 Certifications: includes the certifications to be provided;
- Part 6 Security, Financial and Other Requirements: includes specific requirements that must be addressed by bidders; and,
- Part 7 Resulting Contract Clauses: includes the clauses and conditions that will apply to any resulting contract.

1.2 Summary

- 1.2.1 This bid solicitation process is being issued to satisfy the requirement of Public Works and Government Services Canada, Real Property Branch (the “Client”) for Property Management Services, Project Delivery Services and other related Optional Services with a potential life span of up to twelve years based upon four (4) years plus four (4) two (2) year irrevocable options allowing Canada to extend the term of the contract.
- 1.2.2 Public Works and Government Services Canada (PWGSC) is one of the principal custodians of real property for the federal government. As custodian of general purpose office and common use space, the Department is charged with representing the ownership interests of the Federal Government by ensuring sound stewardship for this real property across the country.
- 1.2.3 This requirement is aligned with Real Property Branch’s National Service Management Strategy, which advocates leveraging the private sector to build service capacity and agility. This is achieved through developing services, people and mechanisms, specifically: Identifying services that offer the greatest opportunity for building capacity by leveraging the private sector; and developing delivery mechanisms for identified service priorities to enable effective out-tasking. The buildings named within this solicitation are primarily Crown-owned offices, and also include some special purpose facilities.

- 1.2.4 The scope of work for the proposed Contract involves Property Management Services, Project Delivery Services and other related Optional Services to Carling Campus and Tunney's Pasture Campus.

1.3 Volumetric Data

- 1.3.1 The "Volumetric Data", has been provided to Bidders to assist them in preparing their bids. The inclusion of this data in this bid solicitation process does not represent a commitment by Canada that Canada's future usage of the service identified in this bid solicitation process will be consistent with this data. It is provided purely for information purposes. The below values are expressed in millions of CND Dollars.

Type of Service	Base Contract				Option 1		Option 2		Option 3		Option 4		Total All years
	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	
Property Management Services	30.0	61.5	63.5	71.5	80.0	89.0	92.0	95.5	99.5	103.0	107.0	111.0	1,003.5
Project Delivery Services	11.0	22.5	23.5	24.5	26.0	27.0	28.0	29.5	31.0	32.5	33.5	35.5	324.5
Tenant Services	4.0	8.5	8.5	9.0	9.5	10.0	10.0	10.5	11.0	11.5	11.5	12.0	116.0
Total No Options	45.0	92.5	95.5	105.0	115.5	126.0	130.0	135.5	141.5	147.0	152.0	158.5	1,444.0
Potential Options													
Projects > \$1M	4.0	8.0	8.0	8.5	9.0	9.5	10.0	10.0	10.5	11.0	11.5	12.0	112.0
FMS	3.0	6.5	6.5	7.0	7.0	7.5	7.5	8.0	8.0	8.5	9.0	9.0	87.5
Lease Brokerage	0.1	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.6
Commercial Ops	0.1	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.6
Additional Assets	6.5	14.0	14.0	15.0	15.5	16.0	16.5	17.5	18.0	19.0	19.5	20.5	192.0
Special Construction Projects	46.7	57.0	78.5	124.5	151.5	122.0	61.5	38.5	0.0	0.0	0.0	0.0	680.2
Total Options	60.4	85.8	107.0	155.0	183.0	155.0	95.5	74.0	36.5	38.5	40.0	41.9	1,072.9
Grand Total	105.4	178.3	202.5	260.0	298.5	281.0	225.5	209.5	178.0	185.5	192.0	200.4	2,516.9

1.4 Purpose of the Request For Proposal

1.4.1 This Request For Proposal (RFP) has been developed to allow potential Bidders the opportunity to submit proposals for the Carling and Tunney's Pasture Campuses to PWGSC for Property Management, Project Delivery and Optional Services as identified within the Statement of Work. Bidders must submit one bid package for both Campuses.

1.5 Objectives

1.5.1 In order to fulfill its requirements, the Department is seeking to attract bids from dynamic, solution-oriented private sector real property service providers who are committed to long-term collaborative relationships for the delivery of high quality services to our clients. PWGSC is looking for highly professional firms who share its management values and ethics. PWGSC places considerable importance on operational excellence, quality management and continuous improvement, communication, project management best practices, best value to Crown, environmental sustainability and good neighbour principles.

1.6 Security

1.6.1 There is a security requirement associated with this requirement. Security (Designated Organizational Screening – DOS clearance) is required prior to bid closing. For additional information, see Part 6 - Security, Financial and Other Requirements, and Part 7 - Resulting Contract Clauses. Bidders should consult the "Security Requirements on PWGSC Bid Solicitations - Instructions for Bidders" document on the Departmental Standard Procurement Documents (<http://www.tpsgc-pwgsc.gc.ca/app-acq/lc-pl/lc-pl-eng.html#a31>) Website.

1.7 Trade Agreements

1.7.1 The requirement is subject to the provisions of the World Trade Organization Agreement on Government Procurement (WTO-AGP), the North American Free Trade Agreement (NAFTA), and the Agreement on Internal Trade (AIT).

1.8 Planning Schedule Overview

1.8.1 Key Activities and Target Dates

The following key activities and target dates are provided for planning purposes only and do not constitute or imply any commitment by Canada.

Activity Description	Target Dates
Complete Bid Proposal Evaluations	January 2013
Award Contract	15 May 2013
Contract Initiation	15 May – 15 August 2013
Contract Operational Start Date Carling Campus	15 August 2013
Contract Operational Start Date Tunney's Pasture Campus	1 April 2014

1.9 Debriefings

- 1.9.1 After contract award, bidders may request a debriefing on the results of the bid solicitation process. Bidders should make the request to the Contracting Authority within 15 working days of receipt of notification that their bid was unsuccessful. The debriefing may be provided in writing, by telephone or in person.

2 PART 2 – BIDDER INSTRUCTIONS

2.1 Enquiries - Bid Solicitation Process

- 2.1.1 All enquiries must be submitted in writing to the Contracting Authority no later than 10 calendar days before the bid closing date. Enquiries received after that time may not be answered.
- 2.1.2 Bidders should reference as accurately as possible the numbered item of the bid solicitation process to which the enquiry relates. Care should be taken by Bidders to explain each question in sufficient detail in order to enable Canada to provide an accurate answer. Technical enquiries that are of a “proprietary” nature must be clearly marked “proprietary” at each relevant item. Items identified as proprietary will be treated as such except where Canada determines that the enquiry is not of a proprietary nature. Canada may edit the questions or may request that the Bidder do so, so that the proprietary nature of the question is eliminated, and the enquiry can be answered with copies to all bidders. Enquiries not submitted in a form that can be distributed to all bidders may not be answered by Canada.

2.2 Bidders' Conference

- 2.2.1 A bidders' conference will be held at 3500 Carling Avenue on the October 10, 2012 from 9:00 am to 11:00 am (EST). The scope of the requirement outlined in the bid solicitation process will be reviewed during the conference and questions will be answered. It is recommended that bidders who intend to submit a bid attend or send a representative.
- 2.2.2 Bidders are requested to register with the Contracting Authority before the conference to confirm attendance. Bidders should provide, in writing, to the Contracting Authority, the names of the person(s) who will be attending and a list of issues they wish to discuss at least 5 working days before the scheduled conference.
- 2.2.3 Any clarifications or changes to the bid solicitation process resulting from the bidders' conference will be issued as an amendment to the bid solicitation process.
- 2.2.4 Bidders who do not attend will not be precluded from submitting a bid.

2.3 Optional Site Visit

- 2.3.1 It is recommended that the Bidder or a representative of the Bidder visit the work site. Arrangements have been made for a tour of the work site. The site visit will be held on _____ (date) at _____ (time and location). Bidders must communicate with the Contracting Authority no later than _____ day(s) before the scheduled visit to confirm attendance and provide the name(s) of the person(s) who will attend. Bidders who do not confirm attendance and provide the name(s) of the person(s) who will attend as required will not be allowed access to the site. Bidders will be requested to sign an attendance form. Bidders who do not attend or send a representative will not be given an alternative appointment but they will not be precluded from submitting a bid. Any clarifications or changes to the bid solicitation process resulting from the site visit will be issued as an amendment to the bid solicitation process.

2.4 Code of Conduct and Certifications - Bid

2.4.1 Bidders must comply with the Code of Conduct for Procurement (<http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html>). In addition to the Code of Conduct for Procurement, bidders must a) respond to bid solicitations in an honest, fair and comprehensive manner, b) accurately reflect their capacity to satisfy the requirements stipulated in the bid solicitations and resulting contracts, c) submit bids and enter into contracts only if they will fulfill all obligations of the Contract.

2.4.2 Bidders further understand that, to ensure fairness, openness and transparency in the procurement process, the commission of certain acts or offences will render them ineligible to be awarded a contract. Canada will declare non-responsive any bid in respect of which the information herein requested is missing or inaccurate, or in respect of which the information contained in the certifications specified hereinafter is found to be untrue, in any respect, by Canada. If it is determined, after contract award, that the Bidder made a false declaration, Canada will have the right to terminate the Contract for default. The Bidder will be required to diligently maintain up-to-date the information herein requested. The Bidder and any of the Bidder's parent companies, subsidiaries and affiliates, will also be required to remain free and clear of any acts or convictions specified herein during the period of any contract arising from this bid solicitation. Canada may verify the information provided by the Bidder, including the information relating to the acts or convictions specified herein, through independent research, use of any government resources or by contacting third parties.

2.4.3 For the purpose of this section, business concerns, organizations and individuals are Bidder's affiliates if:

- (a) directly or indirectly either one controls or has the power to control the other, or
- (b) a third party has the power to control both.

Indicia of control, include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity created following the acts or convictions specified in this section which has the same or similar management, ownership, or principal employees, as the case may be.

2.4.4 Bidders should provide, with their bid or promptly thereafter, a complete list of names of all individuals who are currently directors of the Bidder. If such a list has not been received by the time the evaluation of bids is completed, Canada will inform the Bidder of a time frame within which to provide the information. Failure to provide such a list within the required time frame will render the bid non-responsive. Bidders must always submit the list of directors before contract award.

2.4.5 Canada may, at any time, request that a Bidder provide properly completed and Signed Consent Forms (Consent to a Criminal Record Verification form - PWGSC-TPSGC 229) (Annex I) for any or all individuals named in the aforementioned list within a specified delay. Failure to provide such Consent Forms within the delay will result in the bid being declared non-responsive.

2.4.6 The Bidder must diligently maintain the list up-to-date by informing Canada in writing of any change occurring during the validity period of the bid, and must also

provide Canada, when requested, with the corresponding Consent Forms. The Bidder will also be required to diligently maintain the list and when requested, provide Consent Forms during the period of any contract arising from this bid solicitation.

- 2.4.7 By submitting a bid, the Bidder certifies to be aware, and that its parent companies, subsidiaries and affiliates are aware, that Canada may verify the information provided by the Bidder, including the information relating to the acts or convictions specified herein, through independent research, use of any government resources or by contacting third parties.
- 2.4.8 By submitting a bid, the Bidder certifies that neither the Bidder nor any of the Bidder's parent companies, subsidiaries or affiliates have directly or indirectly, paid or agreed to pay, and will not, directly or indirectly, pay a contingency fee to any individual for the solicitation, negotiation or obtaining of the Contract if the payment of the fee would require the individual to file a return under section 5 of the Lobbying Act.
- 2.4.9 By submitting a bid, the Bidder certifies that except for those offences where a criminal pardon or a record suspension has been obtained, capacities restored by the Governor in Council, or leniency granted as further described in subsection 9 herein, neither the Bidder nor any of the Bidder's parent companies, subsidiaries or affiliates has ever been convicted of an offence under any of the following provisions:
- (a) section 45 (Conspiracies, agreements or arrangements between competitors), 46 (Foreign directives) 47 (Bid rigging), 49 (Agreements or arrangements of federal financial institutions), 52 (False or misleading representation), 53 (Deceptive notice of winning a prize) under the Competition Act, or
 - (b) section 121 (Frauds on the government and Contractor subscribing to election fund), section 124 (Selling or Purchasing Office), section 380 (Fraud) for fraud committed against Her Majesty or section 418 (Selling defective stores to Her Majesty), section 462.31 (Laundering proceeds of crime) or sections 467.11 to 467.13 (Participation in activities of criminal organization) of the Criminal Code of Canada, or
 - (c) paragraph 80(1)(d) (False entry, certificate or return), subsection 80(2) (Fraud against Her Majesty) or section 154.01 (Fraud against Her Majesty) of the Financial Administration Act, or
 - (d) section 239 (False or deceptive statements) of the Income Tax Act, or
 - (e) section 327 (False or deceptive statements) of the Excise Tax Act, or
 - (f) section 3 (Bribing a foreign public official) of the Corruption of Foreign Public Officials Act, or
 - (g) section 5 (Trafficking in substance), section 6 (Importing and exporting), or section 7 (Production of substance) of the Controlled Drugs and Substance Act.
- 2.4.10 In circumstances where a criminal pardon or a record suspension has been obtained, capacities restored by the Governor in Council, or leniency granted pursuant to a formal program (similar to the Competition Bureau's Leniency Program) for offences other than sections 121, 124, 380 for fraud committed against Her Majesty and 418 of the Criminal Code of Canada or offences under the Financial Administration Act, the Bidder must provide with its bid a certified copy of confirming documentation from an official source.

2.5 Procurement Business Number

- 2.5.1 Suppliers are required to have a Procurement Business Number (PBN) before contract award. Suppliers may register for a PBN online at Supplier Registration Information (<https://srisupplier.contractsCanada.gc.ca/>). For non-Internet registration, suppliers may contact the InfoLine at 1-800-811-1148 to obtain the telephone number of the nearest Supplier Registration Agent.

2.6 Standard Instructions, Clauses and Conditions

- 2.6.1 Pursuant to the Department of Public Works and Government Services Act (S.C. 1996, c.16), the instructions, clauses and conditions identified in the bid solicitation and resulting contract by number, date, and title are incorporated by reference into and form part of the bid solicitation and resulting contract as though expressly set out in the bid solicitation and resulting contract.
- 2.6.2 Bidders who submit a bid agree to be bound by the instructions, clauses and conditions of the bid solicitation process and accept the clauses and conditions of the resulting contract.

2.7 Definition of Bidder

- 2.7.1 "Bidder" means the person or entity (or, in the case of a joint venture, the persons or entities) submitting a bid to perform a contract for goods, services or both. It does not include the parent, subsidiaries or other affiliates of the Bidder, or its subcontractors.

2.8 Submission of Bids

- 2.8.1 Canada requires that each bid, at closing date and time or upon request from the Contracting Authority, be signed by the Bidder or by an authorized representative of the Bidder. If a bid is submitted by a joint venture, it must be in accordance with section 2.21.
- 2.8.2 It is the Bidder's responsibility to:
- (a) obtain clarification of the requirements contained in the bid solicitation, if necessary, before submitting a bid;
 - (b) prepare its bid in accordance with the instructions contained in the bid solicitation;
 - (c) submit by closing date and time a complete bid;
 - (d) send its bid only to Public Works and Government Services Canada (PWGSC) Bid Receiving Unit specified on page 1 of the bid solicitation. Bids transmitted by facsimile or electronic mail to Public Works and Government Services Canada will not be accepted;
 - (e) ensure that the Bidder's name, return address, the bid solicitation number, and bid solicitation closing date and time are clearly visible on the envelope or the parcel(s) containing the bid; and,
 - (f) provide a comprehensible and sufficiently detailed bid, including all requested pricing details, that will permit a complete evaluation in accordance with the criteria set out in the bid solicitation.
- 2.8.3 If Canada has provided bidders with multiple formats of a document (for example, a document may be downloaded through the Government Electronic Tendering

Service (GETS) but may also be made available on CD-ROM through GETS), the format downloaded through GETS will take precedence. If Canada posts an amendment to the bid solicitation revising any documents provided to bidders in multiple formats, Canada will not necessarily update all formats to reflect these revisions. It is the Bidder's responsibility to ensure that revisions made through any bid solicitation amendment issued through GETS are taken into account in the alternate formats it uses of bid solicitation documents.

- 2.8.4 Bids will remain open for acceptance for a period of not less than 300 days from the closing date of the bid solicitation, unless specified otherwise in the bid solicitation. Canada reserves the right to seek an extension of the bid validity period from all responsive bidders in writing, within a minimum of three (3) days before the end of the bid validity period. If the extension is accepted by all responsive bidders, Canada will continue with the evaluation of the bids. If the extension is not accepted by all responsive bidders, Canada will, at its sole discretion, either continue with the evaluation of the bids of those who have accepted the extension or cancel the solicitation.
- 2.8.5 Bid documents and supporting information may be submitted in either English or French.
- 2.8.6 Bids received on or before the stipulated bid solicitation closing date and time will become the property of Canada and will not be returned. All bids will be treated as confidential, subject to the provisions of the Access to Information Act (R.S. 1985, c. A-1) and the Privacy Act (R.S., 1985, c. P-21).
- 2.8.7 Unless specified otherwise in the bid solicitation, Canada will evaluate only the documentation provided with a bidder's bid. Canada will not evaluate information such as references to Web site addresses where additional information can be found, or technical manuals or brochures not submitted with the bid.
- 2.8.8 A bid cannot be assigned or transferred in whole or in part.
- 2.8.9 Bidders who submit a bid agree to be bound by the instructions, clauses and conditions of the bid solicitation process and accept the clauses and conditions of the resulting contract.

2.9 Revision of Bid

- 2.9.1 A bid submitted in accordance with these instructions may be revised by letter or facsimile provided the revision is received at the office designated for the receipt of bids, on or before the date and time set for the closing of the solicitation. The letter or facsimile shall be on the Bidder's letterhead or bear a signature that identifies the Bidder.
- 2.9.2 A revision to a bid must clearly identify the change(s) and the specific item(s) to which each change applies.
- 2.9.3 A letter or facsimile submitted to confirm an earlier revision shall be clearly identified as a confirmation.
- 2.9.4 The only acceptable facsimile number for receiving bid revisions is 819-997-9776. Canada will not be responsible for any failure attributable to the transmission or receipt of the faxed bid including, but not limited to, the following:

- (a) receipt of garbled or incomplete amendment;
- (b) availability or condition of the receiving facsimile equipment;
- (c) incompatibility between the sending and receiving equipment;
- (d) delay in transmission or receipt of the amendment;
- (e) failure of the Bidder to properly identify the amendment;
- (f) illegibility of the amendment; or
- (g) security of bid data.

2.9.5 Failure to comply with any of the above provisions shall result in the rejection of the non-compliant revision(s) only. The bid shall be evaluated based on the original bid submitted and all other compliant revision(s).

2.10 Late Bids

2.10.1 PWGSC will return bids delivered after the stipulated bid solicitation closing date and time, unless they qualify as a delayed bid as described below.

2.11 Delayed Bids

2.11.1 A bid delivered to the specified bid receiving unit after the closing date and time but before the contract award date may be considered, provided the bidder can prove the delay is due solely to a delay in delivery that can be attributed to the Canada Post Corporation (CPC) (or national equivalent of a foreign country). Purolator Inc. is not considered to be part of CPC for the purposes of delayed bids. The only pieces of evidence relating to a delay in the CPC system that are acceptable to PWGSC are:

- (a) a CPC cancellation date stamp; or
- (b) a CPC Priority Courier bill of lading; or
- (c) a CPC Xpresspost label

that clearly indicates that the bid was mailed before the bid closing date.

2.11.2 Misrouting, traffic volume, weather disturbances, labour disputes or any other causes for the late delivery of bids are not acceptable reasons for the bid to be accepted by PWGSC.

2.11.3 Postage meter imprints, whether imprinted by the Bidder, the CPC or the postal authority outside Canada, are not acceptable as proof of timely mailing.

2.12 Customs Clearance

2.12.1 It is the responsibility of the Bidder to allow sufficient time to obtain customs clearance, where required, before the bid closing date and time. Delays related to the obtaining of customs clearance cannot be construed as "undue delay in the mail" and will not be accepted as a delayed bid under above section.

2.13 Legal Capacity

2.13.1 The Bidder must have the legal capacity to contract. If the Bidder is a sole proprietorship, a partnership or a corporate body, the Bidder must provide, if requested by the Contracting Authority, a statement and any requested supporting documentation indicating the laws under which it is registered or incorporated together with the registered or corporate name and place of business. This also applies to bidders submitting a bid as a joint venture.

2.14 Rights of Canada

2.14.1 Canada reserves the right to:

- (a) reject any or all bids received in response to the bid solicitation;
- (b) enter into negotiations with bidders on any or all aspects of their bids;
- (c) accept any bid in whole or in part without negotiations;
- (d) cancel the bid solicitation at any time;
- (e) reissue the bid solicitation;
- (f) if no responsive bids are received and the requirement is not substantially modified, reissue the bid solicitation by inviting only the bidders who bid to resubmit bids within a period designated by Canada; and,
- (g) negotiate with the sole responsive Bidder to ensure best value to Canada.

2.15 Rejection of Bid

2.15.1 Canada may reject a bid where any of the following circumstances is present:

- (a) the Bidder is subject to a Vendor Performance Corrective Measure, under the Vendor Performance Corrective Measure Policy, which renders the Bidder ineligible to bid on the requirement;
- (b) an employee, or subcontractor included as part of the bid, is subject to a Vendor Performance Corrective Measure, under the Vendor Performance Corrective Measure Policy, which would render that employee or subcontractor ineligible to bid on the requirement, or the portion of the requirement the employee or subcontractor is to perform;
- (c) the Bidder is bankrupt or where, for whatever reason, its activities are rendered inoperable for an extended period;
- (d) evidence, satisfactory to Canada, of fraud, bribery, fraudulent misrepresentation or failure to comply with any law protecting individuals against any manner of discrimination, has been received with respect to the Bidder, any of its employees or any subcontractor included as part of the bid;
- (e) evidence satisfactory to Canada that based on past conduct or behavior, the Bidder, a subcontractor or a person who is to perform the Work is unsuitable or has conducted himself/herself improperly;
- (f) with respect to current or prior transactions with the Government of Canada:

- i. Canada has exercised its contractual remedies of suspension or termination for default with respect to a contract with the Bidder, any of its employees or any subcontractor included as part of the bid;
 - ii. Canada determines that the Bidder's performance on other contracts, including the efficiency and workmanship as well as the extent to which the Bidder performed the Work in accordance with contractual clauses and conditions, is sufficiently poor to jeopardize the successful completion of the requirement being bid on.
- 2.15.2 Where Canada intends to reject a bid pursuant to a provision of above subsection (f), the Contracting Authority will so inform the Bidder and provide the Bidder ten (10) days within which to make representations, before making a final decision on the bid rejection.
- 2.15.3 Canada reserves the right to apply additional scrutiny, in particular, when multiple bids are received in response to a bid solicitation from a single bidder or a joint venture. Canada reserves the right to:
- (a) reject any or all of the bids submitted by a single bidder or joint venture if their inclusion in the evaluation has the effect of prejudicing the integrity and fairness of the process, or;
 - (b) reject any or all of the bids submitted by a single bidder or joint venture if their inclusion in the procurement process would distort the solicitation evaluation, and would cause a result that would not reasonably have been expected under prevailing market conditions and/or would not provide good value to Canada.

2.16 Communications - Solicitation Period

- 2.16.1 To ensure the integrity of the competitive bid process, enquiries and other communications regarding the bid solicitation must be directed only to the Contracting Authority identified in the bid solicitation. Failure to comply with this requirement may result in the bid being declared non-responsive.
- 2.16.2 To ensure consistency and quality of information provided to bidders, significant enquiries received and the replies to such enquiries will be provided simultaneously to bidders to which the bid solicitation has been sent, without revealing the sources of the enquiries.

2.17 Price Justification

- 2.17.1 In the event that the Bidder's bid is the sole responsive bid received, the Bidder must provide, on Canada's request, one or more of the following price justification:
- (a) a current published price list indicating the percentage discount available to Canada; or
 - (b) a copy of paid invoices for the like quality and quantity of the goods, services or both sold to other customers; or
 - (c) a price breakdown showing the cost of direct labour, direct materials, purchased items, engineering and plant overheads, general and administrative overhead, transportation, etc., and profit; or
 - (d) price or rate certifications; or
 - (e) any other supporting documentation as requested by Canada.

2.18 Bid Costs

- 2.18.1 No payment will be made for costs incurred in the preparation and submission of a bid in response to the bid solicitation. Costs associated with preparing and submitting a bid, as well as any costs incurred by the Bidder associated with the evaluation of the bid, are the sole responsibility of the Bidder.

2.19 Conduct of Evaluation

- 2.19.1 In conducting its evaluation of the bids, Canada may, but will have no obligation to, do the following:

- (a) seek clarification or verification from bidders regarding any or all information provided by them with respect to the bid solicitation;
- (b) contact any or all references supplied by bidders to verify and validate any information submitted by them;
- (c) request, before award of any contract, specific information with respect to bidders' legal status;
- (d) conduct a survey of bidders' facilities and/or examine their technical, managerial, and financial capabilities to determine if they are adequate to meet the requirements of the bid solicitation;
- (e) correct any error in the extended pricing of bids by using unit pricing and any error in quantities in bids to reflect the quantities stated in the bid solicitation; in the case of error in the extension of prices, the unit price will govern.
- (f) verify any information provided by bidders through independent research, use of any government resources or by contacting third parties;
- (g) interview, at the sole costs of bidders, any bidder and/or any or all of the resources proposed by bidders to fulfill the requirement of the bid solicitation.

- 2.19.2 Bidders will have the number of days specified in the request by the Contracting Authority to comply with any request related to any of the above items. Failure to comply with the request may result in the bid being declared non-responsive.

2.20 Joint Venture

- 2.20.1 A joint venture is an association of two or more parties who combine their money, property, knowledge, expertise or other resources in a single joint business enterprise, sometimes referred as a consortium, to bid together on a requirement. Bidders who bid as a joint venture must indicate clearly that it is a joint venture and provide the following information:

- (a) the name of each member of the joint venture;
- (b) the Procurement Business Number of each member of the joint venture;
- (c) the name of the representative of the joint venture, i.e. the member chosen by the other members to act on their behalf, if applicable;
- (d) the name of the joint venture, if applicable.

- 2.20.2 If the information is not clearly provided in the bid, the Bidder must provide the information on request from the Contracting Authority.

- 2.20.3 The bid and any resulting contract must be signed by all the members of the joint venture unless one member has been appointed to act on behalf of all members of the joint venture. The Contracting Authority may, at any time, require each member of the joint venture to confirm that the representative has been appointed with full

authority to act as its representative for the purposes of the bid solicitation and any resulting contract. If a contract is awarded to a joint venture, all members of the joint venture will be jointly and severally or solidarily liable for the performance of any resulting contract.

2.21 Conflict of Interest - Unfair Advantage

- 2.21.1 In order to protect the integrity of the procurement process, bidders are advised that Canada may reject a bid in the following circumstances:
- (a) if the Bidder, any of its subcontractors, any of their respective employees or former employees was involved in any manner in the preparation of the bid solicitation or in any situation of conflict of interest or appearance of conflict of interest;
 - (b) if the Bidder, any of its subcontractors, any of their respective employees or former employees had access to information related to the bid solicitation that was not available to other bidders and that would, in Canada's opinion, give or appear to give the Bidder an unfair advantage.
- 2.21.2 The experience acquired by a bidder who is providing or has provided the goods and services described in the bid solicitation (or similar goods or services) will not, in itself, be considered by Canada as conferring an unfair advantage or creating a conflict of interest. This bidder remains however subject to the criteria established above.
- 2.21.3 Where Canada intends to reject a bid under this section, the Contracting Authority will inform the Bidder and provide the Bidder an opportunity to make representations before making a final decision. Bidders who are in doubt about a particular situation should contact the Contracting Authority before bid closing. By submitting a bid, the Bidder represents that it does not consider itself to be in conflict of interest nor to have an unfair advantage. The Bidder acknowledges that it is within Canada's sole discretion to determine whether a conflict of interest, unfair advantage or an appearance of conflict of interest or unfair advantage exists.
- 2.21.4 The following is a list of private sector consultants and temporary agency personnel that have been employed directly or indirectly in the preparation of this RFP.

Table – Conflict of Interest

Company	Resource Name
3755479 CANADA INC. (operating as Maxsys Staffing & Consulting)	Peter Neville
3755479 CANADA INC. (operating as Maxsys Staffing & Consulting)	Bruce Bingham
3755479 CANADA INC. (operating as Maxsys Staffing & Consulting)	David Patton
3755479 CANADA INC. (operating as Maxsys Staffing & Consulting)	Phil Penny
Numetrica Inc.	Phil Penny

3755479 CANADA INC. (operating as Maxsys Staffing & Consulting)	Richard Marleau
3925994 Canada Inc.	Duane Herperger
Altis Human Resources (Ottawa) Inc.	Neil Lilloco
Groupe Intersol Group Warren Wilson Inc.	Warren Wilson
Lannick Contract Solutions Inc.	Michael O'Regan
Maplesoft Consulting Inc.	Tom Cockwell
Spearhead Management Canada Limited	Micheline Juneau
Strategic Relationships Solutions	Adam Elsaadi
Strategic Relationships Solutions	Elmer Ozipko
Strategic Relationships Solutions	Rhodena McDonald
CRG	Francois Brazeau

2.22 Entire Requirement

- 2.22.1 The bid solicitation documents contain all the requirements relating to the bid solicitation. Any other information or documentation provided to or obtained by a bidder from any source are not relevant. Bidders should not assume that practices used under previous contracts will continue, unless they are described in the bid solicitation. Bidders should also not assume that their existing capabilities meet the requirements of the bid solicitation simply because they have met previous requirements.

2.23 Further Information

- 2.23.1 For further information, bidders may contact the Contracting Authority identified in the bid solicitation.
- 2.23.2 For bid solicitations issued out of PWGSC headquarters, enquiries concerning receipt of bids may be addressed to the Bid Receiving Unit, Procurement Operational Support Division, telephone 819-956-3370. For bid solicitations issued out of PWGSC regional offices, enquiries concerning receipt of bids may be addressed to the Contracting Authority identified in the bid solicitation.

2.24 Applicable Laws

- 2.24.1 Any resulting contract must be interpreted and governed, and the relations between the parties determined, by the laws in force in Ontario.
- 2.24.2 By submission of a bid, the Bidder certifies that the Bidder has the legal capacity to enter into a contract and is in possession of all valid licenses, permits, registrations, certificates, declarations, filings, or other authorizations necessary to comply with all federal, provincial and municipal laws and regulations applicable to the submission of the bid and entry into any ensuing contract for the performance of the work.
- 2.24.3 For the purpose of validating the certification in paragraph 2.24.2, a Bidder shall, if requested, provide a copy of every valid license, permit, registration, certificate, declaration, filing or other authorization listed in the request, and shall provide such documentation within the time limit(s) set out in the request.
- 2.24.4 Failure to comply with the requirements of paragraph 2.24.2 shall result in disqualification of the bid.

2.25 Ontario Labour Legislation

- 2.25.1 In accordance with the requirements of section 77(1) of the Employment Standards Act, 2000, S.O. 2000, c. 41, the following information concerning each employee of the previous supplier providing services at the premises is available upon request:
- (a) the employee's job classification or job description;
 - (b) the wage rate actually paid to the employee;
 - (c) a description of the benefits, if any, provided to the employee including the cost of each benefit and the benefit period to which the cost relates;
 - (d) the number of hours that the employee works in a regular work day and in a regular work week, or if the employee's hours of work vary from week to week, the number of the employee's non-overtime hours for each week that the employee worked during the thirteen (13) weeks before the date of the request for information;
 - (e) the date on which the employer hired the employee;
 - (f) any period of employment attributed to the employer under section 10 of the Act;
 - (g) the number of weeks that the employee worked at the premises during the twenty-six (26) weeks before the request date. The 26-week period must be calculated without including any period during which the provision of services at the premises was temporarily discontinued, or during which the employee was on leave of absence under Part XIV of the Act;
 - (h) a statement indicating whether either of the following subparagraphs applies to the employee:
 - the employee's work, before the request date, included the provision of services at the premises, but the employee did not perform his or her job duties primarily at those premises during the thirteen (13) weeks before the request date.

- the employee's work included the provision of services at the premises, but the employee was not actively at work immediately before the request date, and did not perform his or her job duties primarily at the premises during the most recent thirteen (13) weeks of active employment.
- 2.25.2 The name, residential address and telephone number of each employee as they appear in the previous employer's records will be provided to the successful Bidder after contract award.
- 2.25.3 In addition to the above information, a copy of either the collective agreement, union certificate, or pending union application(s) regarding these employees at the premises is also attached, if applicable.
- 2.25.4 Bidders must use the information referred to above (if applicable) only for the purposes of preparing their bids and complying with the Act. Bidders must not disclose such information except as may be authorized by Canada in writing.
- 2.25.5 The enclosed information concerning the employees of the previous employer providing services at the premises has been received from the previous employer and Canada does not warrant its accuracy or completeness. Canada will not be responsible for any damage or loss which may result from use of or reliance upon any of this information.
- 2.25.6 Bidders who require clarification or further information may contact the Contracting Authority.

3 PART 3 – BID PREPARATION INSTRUCTIONS

3.1 Bid Preparation Instructions

3.1.1 Canada requests that bidders provide their bid in two (2) separately bound sections commensurate with the Evaluation Criteria (Annex H) as follows:

- (a) Section I: Technical Bid (Evaluation Criteria Item 1 - Technical Mandatories and Evaluation Criteria Item 2 - Technical Rated Criteria) in 8 hard copies and 2 soft copies on CD/DVD. The Bidder should provide the soft copies on CD/DVD in both Microsoft® Office 2003 compatible format and searchable Adobe Acrobat® compatible PDF format.
- (b) Section II: Financial Bid:
 - i. (Evaluation Criteria Item 3.2 – Financial Scenarios) in 8 hard copies and 2 soft copies on CD/DVD. The Bidder should provide the soft copies on CD/DVD in both Microsoft® Office 2003 compatible format and searchable Adobe Acrobat® compatible PDF format; and,
 - ii. the Financial Bid Form with Certifications (Annex D) . in a separately sealed envelope. The Bidder should submit 1 hard copy and 1 soft copy on CD/DVD.

The Bidder should indicate one hard copy as its “original”. If there is a discrepancy between the wording of any copies, the wording of the indicated “original” copy will prevail.

3.1.2 Canada requests that bidders follow the format instructions described below in the preparation of their bid:

- (a) use 8.5 x 11 inch (216 mm x 279 mm) paper;
- (b) use a numbering system that corresponds to the bid solicitation process;
- (c) The total page count limitation for the Bidder's entire response is 370 pages and the text may not be smaller than Arial font size 12. All pages are to be numbered sequentially and all pages after 370 will not be considered as part of the bidder's response. Such pages will be removed and not considered by evaluators.
- (d) include a title page at the front of each copy of the bid that includes the title, date, bid solicitation process number, bidder's name and address and contact information of its representative; and
- (e) include a table of contents.

3.1.3 In April 2006, Canada issued a policy directing federal departments and agencies to take the necessary steps to incorporate environmental considerations into the procurement process Policy on Green Procurement (<http://www.tpsgc-pwgsc.gc.ca/ecologisation-greening/achats-procurement/politique-policy-eng.html>).

To assist Canada in reaching its objectives, bidders are encouraged to:

- (a) use paper containing fibre certified as originating from a sustainably-managed forest and/or containing minimum 30% recycled content; and
- (b) use an environmentally-preferable format including black and white printing instead of colour printing, printing double sided/duplex.

3.1.4 Bid Package

The Bidders are to ensure the structured bid package is provided as described above and bidders are reminded that the maximum page limitation for the entire bid response is 370 pages. Only referenced material included within the Bidder's response will be evaluated. Reference material outside of the Bidder's response will not be considered.

3.1.5 Multiple Bids

The Bidder may submit more than one bid. If an alternate bid is submitted, it must be a physically separate document, clearly marked as an alternate bid. Each bid will be evaluated independently, without regard to the other bids submitted by the Bidder. As a result, every bid must be complete on its own. Even though material submitted in one bid will not be used to supplement another bid submitted by the same bidder, where inconsistencies are noted among multiple bids submitted by the same bidder, Canada may take those inconsistencies into account in evaluating the multiple bids. If the Bidder submits multiple bids and wishes to withdraw one or more of those bids, Canada may require that the Bidder withdraw either all its bids, or none of them.

3.1.6 For the purpose of this bid solicitation process, individual members of a joint venture bidding in their own capacity are not considered the same bidder as a joint venture in which they form a part.

3.1.7 No Conditional Proposals

The Bidder must submit a bid for which it seeks to be considered as a Bidder. The Bidder's bid must not be made conditionally. Any condition imposed by the Bidder will render the bid non-responsive and the bid will be given no further consideration.

3.2 Section I: Technical Bid

3.2.1 In their technical bid, bidders should demonstrate their understanding of the requirements contained in the bid solicitation and explain how they will meet these requirements. Bidders should demonstrate their capability and describe their approach in a thorough, concise and clear manner for carrying out the work.

3.2.2 The technical bid should address clearly and in sufficient depth the points that are subject to the evaluation criteria against which the bid will be evaluated. Simply repeating the statement contained in the bid solicitation is not sufficient. In order to facilitate the evaluation of the bid, Canada requests that bidders address and present topics in the order of the evaluation criteria under the same headings. To avoid duplication, bidders may refer to different sections of their bids by identifying the specific paragraph and page number where the subject topic has already been addressed.

3.3 Section II: Financial Bid and Certifications

3.3.1 The Fees shall be

- (a) submitted on the Financial Bid Form of Annex D;
- (b) based on the Bid Documents;
- (c) correctly completed in all respects, as per the Financial Bid Form of Annex D;

- (d) signed by a duly authorized representative of the Bidder, as per the Financial Bid Form of Annex D; and
- (e) accompanied by:
 - i. bid security as specified in Section 6.3;
 - ii. the certifications in Appendices 1 to 3 to the Financial Bid Form.

3.3.2 Any alteration to the pre-printed or pre-typed sections of the Financial Bid Form, or any condition or qualification placed upon the bid shall be cause for disqualification. Alterations, corrections, changes or erasures made to statements or figures entered on the Financial Bid Form by the Bidder shall be initialed by the person or persons signing the bid. Alterations, corrections, changes or erasures that are not initialed shall be deemed void and without effect.

4 PART 4 – EVALUATION PROCEDURES AND BASIS OF SELECTION

4.1 Evaluation Procedures

- 4.1.1 Bids will be assessed in accordance with the entire requirement of the bid solicitation process including the technical and financial evaluation criteria. There are several steps in the evaluation process, which are described below. Even though the evaluation and selection will be conducted in steps, the fact that Canada has proceeded to a later step does not mean that Canada has conclusively determined that the Bidder has successfully passed all the previous steps. Canada may conduct steps of the evaluation in parallel.

An evaluation team composed of representatives of the Client and PWGSC will evaluate the bids on behalf of Canada. Canada may hire any independent consultant, or use any Government resources, to evaluate any bid. Not all members of the evaluation team will necessarily participate in all aspects of the evaluation.

- 4.1.2 PWGSC has engaged Knowles Consultancy Services Inc. in Joint Venture with Hill International Inc. as a fairness monitor for this procurement. The fairness monitor will not be part of the evaluation team, but will, among other things, observe the evaluation of the bids with respect to Canada's adherence to the evaluation process described in this bid solicitation process.

- 4.1.3 In addition to any other time periods established in the bid solicitation process:

- (a) Requests for Clarifications: If Canada seeks clarification or verification from the Bidder about its bid, the Bidder will have 2 working days (or a longer period if specified in writing by the Contracting Authority) to provide the necessary information to Canada. Failure to provide information related to any Technical Mandatory Criteria will result in the bid being declared non-responsive. Failure to provide the information related to any Point Rated Criteria will result in an adjusted score.
- (b) Requests for Survey: If Canada wishes to survey the Bidder's facilities, the Bidder must make its facilities available for this purpose within 5 working days of a request by the Contracting Authority.
- (c) Extension of Time: If additional time is required by the Bidder, the Contracting Authority may grant an extension at his or her sole discretion.

4.2 Technical Evaluation

The evaluation process for the technical bid is described in Annex H.

4.2.1 Mandatory Technical Criteria

Each bid will be reviewed for compliance with the mandatory requirements of the bid solicitation process. All technical criteria that are mandatory requirements are identified specifically with the words "must" or "mandatory". Bids that do not comply with each and every mandatory requirement will be considered non-responsive and be disqualified.

4.2.2 Point-Rated Technical Criteria:

Each bid will be rated by assigning a score to the rated requirements, which are identified in the bid solicitation process by the word “rated” or by reference to a score. Bidders who fail to submit complete bids with all the information requested by this bid solicitation process will be rated accordingly.

4.2.3 Reference Checks

Reference checks for the purpose of this evaluation are used to verify and validate the bidder's response. Information provided by a reference which differs from the information supplied by the Bidder may be considered by evaluators. If the information provided by the bidder cannot be verified and validated, the information will not be evaluated and the bid will receive a score of zero for the criteria in question. Crown references will be accepted.

4.2.4 Tracking and Reporting Demonstration for IM/IT requirements

Canada may request a demonstration at its discretion from the Bidders. Canada may, but will have no obligation, to require that the Bidders demonstrate any of the features, functionality and capabilities described in this bid solicitation process or in its bid, in order to verify compliance with the requirements of this bid solicitation process. If required, the demonstration must be conducted, at no cost to Canada, at a location in Canada agreed to by the Contracting Authority. Canada will provide no fewer than 5 working days of notice before the scheduled date for the demonstration. Once the demonstration has begun, it must be completed within the same day. Canada will pay its own travel and salary costs associated with any demonstration. Despite the written bid, if Canada determines during a demonstration that the Bidder's proposed solution does not meet the technical requirements of this bid solicitation process, the bid may be declared non-responsive. Canada may, as a result of a demonstration, reduce the score of the Bidder on any rated requirement, if the demonstration indicates that the score provided to the Bidder on the basis of its written bid is not validated by the demonstration. The Bidder's score will not be increased as a result of any demonstration.

4.3 Financial Evaluation

4.3.1 The financial evaluation process is described in Annex H.

4.3.2 Point-Rated Financial Criteria

Financial Merit will be based on scenario responses.

4.3.3 Substantiation of Professional Services Rates

In Canada's experience, bidders will from time to time propose rates at the time of bidding for one or more categories of resources that they later refuse to honour, on the basis that these rates do not allow them to recover their own costs and/or make a profit. When evaluating the rates for professional services bid, Canada may, but will have no obligation to, require price support for any rates proposed (either for all or for specific resource categories). Examples of price support that Canada would consider satisfactory include:

- (a) documentation (such as billing records) that shows that the Bidder has recently provided and invoiced another customer (with whom the Bidder deals at arm's length) for services similar to the services that would be provided by the relevant resource category, where those services were provided for at least one month and the fees charged are equal to or less than the rate offered to Canada (to protect the privacy of the customer, the Bidder may black out the customer's name and personal information on the invoice submitted to Canada);
- (b) a signed contract between the Bidder and an individual qualified (based on the qualifications described in this bid solicitation process) to provide services under the relevant resource category, where the amount payable under that contract by the Bidder to the resource is equal to or less than the rate bid for that resource category;
- (c) a signed contract with a subcontractor who will perform the work under any resulting contract, which provides that the required services will be provided at a rate that is equal to or less than the rate bid for the relevant resource category (and where the resource meets all the qualifications described in this bid solicitation process); or
- (d) details regarding the salary paid to and benefits provided to the individuals employed by the Bidder qualified (based on the qualifications described in this bid solicitation process) to provide services under the relevant resource category, where the amount of compensation, when converted to a per diem or hourly rate (as applicable), is equal to or less than the rate bid for that resource category.

Once Canada requests substantiation of the rates bid for any resource category, it is the sole responsibility of the Bidder to submit information (either the information described in the examples above, or other information that demonstrates that it will be able to recover its own costs based on the rates it has proposed) that will allow Canada to determine whether it can rely, with confidence, on the Bidder's ability to provide the required services at the rates bid, while, at a minimum, recovering its own costs. Where Canada determines that the information provided by the Bidder does not demonstrate the Bidder's ability to recover its own costs in providing the relevant resource, Canada may declare the bid non-compliant.

4.4 Basis of Selection - Highest Combined Rating of Technical Merit (70%) and Financial Merit (30%)

4.4.1 To be declared responsive, a bid must:

- (a) comply with all the requirements of the bid solicitation process;
- (b) meet all the mandatory evaluation criteria; and

4.4.2 Bids not meeting (a) or (b) will be declared non-responsive. Neither the responsive bid obtaining the highest Technical/Financial Score nor the one with the lowest evaluated price fees will necessarily be accepted.

4.4.3 Financial Merit Score will be based on fees plus the bidder's financial response to two (2) scenarios. The calculations for fees can be found at Annex H.

4.4.4 The responsive bid with the highest combined rating of technical merit and financial merit will be recommended for award of a contract. In the event two or more responsive bids have the same highest combined rating of technical and

financial merit, the responsive bid that obtained the highest overall score for all the point rated technical criteria will be recommended for award of a contract.

4.5 Evaluation Summary Table

The details of the evaluation criteria may be found at Annex H.

ITEM	CATEGORY TITLES	WEIGHT
1	Mandatory	N/A
1.1	Property Management Services	N/A
1.2	Project Delivery Services	N/A
2	Technical Rated	70.00%
2.1	Property Management Services Experience	10.00%
2.2	Project Delivery Services Experience	10.00%
2.2.1	PDS Experience	5.00%
2.2.2	PDS Experience - Single Project	5.00%
2.3	Management Approach	25.00%
2.3.1	Organizational Structure and Approach	10.00%
2.3.2	Quality Management	3.00%
2.3.3	Data Information Management and Reporting	2.00%
2.3.4	Expenditure Management	2.00%
2.3.5	Subcontract Management	2.00%
2.3.6	Tenant Relationship Management	2.00%
2.3.7	Portfolio Service Integration	2.00%
2.3.8	Project	2.00%

2.4	Contract Information	5.00%
2.4.1	Contract Initiation	2.50%
2.4.2	Contract Completion	2.50%
2.5	Technical Scenarios	20.00%
2.5.1	Scenario 1 - Inspection, Test and Repair	4.00%
2.5.2	Scenario 2 - Occupational Health and Safety	4.00%
2.5.3	Scenario 3 - Transition	4.00%
2.5.4	Scenario 4 - Project Delivery Services	4.00%
2.5.5	Scenario 5 - Expenditure Management	4.00%
3	Financial Rated	30.00%
3.1	Fees	20.00%
3.2	Financial Scenarios	10.00%

5 PART 5 – CERTIFICATIONS

Bidders must provide the required certifications to be awarded the contract. Canada will declare a bid non-responsive if the required certifications are not completed and submitted as requested. Bidders should provide the required certifications by completing the Appendices of the Financial Bid Form in Annex D.

Compliance with the certifications bidders provide to Canada is subject to verification by Canada during the bid evaluation period (before award of a contract) and after award of a contract. The Contracting Authority will have the right to ask for additional information to verify bidders' compliance with the certifications before award of a contract. The bid will be declared non-responsive if any certification made by the Bidder is untrue, whether made knowingly or unknowingly. Failure to comply with the certifications or to comply with the request of the Contracting Authority for additional information will also render the bid non-responsive.

The certifications included herein, Certifications Precedent to Contract Award, should be completed and submitted with the bid, but may be submitted afterwards. If any of these required certifications are not completed and submitted as requested, the Contracting Authority will so inform the Bidder and provide the Bidder with a timeframe within which to meet the requirement. Failure to comply with the request of the Contracting Authority and meet the requirement within that time period will render the bid non-responsive.

5.1. Code of Conduct Certifications

Bidders must submit a complete list of names of all individuals who are currently directors of the Bidder, by completing Appendix 1 of the Financial Bid Form in Annex D.

5.2 Federal Contractors Program (\$200,000 or more)

5.2.1 The Federal Contractors Program (FCP) requires that some suppliers, including a supplier who is a member of a joint venture, bidding for federal government contracts, valued at \$200,000 or more (including all applicable taxes), make a formal commitment to implement employment equity. This is a condition precedent to contract award. If the Bidder is subject to the FCP or, if the Bidder is a joint venture and if any of the members of the joint venture is subject to the FCP, evidence of the commitment made by the Bidder or by each member of the joint venture who is subject to the FCP must be provided by the Bidder before the award of any contract resulting from the bid solicitation process.

5.2.2 Suppliers who have been declared ineligible contractors by Human Resources and Skills Development Canada (HRSDC) are no longer eligible to receive government contracts over the threshold for solicitation of bids as set out in the Government Contracts Regulations. Suppliers may be declared ineligible contractors either, as a result of a finding of non-compliance by HRSDC, or, following their voluntary withdrawal from the FCP for a reason other than the reduction of their workforce to less than 100 employees. Any bids from ineligible contractors, including a bid from a joint venture that has a member who is an ineligible contractor, will be declared non-responsive.

5.2.3 The Bidder certifies its status with the FCP by completing the declaration form in Appendix 2 of the Financial Bid Form in Annex D.

5.3 Former Public Servants Certification

Contracts with former public servants (FPS) in receipt of a pension or of a lump sum payment must bear the closest public scrutiny and reflect fairness in spending public funds. In order to comply with Treasury Board policies and directives on contracts with FPS, bidders must provide the information required in Appendix 3 of the Financial Bid Form in Annex D.

5.4 Status and Availability of Resources

5.4.1 The Bidder certifies that, should it be awarded a contract as a result of the bid solicitation process, the Contractor and every individual proposed in its bid will be available to perform the Work as required by Canada's representatives and at the time specified in the bid solicitation process or agreed to with Canada's representatives. If for reasons beyond its control, the Bidder is unable to provide the services of an individual named in its bid, the Bidder may propose a substitute with similar qualifications and experience. The Bidder must advise the Contracting Authority of the reason for the substitution and provide the name, qualifications and experience of the proposed replacement. For the purposes of this clause, only the following reasons will be considered as beyond the control of the Bidder: death, sickness, maternity and parental leave, retirement, resignation, dismissal for cause or termination of an agreement for default.

5.4.2 If the Bidder has proposed any individual who is not an employee of the Bidder, the Bidder certifies that it has the permission from that individual to propose his/her services in relation to the Work to be performed and to submit his/her résumé to Canada. The Bidder must, upon request from the Contracting Authority, provide a written confirmation, signed by the individual, of the permission given to the Bidder and of his/her availability.

5.5 Certification

By submitting a bid, the Bidder certifies that the information submitted by the Bidder in response to the above requirements is accurate and complete.

6 PART 6 – SECURITY, FINANCIAL AND OTHER REQUIREMENTS

6.1 Security Requirement

- 6.1.1 At the date of bid closing, the Bidder must hold a valid organization security clearance as indicated in Part 7 - Resulting Contract Clauses.

Before the commencement of any work, the following conditions must be met:

- (a) the Bidder's proposed individuals requiring access to classified or protected information, assets or sensitive work site(s) must meet the security requirement as indicated in Part 7 - Resulting Contract Clauses; and
- (b) the Bidder must provide the name of all individuals who will require access to classified or protected information, assets or sensitive work sites.

- 6.1.2 For additional information on security requirements, bidders should consult the "Security Requirements for PWGSC Bid Solicitations - Instructions for Bidders" (<http://www.tpsgc-pwgsc.gc.ca/app-acq/lc-pl/lc-pl-eng.html#a31>) document on the Departmental Standard Procurement Documents Website.

6.2 Financial Capability

- 6.2.1 Financial Capability Requirement: The Bidder must have the financial capability to fulfill this requirement. To determine the Bidder's financial capability, the Contracting Authority may, by written notice to the Bidder, require the submission of some or all of the financial information detailed below during the evaluation of proposals. The Bidder must provide the following information to the Contracting Authority within fifteen (15) working days of the request or as specified by the Contracting Authority in the notice:

- a. Audited financial statements, if available, or the unaudited financial statements (prepared by the Bidder's outside accounting firm, if available, or prepared in-house if no external statements have been prepared) for the Bidder's last three fiscal years, or for the years that the Bidder has been in business if this is less than three years (including, as a minimum, the Balance Sheet, the Statement of Retained Earnings, the Income Statement and any notes to the statements).
- b. If the date of the financial statements in (a) above is more than five months before the date of the request for information by the Contracting Authority, the Bidder must also provide, unless this is prohibited by legislation for public companies, the last quarterly financial statements (consisting of a Balance Sheet and a year-to-date Income Statement), as of two months before the date on which the Contracting Authority requests this information.
- c. If the Bidder has not been in business for at least one full fiscal year, the following must be provided:
 - i. the opening Balance Sheet on commencement of business (in the case of a corporation, the date of incorporation); and

- ii. the last quarterly financial statements (consisting of a Balance Sheet and a year-to-date Income Statement) as of two months before the date on which the Contracting Authority requests this information.
 - d. A certification from the Chief Financial Officer or an authorized signing officer of the Bidder that the financial information provided is complete and accurate.
 - e. A confirmation letter from all of the financial institution(s) that have provided short-term financing to the Bidder outlining the total of lines of credit granted to the Bidder and the amount of credit that remains available and not drawn upon as of one month prior to the date on which the Contracting Authority requests this information.
- 6.2.2 If the Bidder is a joint venture, the financial information required by the Contracting Authority must be provided by each member of the joint venture.
- 6.2.3 If the Bidder is a subsidiary of another company, then any financial information above required by the Contracting Authority must be provided by the ultimate parent company. Provision of parent company financial information does not by itself satisfy the requirement for the provision of the financial information of the Bidder, and the financial capability of a parent cannot be substituted for the financial capability of the Bidder itself unless an agreement by the parent company to sign a Parental Guarantee, as drawn up by Public Works and Government Services Canada (PWGSC), is provided with the required information.
- 6.2.4 Financial Information Already Provided to PWGSC: The Bidder is not required to resubmit any financial information requested by the Contracting Authority that is already on file at PWGSC with the Contract Cost Analysis, Audit and Policy Directorate of the Policy, Risk, Integrity and Strategic Management Sector, provided that within the above-noted time frame:
- a. the Bidder identifies to the Contracting Authority in writing the specific information that is on file and the requirement for which this information was provided; and
 - b. the Bidder authorizes the use of the information for this requirement.

It is the Bidder's responsibility to confirm with the Contracting Authority that this information is still on file with PWGSC.

- 6.2.5 Other Information: Canada reserves the right to request from the Bidder any other information that Canada requires to conduct a complete financial capability assessment of the Bidder.
- 6.2.6 Confidentiality: If the Bidder provides the information required above to Canada in confidence while indicating that the disclosed information is confidential, then Canada will treat the information in a confidential manner as permitted by the Access to Information Act, R.S., 1985, c. A-1, Section 20(1) (b) and (c).
- 6.2.7 Security: In determining the Bidder's financial capability to fulfill this requirement, Canada may consider any security the Bidder is capable of providing, at the Bidder's sole expense (for example, an irrevocable letter of credit from a registered

financial institution drawn in favour of Canada, a performance guarantee from a third party or some other form of security, as determined by Canada).

- 6.2.8 In the event that a proposal is found to be non-compliant on the basis that the Bidder is considered not to be financially capable of performing the subject requirement, official notification shall be provided to the Bidder.

6.3 Bid Security

6.3.1 Bidders must provide bid security in the amount of \$2,000,000 consisting of:

- (a) a security deposit as defined in section 6.4, or
- (b) a bid bond (form PWGSC-TPSGC 504 (<http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/504.pdf>)), which must be accepted as security by one of the bonding companies listed in Treasury Board Contracting Policy, Appendix L, Acceptable Bonding Companies (<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494§ion=text#appL>).

6.4 Security Deposit Definition

6.4.1 "security deposit" means

- a. a bill of exchange that is payable to the Receiver General for Canada and certified by an approved financial institution or drawn by an approved financial institution on itself; or
- b. an irrevocable standby letter of credit.

6.4.2 "approved financial institution" means

- a. any corporation or institution that is a member of the Canadian Payments Association;
- b. a corporation that accepts deposits that are insured by the Canada Deposit Insurance Corporation or the "Régie de l'assurance-dépôts du Québec" to the maximum permitted by law;
- c. a credit union as defined in paragraph 137(6) of the Income Tax Act;
- d. a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by a Canadian province or territory; or
- e. the Canada Post Corporation.

6.4.3 "irrevocable standby letter of credit"

- a. means any arrangement, however named or described, whereby a financial institution (the "Issuer"), acting at the request and on the instructions of a customer (the "Applicant"), or on its behalf,
 - i. will make a payment to or to the order of Canada, as the beneficiary;
 - ii. will accept and pay bills of exchange drawn by Canada;

- iii. authorizes another financial institution to effect such payment, or accept and pay such bills of exchange; or
 - iv. authorizes another financial institution to negotiate, against written demand(s) for payment, provided that the conditions of the letter of credit are complied with.
- b. must state the face amount which may be drawn against it;
 - c. must state its expiry date;
 - d. must provide for sight payment to the Receiver General for Canada by way of the financial institution's draft against presentation of a written demand for payment signed by the authorized departmental representative identified in the letter of credit by his/her office;
 - e. must provide that more than one written demand for payment may be presented subject to the sum of those demands not exceeding the face amount of the letter of credit;
 - f. must provide that it is subject to the International Chamber of Commerce (ICC) Uniform Customs and Practice (UCP) for Documentary Credits, 2007 Revision, ICC Publication No. 600. Pursuant to the ICC UCP, a credit is irrevocable even if there is no indication to that effect; and
 - g. must be issued (Issuer) or confirmed (Confirmer), in either official language, by a financial institution that is a member of the Canadian Payments Association and is on the letterhead of the Issuer or Confirmer. The format is left to the discretion of the Issuer or Confirmer.

6.5 Security Deposit

- 6.5.1 Canada will hold the security deposit as security to entry into a contract. If a successful bidder refuses to enter into contract, the amount of the security deposit will be forfeited to Canada or a demand for payment will be made against the letter of credit by Canada. The amount forfeited or payment demand will not exceed the difference between the bid price and the amount of the Contract awarded by Canada for the requirement.
- 6.5.2 Canada will return all non-forfeited security deposits to unsuccessful bidders after contract award, and to the successful Bidder upon receipt of the required contract financial security. If no contract is awarded, Canada will return all security deposits at the expiration of the bid validity period, including any extension.

6.6 Contract Security

- 6.6.1 The Contractor must provide the contract security specified in Part 7.
- 6.6.2 If, for any reason, Canada does not receive the security deposit in the amount set out in Part 7 and within the specified period, the Contractor will be in default. Canada may, at its discretion, retain the bid financial security and accept another bid, reject all bids or issue a new bid solicitation.

7 PART 7 – RESULTING CONTRACT CLAUSES (At contract award, delete this title)

The following clauses, conditions and Annexes apply to and form part of any contract resulting from the bid solicitation.

7.1 Scope of the Work

- 7.1.1 The Contractor must perform the Work in accordance with the Statement of Work at Annex B and the Contractor's bid entitled _____, dated _____.
- 7.1.2 The Statement of Work and its appendices are deemed to include not only the particular kind of Work mentioned, but also labour, services, rentals, travel, material, matters and things necessary for the execution, completion and delivery of the Work.
- 7.1.3 The list of buildings is set out in Annex B, Appendix F.
- 7.1.4 The contractor must perform the Work described herein for the following locations within the following periods:
 - 7.1.4.1 Carling Campus **only** for the period from contract award to 31 March 2014.
 - 7.1.4.2 Tunney's Pasture (including Graham Spry Building) and Carling Campus for the period from 01 April 2014 to the Contract Completion date of 30 May 2017.
- 7.1.5 Canada has the irrevocable option to add or withdraw assets and any Optional Services as described in the Statement of Work, under the same clauses and conditions. Canada may exercise this option at any time by sending reasonable prior notice to the Contractor. The option(s) may only be exercised by the Contracting Authority.

7.2 Work Authorization

- 7.2.1 The Work to be performed under the Contract will be on an "as and when requested basis" using a Work Authorization (WA). The Work described in the WA must be in accordance with the scope of the Contract.
- 7.2.2 The Contractor must perform the Work in accordance with the Work Authorization process at Annex K.

7.3 Authorities

- 7.3.1 Technical Authority
 - 7.3.1.1 Canada shall designate a Technical Authority and shall notify the Contractor of the name, address and telephone number of the Technical Authority.

7.3.1.2 The Technical Authority or its designated representative is responsible for all matters concerning the technical content of the Work under the Contract. The Technical Authority shall act as the principal point of contact with the Contractor for all matters relating to the Contract, including daily operations, reporting and administration. Changes in Work, within scope and budget, may be authorized by the Technical Authority. The Technical Authority shall have access to the Work at all times during its execution and the Contractor shall provide the Technical Authority with full information and assistance in order that the Technical Authority may verify, assess or determine that the Work is executed in accordance with the Contract. Canada may designate a new Technical Authority from time to time by giving written notice to the Contracting Authority in the manner set out herein. Where Tenants have entered into a written Record of Agreement with PWGSC, Canada will identify those Designated Tenant Authorities who may issue Work Authorizations directly to the Contractor.

7.3.2 Contracting Authority

7.3.2.1 Canada shall designate a Contracting Authority and shall notify the Contractor of the name, address and telephone number of the Contracting Authority.

7.3.2.2 The Contracting Authority or its designated representative is responsible for the management of the Contract. Any proposed adjustments to the scope of the Contract are to be discussed with the Technical Authority, but any resulting amendment can only take effect by the issuance of a written Amendment by the Contracting Authority. The Contractor shall not perform Work in excess of or outside the scope of this Contract based on verbal or written requests or instructions from any government personnel other than the Contracting Authority. Canada may designate a new Contracting Authority from time to time by giving written notice to the Contractor in the manner set out herein.

7.3.3 Contractor's Representative

7.3.3.1 Prior to commencing the Work, the Contractor shall designate a Contractor's Representative and shall notify Canada of the name, address and telephone number of the Contractor's Representative.

7.3.3.2 The Contractor's Representative has full delegated authority, to act as a principal point of contact with the Technical Authority and the Contracting Authority on all matters pertaining to the Contract. The Contractor's Representative represents the Contractor with respect to all aspects of Contract. The Contractor may designate a new Contractor's Representative from time to time by giving written notice to the Contracting Authority.

7.4 Joint Venture Contractor (only if required)

7.4.1 The Contractor confirms that the name of the joint venture is _____ and that it is comprised of the following members: [Note to Bidders: Canada will list all the joint venture members named in the Contractor's original bid in any contract awarded to a joint venture bidder].

- 7.4.2 With respect to the relationship among the members of the joint venture Contractor, each member agrees, represents and warrants (as applicable) that:
- (a) _____ has been appointed as the “representative member” of the joint venture Contractor and has fully authority to act as agent for each member regarding all matters relating to the Contract;
 - (b) by giving notice to the representative member, Canada will be considered to have given notice to all the members of the joint venture Contractor; and
 - (c) payments made by Canada to the representative member will act as a release by all the members.
- 7.4.3 All the members agree that Canada may terminate the Contract in its discretion if there is a dispute among the members that, in Canada's opinion, affects the performance of the Work in any way.
- 7.4.4 All the members are jointly and severally or solidarily liable for the performance of the entire Contract.
- 7.4.5 The Contractor acknowledges that any change in the membership of the joint venture (i.e., a change in the number of members or the substitution of another legal entity for an existing member) constitutes an assignment and is subject to the assignment provisions of the General Conditions.
- 7.4.6 The Contractor acknowledges that all security and controlled goods requirements in the Contract, if any, apply to each member of the joint venture Contractor.

7.5 Standard Clauses and Conditions

- 7.5.1 All clauses and conditions identified in the Contract by number, date and title are set out in the Standard Acquisition Clauses and Conditions Manual (<https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual>) issued by Public Works and Government Services Canada.
- 7.5.2 General Conditions
- 7.5.2.1 2035 (2012-07-16), General Conditions - Higher Complexity - Services, apply to and form part of the Contract.
- 7.5.3 Supplemental General Conditions
- 7.5.3.1 4006 (2010-08-16), Contractor to Own Intellectual Property Rights in Foreground Information

7.6 Priority of Documents

- 7.6.1 If there is a discrepancy between the wording of any documents that appear on the list, the wording of the document that first appears on the list has priority over the wording of any document that subsequently appears on the list.
- 7.6.1.1 the Articles of Agreement;
 - 7.6.1.2 the supplemental general conditions 4006 (2010-08-16), Contractor to Own Intellectual Property Rights in Foreground Information;

- 7.6.1.3 the general conditions 2035 (2012-07-16), General Conditions - Higher Complexity - Services, apply to and form part of the Contract;
- 7.6.1.4 Annex B, Statement of Work;
- 7.6.1.5 Annex A, Terms of Payment;
- 7.6.1.6 Annex C, Security Requirements Check List;
- 7.6.1.7 Annex E, Insurance Requirements;
- 7.6.1.8 Annex K, Work Authorization Process;
- 7.6.1.9 the signed Work Authorizations (including all of its Annexes, if any) (if applicable);
- 7.6.1.10 the Contractor's bid, including all amendments to the solicitation, dated _____, (insert date of bid) (If the bid was clarified or amended, insert at the time of contract award: "as clarified on _____" **or** "as amended on _____" and insert date(s) of clarification(s) or amendment(s))

7.7 Security Requirement

- 7.7.1 Consult the Canadian Industrial Security Directorate (CISD) (<http://ssi-iss.tpsgc-pwgsc.gc.ca/index-eng.html>) Web site for more information.
- 7.7.2 The Contractor must, at all times during the performance of the Contract, hold a valid Facility Security Clearance at the level of SECRET, with approved Document safeguarding at the level of SECRET, issued by the Canadian Industrial Security Directorate (CISD), Public Works and Government Services Canada (PWGSC).
- 7.7.3 The Contractor personnel requiring access to CLASSIFIED information, assets or sensitive work site(s) must EACH hold a valid SECRET clearance, as required, all other personnel must hold a valid RELIABILITY STATUS or CONFIDENTIAL, granted or approved by CISD/PWGSC. Until the security screening of the Contractor personnel required by this Contract has been completed satisfactorily by the Canadian Industrial Security Directorate, Public Works and Government Services Canada, the Contractor personnel MAY NOT HAVE ACCESS to CLASSIFIED information or assets, and MAY NOT ENTER sites where such information or assets are kept, without an escort.
- 7.7.4 Processing of CLASSIFIED information electronically at the Contractor's site is NOT permitted under this Contract.
- 7.7.5 Subcontracts which contain security requirements are NOT to be awarded without the prior written permission of CISD/PWGSC.
- 7.7.6 The Contractor must comply with the provisions of the:
 - Security Requirements Check List and security guide (if applicable), attached at Annex C;
 - Industrial Security Manual (Latest Edition).

7.8 Terms of Contract

7.8.1 Period of the Contract

7.8.1.1 The period of the Contract for:

7.8.1.1.1 Carling Campus only is from contract award to 31 March 2014; and

7.8.1.1.2 Tunney's Pasture (including Graham Spry Building) and Carling Campus is from 01 April 2014 to 30 May 2017.

7.8.1.2 Canada has the irrevocable option to extend the term of the Contract by up to four (4) additional two (2) year period(s) under the same clauses and conditions. The Contractor agrees that, during the extended period of the Contract, it will be paid in accordance with the applicable provisions as set out in Annex A - Terms of Payment and the bidder's response.

7.8.1.3 Canada may exercise this option at any time by sending a written notice to the Contractor at least 365 calendar days before the expiry date of the Contract. The option may only be exercised by the Contracting Authority, and for administrative purposes only will be evidenced, through a subsequent contract amendment.

7.8.2 Separating Contract for transfer to Other Government Departments (OGDs)

7.8.2.1 The Minister of Public Works and Government Services shall have the unrestricted right to transfer administration, assign or novate all or any portion or any interest in this Contract. To the extent that the transferee, assignee or novatee assumes the obligations of The Minister under this Contract, the Minister thereupon and without further agreement shall be released of all liability and responsibility under this Contract and the Contractor shall look to the transferee, assignee or novatee for all obligations of the Contract including management, contracting, administration and payment from and after the effective date of the transfer of administration, assignment or novation of the Contract.

7.8.3 Contract Initiation

7.8.3.1 The Transition Period Work, in accordance with Annex B "Statement of Work", is to be performed from date of Contract Award to Contract Operational Start Date inclusive. Contract Operational Start Date for, the Carling Campus is August 15, 2013, and for Tunney's Pasture is April 1, 2014.

7.8.3.2 Initiation Period at the beginning of the Contract – Project Schedule

7.8.3.2.1 The Contractor must provide a project management plan (PMP) detailing the initiation and transition period complete with Gantt chart to the Technical Authority 30 calendar days after award of Contract as described in Annex B "Statement of Work".

7.8.4 Contract Completion

- 7.8.4.1 The Contractor acknowledges that the nature of the services provided under the Contract requires continuity and that a transition period may be required at the end of the Contract or upon withdrawal of an asset.
- 7.8.4.2 The Contractor acknowledges that some of the Completion Services are required after the Operational End Date of the Contract. The Operational End Date of the Contract is 31 March 2017.
- 7.8.4.3 The Contractor grants to Canada the irrevocable option to further extend the term of the Contract by a period of up to six months under the same clauses and conditions to ensure the required completion. The Contractor agrees that, during the extended period of the Contract, it will be paid in accordance with the applicable provisions as set out in Annex A - Terms of Payment.

The Contracting Authority will advise the Contractor of the above extension by sending a written notice to the Contractor before the contract expiry date. The extension will be evidenced for administrative purposes only, through a contract amendment.

7.8.5 Limitation of Expenditure

- 7.8.5.1 Canada's total liability is in accordance with Annex K – Work Authorization Process.

7.9 Method of Payment

- 7.9.1 Canada will pay the Contractor in accordance with Annex A - Terms of Payment.

7.10 Certifications

- 7.10.1 Compliance with the certifications provided by the Contractor in its bid is a condition of the Contract and subject to verification by Canada during the term of the Contract. If the Contractor does not comply with any certification or it is determined that any certification made by the Contractor in its bid is untrue, whether made knowingly or unknowingly, Canada has the right, pursuant to the default provision of the Contract, to all of its remedies including termination of the Contract for default.

7.11 Audit Rights

- 7.11.1 The Contractor's calculation of credits under this Contract is subject to verification by government audit, at the Contracting Authority's discretion, before or after payment is made to the Contractor under the terms and conditions of this Contract. The Contractor agrees to cooperate fully with Canada during the conduct of any audit by providing Canada with access to the records and systems that Canada considers necessary to ensure that all credits have been accurately credited to Canada in the Contractor's invoices. If an audit demonstrates that past invoices reflect errors in the calculation of the credits, the Contractor will repay to Canada the amount the audit reveals should have been credited to Canada, plus interest, from the date Canada remitted the excess payment to the date of the refund, at the discount rate of interest per annum set by the Bank of Canada and in effect on the date of the excess payment, plus 1 ¼ percent per annum. If, as a result of

conducting such an audit, Canada determines that the Contractor's records or systems for identifying, calculating and recording the credits are inadequate, the Contractor agrees to implement any additional measures required by the Contracting Authority.

- 7.11.2 Time charged and the accuracy of the Contractor's electronic time management system is subject to verification by Canada, before or after payment is made to the Contractor. If verification is done after payment, the Contractor must repay any overpayment in accordance General Conditions 2035.

7.12 Contract Security

The Contractor must provide the Contracting Authority with contract security within 30 calendar days after the date of contract award. The contract security must be in the amount of \$5,000,000 for the entire contract period, including any extension. The contract security must be in the form of:

- a. a security deposit as defined in section 7.12.7, or
- b. a performance bond (form PWGSC-TPSGC 505 (<http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/505.pdf>)), which must be accepted as security by one of the bonding companies listed in Treasury Board Contracting Policy, Appendix L, Acceptable Bonding Companies (<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494§ion=text#appL>).

- 7.12.1 If, for any reason, Canada does not receive the security deposit in the amount set out above within the specified period, the Contractor will be in default.

- 7.12.2 If the security deposit is in the form of a bill of exchange, Canada will deposit the bill of exchange in an open account in the Consolidated Revenue Fund. Bills of exchange that are deposited to the credit of the Consolidated Revenue Fund will bear simple interest, calculated on the basis of the rates which are in effect during the period the deposit is held.

These rates are published monthly by the Department of Finance and are set to be equal to the average yield on 90-day Treasury Bills, less 1/8 of 1 percent. Interest will be paid annually or, when the security deposit is returned to the Contractor, if earlier. The Contractor may, however, request Canada to hold and not cash the bill of exchange, in which case no interest will become payable.

- 7.12.3 Canada may convert the security deposit to the use of Canada if any circumstance exists which would entitle Canada to terminate the Contract for default, but any such conversion will not constitute termination of the Contract.

- 7.12.4 When Canada so converts the security deposit:

- a. the proceeds will be used by Canada to complete the Work according to the conditions of the Contract, to the nearest extent that it is feasible to do so and any balance left will be returned to the Contractor on completion of the warranty period; and

- b. if Canada enters into a contract to have the Work completed, the Contractor will:
 - i) be considered to have irrevocably abandoned the Work; and
 - ii) remain liable for the excess cost of completing the Work if the amount of the security deposit is not sufficient for such purpose. "Excess cost" means any amount over and above the amount of the Contract Price remaining unpaid together with the amount of the security deposit.

7.12.5 If Canada does not convert the security deposit to the use of Canada before completion of the contract period, Canada will return the security deposit to the Contractor within a reasonable time after such date.

7.12.6 If Canada converts the security deposit for reasons other than bankruptcy, the financial security must be reestablished to the level of the amount stated above so that this amount is continued and available until completion of the contract period.

7.12.7 Security Deposit Definition

a. "security deposit" means

- i. a bill of exchange that is payable to the Receiver General for Canada and certified by an approved financial institution or drawn by an approved financial institution on itself; or
- ii. an irrevocable standby letter of credit.

b. "approved financial institution" means

- i. any corporation or institution that is a member of the Canadian Payments Association;
- ii. a corporation that accepts deposits that are insured by the Canada Deposit Insurance Corporation or the "Régie de l'assurance-dépôts du Québec" to the maximum permitted by law;
- iii. a credit union as defined in paragraph 137(6) of the Income Tax Act;
- iv. a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by a Canadian province or territory; or
- v. the Canada Post Corporation.

c. "irrevocable standby letter of credit"

- i. means any arrangement, however named or described, whereby a financial institution (the "Issuer"), acting at the request and on the instructions of a customer (the "Applicant"), or on its behalf,
 - I. will make a payment to or to the order of Canada, as the beneficiary;
 - II. will accept and pay bills of exchange drawn by Canada;
 - III. authorizes another financial institution to effect such payment, or accept and pay such bills of exchange; or
 - IV. authorizes another financial institution to negotiate, against written demand(s) for payment, provided that the conditions of the letter of credit are complied with.

- ii. must state the face amount which may be drawn against it;
- iii. must state its expiry date;
- iv. must provide for sight payment to the Receiver General for Canada by way of the financial institution's draft against presentation of a written demand for payment signed by the authorized departmental representative identified in the letter of credit by his/her office;
- v. must provide that more than one written demand for payment may be presented subject to the sum of those demands not exceeding the face amount of the letter of credit;
- vi. must provide that it is subject to the International Chamber of Commerce (ICC) Uniform Customs and Practice (UCP) for Documentary Credits, 2007 Revision, ICC Publication No. 600. Pursuant to the ICC UCP, a credit is irrevocable even if there is no indication to that effect; and
- vii. must be issued (Issuer) or confirmed (Confirmer), in either official language, by a financial institution that is a member of the Canadian Payments Association and is on the letterhead of the Issuer or Confirmer. The format is left to the discretion of the Issuer or Confirmer.

7.13 Insurance Requirements

- 7.13.1 The Contractor must comply with the insurance requirements specified in Annex E – Insurance Terms.

7.14 Limitation of Liability

7.14.1 Indemnification by the Contractor

7.14.1.1 The Contractor must indemnify and save Canada harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by Canada or in respect of claims by any third party, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by, or attributable to the activities of the Contractor in performing the Work, provided such claims are caused by the negligent or deliberate acts or omissions of the Contractor, or those for whom it is responsible at law.

7.14.1.2 The Contractor's obligation to indemnify Canada for losses related to first party liability is limited to:

- a. In respect to each loss for which insurance is to be provided pursuant to the insurance requirements of the Contract, the Wrap-Up Liability insurance limit for one occurrence as referred to in the in Annex E, Insurance Requirements, of the contract.
- b. In respect to each loss for which insurance is not required to be provided in accordance with the insurance requirements of the Contract, the amount of \$20,000,000.

The limitation of this obligation is exclusive of interest and all legal costs and does not apply to any infringement of intellectual property rights or any breach of warranty obligations.

7.14.1.3 The Contractor's obligation to indemnify Canada for losses related to third party liability must have no limitation and must include the complete

costs of defending any legal action by a third party. If requested by Canada, the Contractor must defend Canada against any third party claims.

7.14.1.4 The Contractor must pay all royalties and patent fees required for the performance of the Contract and, at the Contractor's expense, must defend all claims, actions or proceedings against Canada charging or claiming that the Work or any part thereof provided or furnished by the Contractor to Canada infringes any patent, industrial design, copyright trademark, trade secret or other proprietary right enforceable in Canada.

7.14.1.5 Notice in writing of a claim must be given within a reasonable time after the facts, upon which such claim is based, became known.

7.15 Dispute Resolution

7.15.1 Interpretation

7.15.1.1 "dispute" means any disagreement regarding any issue identified by the Contractor in the notice submitted to Canada in accordance with 7.15.3.2, "Notice of Dispute", and includes any claim by the Contractor arising from such disagreement and any counterclaim by Canada, but does not include any claim by either party for punitive or exemplary damages, injury to persons, death, or any claim based on an allegation of libel or slander; and

7.15.1.2 The dispute resolution procedures set out herein, do not apply to any claim by Canada against the Contractor, including, but not limited to, any claim of setoff regarding any amount due to Canada, except any counterclaim in a dispute as defined in 7.15.1.1.

7.15.2 Consultation and Co-operation

7.15.2.1 The parties agree to maintain open and honest communication throughout the performance of the Contract. The parties agree to consult and co-operate with each other in the furtherance of the Work and the resolution of problems or differences that may arise.

7.15.3 Notice of Dispute

7.15.3.1 Subject 7.15.1.1, any dispute between the parties to the Contract of any nature arising out of or in connection with the Contract which could result in a claim by either party, and which is not settled by consultation and co-operation, must be resolved in the first instance by Canada, whose written decision or direction shall be final and binding subject only to the provisions herein. Such written decision or direction includes, but is not limited to, any written decision or direction by Canada under any provision of the Contract.

7.15.3.2 The Contractor shall be deemed to have accepted the decision or direction of Canada referred to in 7.15.3.1 above and to have expressly waived and released Canada from any claim in respect of the particular matter dealt with in that decision or direction unless, within 15 working days after receipt of the decision or direction, the Contractor submits to Canada a written notice of dispute requesting formal negotiation under

7.15.4, "Negotiation". Such notice must refer specifically to 7.15.4, "Negotiation", and must specify the issues in contention and the relevant provisions of the Contract.

7.15.3.3 The giving of a written notice in accordance with 7.15.3.2 above does not relieve the Contractor from complying with the decision or direction that is the subject of the dispute. Such compliance, however, must not be construed as an admission by the Contractor of the correctness of such decision or direction.

7.15.3.4 If a dispute is not resolved promptly, Canada must give such instructions as, in Canada's opinion, are necessary for the proper performance of the Work and to prevent delays pending a resolution of the matter. Unless Canada terminates the Contract, orders the Contractor to suspend the Work, or takes the Work out of the hands of the Contractor, the Contractor must continue to perform the Work in accordance with the provisions and requirements of the Contract and the instructions of Canada. Such performance will not prejudice any claim that the Contractor may have with respect to the matter in dispute.

7.15.3.5 Nothing in these Dispute Resolution procedures relieves the Contractor from its obligation to provide any other notice required by the Contract within the time specified in the Contract.

7.15.4 Negotiation

7.15.4.1 Within 10 working days after receipt by Canada of a notice referred to in 7.15.3, "Notice of Dispute", the parties must commence negotiations in order to resolve the dispute. Negotiations must occur initially between representatives of the Contractor and Canada who play a direct supervisory role in the performance, administration or management of the matter in dispute under the Contract.

7.15.4.2 If the representatives referred to in 7.15.4.1 above are unable to resolve some or all of the issues which are the subject of the negotiations within 30 working days, the parties must refer the remaining issues which are in dispute to a second level of negotiation between a principal or principals of the Contractor and a higher ranked representative or representatives of Canada.

7.15.4.3 If negotiations fail to resolve the dispute within 30 working days from the date of the dispute is referred to the second level of negotiation, either party may, by giving written notice to the other party, within 15 working days from the end of such period, request that mediation be undertaken to assist the parties to reach agreement on the outstanding issues.

7.15.4.4 Periods of time longer than those prescribed above, may be agreed to in writing, by the parties.

7.15.4.5 Should the abovementioned notice provisions not be adhered to, the dispute will be considered to be abandoned.

7.15.5 Mediation

7.15.5.1 If mediation is requested in accordance with 7.15.4.3, "Negotiation", mediation must be conducted in accordance with 7.15.8, "Rules for Mediation of Disputes".

7.15.5.2 If a Project Mediator has not previously been appointed for the purposes of the Contract, a Project Mediator must be appointed in accordance with section 7.15.8, "Rules for Mediation of Disputes", forthwith after delivery of a notice in accordance with 7.15.4, "Negotiation", requesting mediation.

7.15.5.3 If the dispute has not been resolved within

- (a) 30 working days following the appointment of a Project Mediator in accordance with 7.15.5.2, if a Project Mediator was not previously appointed;
- (b) 30 working days following receipt by Canada of a responding party's written notice referred to in 7.15.3, "Notice of Dispute", if a Project Mediator was previously appointed; or
- (c) such other longer period as may have been agreed to by the parties;

the Project Mediator must terminate the mediation by giving written notice to the parties stating the effective date of termination.

7.15.6 Confidentiality

7.15.6.1 All information exchanged during alternative dispute resolution procedures, by whatever means, must be without prejudice and must be treated as confidential by the parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable must not be rendered inadmissible or non-discoverable by virtue of its use during an alternative dispute resolution process.

7.15.7 Settlement

7.15.7.1 Any agreement to settle all or any part of a dispute, by whatever means, must be in writing and be signed by the parties or their authorized representatives.

7.15.8 Rules for Mediation of Disputes

7.15.8.1 Appointment of Project Mediator

- a) The parties to the Contract may, by mutual consent, at any time after entry into the Contract, appoint a mediator (the "Project Mediator") to conduct mediation proceedings in accordance with these Rules for Mediation of Disputes, in regard to any dispute that may arise with regard to the interpretation, application or administration of the Contract. In this case, they must jointly enter into a contract with the appointed Project Mediator.
- b) If the parties do not appoint a Project Mediator pursuant to paragraph 1 of 7.15.8.1, the parties must appoint a Project Mediator

within 30 days following receipt of a written notice from either party, requesting that mediated negotiations be undertaken in accordance with these Rules to assist the parties to reach agreement on any outstanding issues that may be in dispute. Any contract entered into with the appointed Project Mediator must meet the requirements as set out for the contract described in paragraph 1 of 7.15.8.1.

- c) When mediation is requested pursuant to 7.15.8.1, the parties must within 15 days send to the Project Mediator
 - i. a copy of the notice requesting negotiation under 7.15.3, "Notice of Dispute";
 - ii. a copy of Canada's written position in relation to the notice, the issues in contention and the relevant provisions of the contract; and
 - iii. a copy of the Contractor's written request for mediation required under 7.15.4.3, "Negotiation".
- d) If the parties have not agreed on a Project Mediator, Canada must forthwith provide the Contractor with a list of 3 candidates from which the Contractor shall chose the Project Mediator
- e) If the parties have not previously entered into a contract with a mutually acceptable Project Mediator, a contract and a Mediation Agreement must be negotiated forthwith, which must incorporate or otherwise comply with the provisions of these Rules and be in the form attached to this agreement as Annex "F". If negotiations are unsuccessful, or if for other reason the individual is unwilling or unable to enter into a contract to act as Project Mediator, the parties must repeat the process with the Contractor's second selected mediator.
- f) Upon execution of the contract with the Project Mediator the parties must provide the Project Mediator with copies of the documents referred to in paragraph 3 of 7.15.8.1.

7.15.8.2 Confidentiality

- a) Subject to paragraph 2 of 7.15.8.2, and unless otherwise agreed in writing by the parties, the Project Mediator, the parties and their counsel or representatives must keep confidential all matters and documents disclosed during mediation proceedings except where the disclosure is necessary for any implementation of any agreement reached or is required by law.
- b) Evidence that is independently admissible or discoverable in any arbitral or judicial proceeding must not be rendered inadmissible or non-discoverable by virtue of its use in mediation proceedings.
- c) Neither party must make transcripts, minutes or other records of a mediation conference.
- d) The personal notes and written opinions of the Project Mediator made in relation to mediation are in the Project Mediator's sole possession and control, are confidential, and may not be used in any

subsequent proceeding between the parties or where they are opposed in interest without the express written permission of the parties.

- e) All information exchanged during mediation procedures, by whatever means, must be without prejudice and must be treated as confidential by the parties and their representatives, unless otherwise required by law.

7.15.8.3 Time and Place of Mediation

The Project Mediator, in consultation with the parties must set the date, time and place of any mediation conference as soon as possible, bearing in mind that, subject to agreement to the contrary between the parties, only 30 working days are available within which to attempt to settle the dispute.

7.15.8.4 Representation

- a) Representatives of the parties may be accompanied at the mediation conference by legal counsel or any other person.
- b) If the Project Mediator is a lawyer, the Project Mediator must not provide legal advice to a party during the course of the mediation conference, but may recommend that a party obtain independent legal advice before finalizing a settlement agreement.

7.15.8.5 Procedure

- a) The parties agree to an exchange of all facts, information and documents upon which they intend to rely in any oral or written presentation during the mediation. This exchange must be completed no later than 3 working days prior to the date set for a mediation conference.
- b) The Project Mediator must be free to meet with the parties individually during a mediation conference if the Project Mediator is of the opinion that this may improve the chances of a mediated settlement, and either party may request such an individual meeting at any time.
- c) The parties may agree to extend the 30 working days available for settlement of the dispute through mediation, and the Project Mediator must record that agreement in writing.

7.15.8.6 Settlement Agreement

- a) The parties must record in writing any settlement agreement reached, with sufficient detail to ensure a clear understanding of
 - i. the issues resolved;
 - ii. any obligations assumed by each party including criteria to determine if and when these obligations have been met; and
 - iii. the consequences of failure to comply with the agreement reached.

7.15.8.7 The parties agree to carry out the terms of a settlement agreement as soon as possible and, in any event, within any time periods specified in the agreement.

7.15.8.8 Termination of Mediation

- a) Either party may withdraw from mediation at any time without reason and, in that event, the Project Mediator must give each party a written notice terminating the mediation and establishing the effective date of termination.
- b) If, in the opinion of the Project Mediator, either party fails to mediate in good faith or fails to comply with the terms of these Rules, or if the Project Mediator, at any time during mediation, is of the opinion that further negotiations will fail to resolve the issues outstanding, the Project Mediator may terminate the negotiations by providing the parties with a written notice of termination, stating therein the Project Mediator's reasons for the termination, and the effective date of termination.
- c) If a dispute has not been resolved within 30 working days or such other longer period as may have been agreed to by the parties, the Project Mediator must terminate the mediation by giving written notice to the parties stating the effective date of termination.

7.15.8.9 Costs

The parties agree that they will each be responsible for the costs of their own representatives and advisors and associated travel and living expenses. Fees and expenses of the Project Mediator and all administrative costs of mediation, such as the cost of the meeting room(s), if any, must be borne equally by the parties.

7.15.8.10 Subsequent Proceedings

- a) The parties must not rely on or introduce as evidence in any arbitral or judicial proceeding, whether or not such proceeding relates to the subject matter of mediation,
 - i. any documents of other parties that are not otherwise producible in those proceedings;
 - ii. any views expressed or suggestions made by any party in respect of a possible settlement of issues;
 - iii. any admission made by any party in the course of mediation unless otherwise stipulated by the admitting party; and
 - iv. the fact that any party has indicated a willingness to make or accept a proposal or recommendation for settlement.
- b) The Project Mediator must neither represent nor testify on behalf of either of the parties in any subsequent investigation, action or proceeding relating to the issues in mediation proceedings.
- c) The Project Mediator must not be subpoenaed to give evidence relating to
 - i. the Project Mediator's role in mediation;

- ii. or the matters or issues in mediation, in any subsequent investigation, action or proceeding and the parties agree to vigorously oppose any effort to have the Mediator so subpoenaed.

7.16 Applicable Laws

Any resulting contract must be interpreted and governed, and the relations between the parties determined, by the laws in the province in which the work is to be performed.

7.17 Taking the Work Out of the Contractor's Hands

7.17.1 The Technical Authority may take all or any portion of the Work out of the Contractor's hands and may employ such means as it sees fit to complete the Work, by giving notice to the Contractor in any of the following cases:

- a) if the Contractor has defaulted in executing the Work or any portion thereof to the satisfaction of the Technical Authority and the Technical Authority has given notice thereof to the Contractor and has by such notice required the Contractor to put an end to such default or delay, and such default or delay continues after such notice;
- b) if the Contractor has defaulted in the completion of any part of the Work within the time fixed for its completion by the Contract;
- c) if the Contractor has become insolvent;
- d) if the Contractor has committed an act of bankruptcy;
- e) if the Contractor has abandoned the Work;
- f) if the Contractor has made an assignment of the Contract without the consent of Canada; and
- g) if the Contractor fails to meet the agreed upon Key Performance Indicator levels for more than three consecutive months.

7.17.2 If the Work and any portion thereof is taken out of the Contractor's hands under this clause the obligation of Canada to make payments to the Contractor in respect of the Work or any portion thereof so taken out of the Contractor's hands will cease and no further payments will be made to the Contractor in respect thereof unless the Technical Authority certifies that no financial prejudice will result to Canada from the default of the Contractor.

7.17.3 The Contractor will not be relieved of any legal or contractual obligations other than the physical execution of that portion of the Work so taken out of the Contractor's hands.

7.17.4 The amount of all loss and damage suffered by Canada by reason of the non-completion of such Work will be recovered from the Contractor.

7.18 Effect of Taking the Work Out of the Contractor's Hands

7.18.1 The taking of the Work or any part thereof out of the Contractor's hands pursuant to the above, Taking the Work out of the Contractor's Hands, does not operate so as to relieve or discharge the Contractor from any obligation under the Contract or imposed upon it by law except the obligation to complete the performance of that part of the Work that was taken out of its hands.

- 7.18.2 If the Work or any part thereof is taken out of the Contractor's hands pursuant to the above, Taking the Work out of the Contractor's Hands all plant and material and the interest of the Contractor in all real property, licences, powers and privileges acquired, used or provided by the Contractor under the Contract with respect to the Work or any portion thereof taken out of the Contractor's hands will be the property of Canada without additional compensation to the Contractor.
- 7.18.3 When the Technical Authority certifies that any plant, material, or any interest of the Contractor acquired pursuant to the above is no longer required for the purposes of the Work, or that it is not in the interests of Canada to retain that plant, material or interest, title to such plant, materials or interest will revert to the Contractor.

7.19 Language of Services

- 7.19.1 Where services are provided or made available by the Contractor on behalf of the Crown, any member of the public in Canada or elsewhere can communicate with and obtain those services from the Contractor in either official language in any case where those services, in the opinion of the Minister if provided by Canada, would be required under Part IV of the Official Languages Act to be provided in either official language.
- 7.19.2 The contractor must also be prepared to provide all services (reports, correspondence and communications) described within the Statement of Work in either official language as and when requested by Canada.