

**RETURN BIDS TO:
RETOURNER LES SOUMISSIONS À:**
**Bid Receiving Public Works and Government
Services Canada/Réception des soumissions
Travaux publics et Services gouvernementaux
Canada**
**800 Burrard Street, 12th floor
800, rue Burrard, 12e étage
Vancouver
British Columbia
V6Z 2V8
Bid Fax: (604) 775-9381**

REQUEST FOR PROPOSAL DEMANDE DE PROPOSITION

**Proposal To: Public Works and Government
Services Canada**

We hereby offer to sell to Her Majesty the Queen in right of Canada, in accordance with the terms and conditions set out herein, referred to herein or attached hereto, the goods, services, and construction listed herein and on any attached sheets at the price(s) set out therefor.

**Proposition aux: Travaux Publics et Services
Gouvernementaux Canada**

Nous offrons par la présente de vendre à Sa Majesté la Reine du chef du Canada, aux conditions énoncées ou incluses par référence dans la présente et aux annexes ci-jointes, les biens, services et construction énumérés ici sur toute feuille ci-annexée, au(x) prix indiqué(s).

Comments - Commentaires

Title - Sujet Construction Work - GI/GO	
Solicitation No. - N° de l'invitation EZ899-123251/A	Date 2012-03-20
Client Reference No. - N° de référence du client	
GETS Reference No. - N° de référence de SEAG PW-\$PWY-005-6661	
File No. - N° de dossier PWY-1-34511 (005)	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2012-05-01	Time Zone Fuseau horaire Pacific Daylight Saving Time PDT
F.O.B. - F.A.B. Plant-Usine: <input type="checkbox"/> Destination: <input checked="" type="checkbox"/> Other-Autre: <input type="checkbox"/>	
Address Enquiries to: - Adresser toutes questions à: Pillay, Sal (PWY)	Buyer Id - Id de l'acheteur pwy005
Telephone No. - N° de téléphone (604) 775-9386 ()	FAX No. - N° de FAX (604) 775-6633
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction: CSC - Mission Institution and Kent Institution, Mission and Agassiz	

Instructions: See Herein

Instructions: Voir aux présentes

Vendor/Firm Name and Address

**Raison sociale et adresse du
fournisseur/de l'entrepreneur**

Issuing Office - Bureau de distribution

Public Works and Government Services Canada - Pacific
Region
800 Burrard Street, 12th floor
800, rue Burrard, 12e étage
Vancouver
British C
V6Z 2V8

Delivery Required - Livraison exigée See Herein	Delivery Offered - Livraison proposée
Vendor/Firm Name and Address Raison sociale et adresse du fournisseur/de l'entrepreneur	
Telephone No. - N° de téléphone Facsimile No. - N° de télécopieur	
Name and title of person authorized to sign on behalf of Vendor/Firm (type or print) Nom et titre de la personne autorisée à signer au nom du fournisseur/ de l'entrepreneur (taper ou écrire en caractères d'imprimerie)	
Signature	Date

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Introduction

Public Works and Government Services Canada (PWGSC) is inviting qualified Turnkey (Design-Build) Bidders to deliver new Generic Support Buildings at **Mission Institution, Mission, BC and Kent Institution, Agassiz, BC**

The objective of this RFP is to retain an individual Contractor or Joint Venture to provide the complete design-build (turnkey) work for Support Buildings at Correctional Services Canada, **Pacific Region**. Utilizing a turnkey service delivery methodology, a full range of professional consultant and contractor services will be required during both the design and construction phases of the project. The work consists of but is not limited to the design and construction of **two (2)** buildings, including site work and service connections. The Project requires design and execution for multiple disciplines carefully coordinated with on-going Institutional operations.

This is a single phase selection process.

This RFP Document sets out the project requirement, i.e., the particulars of the project itself and the broad scope of services required from the Contractor.

Based upon their analysis of the project requirements and the capability/capacity of their firm, the bidders formulate bids for the service, including their price.

The bidders describe their capabilities and proposed services in the "*Technical Portion*" of the submission (Envelope One). The "*Price Portion*" includes the proposed price and bid security which is submitted in a sealed envelope (envelope two).

The Technical Portion of competitive bids are evaluated, without knowledge of the price, by the Technical Evaluation Board. Evaluation is based on a set of pre-established criteria, components and weight factors. Numerical technical scores are awarded at the completion of the technical evaluation.

Price envelopes are then opened for the technically qualified proposals. The responsive submission with the lowest price will be recommended for award of the contract.

Instructions to Bidders

Glossary of Terms:

1. In this Request for Proposal (RFP), the following words or phrases have the corresponding meaning.

Bidder Team: The team consisting of the prime Contractor, prime consultant, specialists and other firms or Subcontractors, including the Bidder, proposed by the Bidder to perform or furnish all the Services, Documents, Labour, Material and Plant for the execution of the Work.

Key Personnel: Staff of the Contractor, Subcontractors and specialists proposed to be assigned to this project.

Technical Rating: A rating assigned to the technical component of a proposal in the selection procedure.

Solicitation No. - N° de l'invitation

EZ899-123251/A

Amd. No. - N° de la modif.

Buyer ID - Id de l'acheteur

pw005

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

File No. - N° du dossier

CCC No./N° CCC - FMS No/ N° VME

PWY-1-34511

Bidder: The entity (or in the case of a joint venture, the entities) submitting a bid. The successful Bidder will be the Contractor upon award of Contract.

Evaluation Board: The board established to evaluate and rate proposals. Board members represent a broad cross-section of professional qualifications and experience.

NOTE:

Where "Proposal" appears in this bid solicitation and the resulting contract, this means "Bid" in the context of the Terms, Conditions and Instructions.

IB01 BID DOCUMENTS

- 1) The following are the bid documents:

- (a) Request for Proposals - Page 1;
- (b) Instructions to Bidders;
- (c) Clauses and Conditions identified in Contract documents;
- (d) Submission Requirements and Evaluation;
- (e) Price Form;
- (f) Project Manual; and
- (g) any amendments prior to solicitation closing

Submission of a bid constitutes acknowledgment that the Bidder has read and agrees to be bound by these documents.

IB02 CODE OF CONDUCT FOR PROCUREMENT

- 1) To comply with the Code of Conduct for Procurement, bidders must respond to bid solicitations in an honest, fair and comprehensive manner, accurately reflect their capacity to satisfy the requirements stipulated in the bid solicitation and resulting contract, submit bids and enter into contracts only if they will fulfill all obligations of the Contract. To ensure fairness, openness and transparency in the bidding process, the following activities are prohibited:

- (a) payment of a contingency fee by any party to a contract to a person to whom the Lobbying Act (1985, c. 44 (4th Supp.)) applies;
- (b) corruption, collusion, bid-rigging or any other anti-competitive activity in the bidding process for contracts for the provision of goods or services.

- 2) By submitting a bid, the Bidder certifies that neither the Bidder nor any of the Bidder's Affiliates has ever been convicted of a criminal offence in respect of the activities stated in (a) or (b) above or is the subject of outstanding criminal charges in respect of such activities filed subsequent to September 1, 2010.

- 3) Bidders further understand that the commission of certain offences will render them ineligible to be awarded a contract. By submitting a bid, the Bidder certifies that neither the Bidder nor any of the Bidder's Affiliates has ever been convicted or is the subject of outstanding criminal charges in respect of an offence under any of the following provisions:

Section 121 (Frauds on the government and Contractor subscribing to election fund), Section 124 (Selling or Purchasing Office), Section 380 (Fraud committed against Her Majesty) or Section 418 (Selling defective stores to Her Majesty) of the Criminal Code of Canada, or under 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.

- 4) For the purpose of this section, business concerns, organizations or individuals are Bidder's Affiliates if, directly or indirectly, 1) either one controls or has the power to control the other, or 2) 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 charges or convictions contemplated in this section which has the same or similar management, ownership, or principal employees as the Bidder that is charged or convicted, as the case may be.

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- 5) Except in the limited circumstances set out in subsection 6 below, the Contracting Authority will declare non-responsive any bid in respect of which the information contained in the certifications contemplated above is determined to be untrue in any respect by the Contracting Authority.
 - 6) Subsection 5 has no application in the circumstances where a bidder has pled guilty of an offence contemplated in Section 01, 1. (b) and the Bidder has provided with its bid an assurance from the Competition Bureau of Canada indicating that the Bidder has been granted leniency, or in the circumstances where the Bidder provides documentation from the National Parole Board that the Bidder has obtained a criminal pardon in relation to such offence.
 - 7) The Bidder acknowledges and agrees that the certifications contemplated must remain valid during the period of any resulting contract arising from this bid solicitation.

IB03 CONFLICT OF INTEREST - UNFAIR ADVANTAGE

- 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) 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.
- 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.

IB04 COMPLETION OF BID

- 1) The bid shall:
 - a) be submitted on the Bid Form provided through MERX or on a clear and legible reproduced copy of said Bid Form; the reproduced copy must be identical in every respect to the Bid Form provided through MERX;
 - b) not be delivered to the Bid Receiving Unit by means of facsimile transmission; facsimile copies of bids are not acceptable;
 - c) be based on the bid documents listed above;
 - d) be correctly completed in all respects;

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- e) be signed by a duly authorized representative of the Bidder; and
 - f) be accompanied by
 - i) the bid security as specified herein; and
 - ii) any other document or documents specified elsewhere in the solicitation where it is stipulated that said documents are to accompany the bid.
 - 2) Any alteration to the preprinted or pre-typed sections of the Bid Form, or any condition or qualification placed upon the bid shall be direct cause for disqualification. Alterations, corrections, changes or erasures made to statements or figures entered on the Bid Form by the Bidder shall be initialed by the person or persons signing the bid. Initials shall be original(s). Alterations, corrections, changes or erasures that are not initialed shall be deemed void and without effect.

IB05 IDENTITY OR LEGAL CAPACITY OF THE BIDDER

- 1) In order to confirm the authority of the person or persons signing the bid or to establish the legal capacity under which the Bidder proposes to enter into Contract, any Bidder who carries on business in other than its own personal name shall, if requested by Canada, provide satisfactory proof of (a) such signing authority; and (b) the legal capacity under which it carries on business; prior to contract award. Proof of signing authority may be in the form of a certified copy of a resolution naming the signatory(ies) that is (are) authorized to sign this bid on behalf of the corporation or partnership. Proof of legal capacity may be in the form of a copy of the articles of incorporation or the registration of the business name of a sole proprietor or partnership

IB06 SUBMISSION OF BID

- 1) Bids are submitted following a "two envelope" procedure, in which bidders submit the "technical" components of their bid in one envelope and the proposed price, including bid security, in a second envelope. The Bid shall be addressed and submitted to the office designated for the receipt of bids. It must be received on or before the date and time set for bid closing.

Submissions are to be addressed to:

**Public Works and Government Services Canada
 Bid Receiving Unit
 Real Property Contracting
 1210 - 800 Burrard Street
 Vancouver, B.C., V6Z 2V8**

- 2) Prior to submitting the bid, the Bidder shall ensure that the following information is clearly printed or typed in the appropriate spaces on the face of the bid return envelope:
 - a) Solicitation Number
 - b) Description/Location
 - c) Name of Bidder
 - d) Closing Time/Date
- 3) Failure to comply with 3.1 and 3.2 may render the bid liable to disqualification.

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- 4) To be considered responsive, a bid must meet all of the mandatory requirements set out in the RFP. No further consideration in the selection procedure will be given to a Bidder submitting a non-responsive bid

IB07 REVISION OF BIDS

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 bid. The facsimile must be on the Bidder's letterhead or bear a signature that identifies the Bidder. A revision to a unit price bid must clearly identify the change(s) in the unit price(s) and the specific item(s) to which each change applies. **(Facsimile # (604) 775-9381)**

IB08 CAPITAL DEVELOPMENT AND REDEVELOPMENT CHARGES

For the purposes of GC1.8 of the General Conditions, only fees or charges directly related to the processing and issue of building permits shall be included. Bidders shall not include any monies in the bid amount for special municipal development, redevelopment or other fees or charges which a municipal authority may seek as a prerequisite to the issuance of building permits.

IB09 PRICE

- 1) Unless specified otherwise elsewhere in the bid documents:
- (a) the bid price shall be in Canadian currency, and
 - (b) the bid price shall not include any amount for the Goods and Services Tax (GST) or the Harmonized Sales Tax (HST) as may be applicable, and
 - (c) exchange rate fluctuation protection is not offered, and
 - (d) any request for exchange rate fluctuation protection will not be considered, and will render the bid non-responsive.

IB10 LICENSING REQUIREMENTS

- 1) Bidder Team members and Key Personnel shall be, or be eligible to be licensed, certified or otherwise authorized to provide the necessary professional services to the full extent that may be required by provincial or territorial law in the Province or Territory in which the project is located.
- 2) By virtue of submission of a bid, the Bidder certifies that the Bidder's team and Key Personnel are in compliance with the requirements of paragraph 1. The Bidder's Bidder Team acknowledges that Canada reserves the right to verify any information in this regard and that false or erroneous certification may result in the bid being declared non-responsive.

IB11 COMPOSITION OF TEAM

- 1) By submitting a bid, the Bidder represents and warrants that the entities and persons proposed in the bid to perform the required services will be the entities and persons that will perform the services in the fulfillment of the project under any contractual arrangement arising from submission of the bid. If the Bidder has proposed any person in fulfillment of the project who is not an employee of the Bidder, the Bidder warrants that it has written permission from such person (or the employer of such person) to propose the services of such person in relation to the services to be performed.

IB12 LISTING OF SUBCONTRACTOR AND SUPPLIERS

Notwithstanding any list of Subcontractors which the Bidder may be required to submit as part of the bid, the Bidder submitting the recommended bid shall, within 48 hours of receipt of a notice thereof, submit the names of Subcontractors and suppliers for the part or parts of the work listed in the said notice. Once named, the successful Contractor may not substitute one Subcontractor for another without written approval from Canada

IB13 FINANCIAL STATEMENTS

- 1) In order to confirm a Bidder's financial capability to perform the subject requirement, the Contracting Authority reserves the right to have access, during the bid evaluation, to current Bidder financial information. If requested, the financial information to be provided shall include, but not be limited to, the Bidder's most recent audited financial statements or financial statements certified by the Bidder's chief financial officer.
- 2) Should the Bidder provide the requested information to Canada in confidence while indicating that the disclosed information is confidential, then Canada will treat the information in a confidential manner as provided in the Access to Information Act.
- 3) In the event that a bid 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.

IB14 LANGUAGE OF THE BID AND CONTRACT DOCUMENTS

The Contract documents shall be in the same official language (English or French) as the language of the bid submitted.

IB15 ACCEPTANCE OF BID

- 1) Canada may accept any bid, whether it is the lowest or not, or may reject any or all bids.
- 2) Without limiting the generality of paragraph 1) of IB15, Canada may reject a bid if any of the following circumstances is present:
 - a) the Bidder's bidding privileges are suspended or are in the process of being suspended;
 - b) the bidding privileges of any employee or subcontractor included as part of the bid are suspended or are in the process of being suspended, which suspension or pending suspension would render that employee or subcontractor ineligible to bid on the Work, or the portion of the employee or subcontractor is to perform;
 - c) with respect to current or prior transactions with Canada
 - (i) the Bidder is bankrupt or if, for whatever reason, its activities are rendered inoperable for an extended Period;
 - (ii) 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 its bid;
 - (iii) Canada has exercised, or intends to exercise, the contractual remedy of taking the work out of the contractor's hands with respect to a contract with the Bidder, any of its employees or any subcontractor included as part of its bid; or
 - (iv) Canada determines that the Bidder's performance on other contracts is sufficiently poor to jeopardize the successful completion of the requirement being bid on.
- 3) In assessing the Bidder's performance on other contracts pursuant to subparagraph 2)(c)(iv) of IB15, Canada may consider, but not be limited to, such matters as:
 - a) the quality of workmanship in performing the Work;
 - b) the timeliness of completion of the Work;

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- c) the overall management of the Work and its effect on the level of effort demanded of the department and its representative; and
 - d) the completeness and effectiveness of the Contractor's safety program during the performance of the Work.
- 4) Without limiting the generality of paragraphs 1), 2) and 3) of IB15, Canada may reject any bid based on an unfavourable assessment of the
- a) adequacy of the bid price to permit the work to be carried out and, in the case of a bid providing prices per unit, whether each such price reasonably reflects the cost of performing the part of the work to which that price applies;
 - b) Bidder's ability to provide the necessary management structure, skilled personnel, experience and equipment to perform competently the work under the Contract; and
 - c) Bidder's performance on other contracts.
- 5) Where Canada intends to reject a bid pursuant to a provision of paragraphs 1), 2), 3) or 4) of IB15, other than subparagraph 2)(a) of IB15, the contracting Authority will inform the Bidder and provide the Bidder ten (10) days within which to make representations, before making a final decision on the bid rejection.
- 6) Canada may waive informalities and minor irregularities in bids received if Canada determines that the variation of the bid from the exact requirements set out in the Bid Documents can be corrected or waived without being prejudicial to other Bidders.

IB16 ENQUIRIES DURING THE SOLICITATION PERIOD

- 1) Enquiries regarding the bid must be submitted in writing to the Contracting Officer named on the front page of the Request for Proposal as early as possible within the bidding period. Enquiries should be received no later than **five (5)** calendar days prior to the date set for bid closing to allow sufficient time to provide a response. Enquiries received after that time may not result in an answer being provided.
- 2) To ensure consistency and quality of the information provided to bidders, the Contracting Officer will examine the content of the enquiry and will decide whether or not to issue an amendment to the Bid Documents.
- 3) All enquiries and other communications sent throughout the bidding period are to be directed **ONLY** to the Contracting Officer named on the front page of the Request for Proposal. Failure to comply with this requirement may result in the bid being declared non-responsive.

IB17 BID SECURITY REQUIREMENTS

- 1) The Bidder shall submit bid security with its bid in the form of a bid bond or a security deposit in an amount that is equal to not less than 10% of the bid amount. The maximum amount of bid security required with any bid is \$2,000,000.
- 2) A bid bond (form PWGSC-TPSGC 504) shall be in an approved form, properly completed, with original signature(s) and issued by an approved company whose bonds are acceptable to Canada either at the time of solicitation closing or as identified in Treasury Board Appendix L, Acceptable Bonding Companies displayed at the following web site:
[Http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494§ion=text#appl](http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494§ion=text#appl)

The approved form for the bid bond is displayed as form PWGSC-TPSGC 504 at the following web site: [Http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/formulaires-forms-eng.html](http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/formulaires-forms-eng.html)

- 3) A security deposit shall be an original, properly completed, signed where required and be either
 - a) a bill of exchange, bank draft or money order payable to the Receiver General for Canada;
 - b) bonds of the Government of Canada or bonds unconditionally guaranteed as to principal and interest by the Government of Canada; or
- 4) A bill of exchange, bank draft or money order referred to in IB 17.3 shall be certified by or drawn on
 - a) a corporation or institution that is a member of the Canadian Payments Association;
 - b) a corporation that accepts public deposits and repayment of the deposits is unconditionally guaranteed by Her Majesty in right of a province;
 - c) 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,
 - d) a corporation, association or federation incorporated or organized as a credit union or cooperative credit society that conforms to the requirements of a credit union which are more particularly described in paragraph 137 (6)(b) of the Income Tax Act, or
 - e) Canada Post Corporation.
- 5) If a bill of exchange, bank draft or money order is drawn on an institution or corporation other than a chartered bank it must be accompanied by proof that the said institution or corporation meets at least one of the criteria described in IB 17.4, either by letter or by a stamped certification on the bill of exchange, bank draft, or money order.
- 6) For the purposes of this section a bill of exchange is an unconditional order in writing signed by the Bidder and addressed to an approved financial institution, requiring the said institution to pay, on demand, at a fixed or determinable time a sum certain of money to, or to the order of, the Receiver General for Canada.
- 7) Bonds referred to in IB 17.3 shall be provided on the basis of their market value current at the date of bid closing, and shall be
 - a) payable to bearer,
 - b) accompanied by a duly executed instrument of transfer of the bonds to the Receiver General for Canada in the form prescribed by the Domestic Bonds of Canada Regulations, or
 - c) registered as to principal or as to principal and interest in the name of the Receiver General for Canada pursuant to the Domestic Bonds of Canada Regulations.

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- 8) As an alternative to a security deposit an irrevocable standby letter of credit is acceptable to Canada and the amount shall be determined in the same manner as a security deposit referred to above.
- 9) An irrevocable standby letter of credit referred to in paragraph IB 17.8 shall
- a) be an 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 own behalf,
 - i) is to make a payment to, or to the order of, the Receiver General for Canada as the beneficiary;
 - ii) is to accept and pay bills of exchange drawn by the Receiver General for 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 terms and conditions of the letter of credit are complied with;
 - b) states the face amount which may be drawn against it;
 - c) states its expiry date;
 - d) provides for sight payment to the Receiver General for Canada by way of the financial institutions' 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) provide that more than one written demand for payment may be presented subject to the sum of those demands not exceeding the face value 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) be issued or confirmed, in either official language, by a financial institution which 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.

IB 18 CONTRACT SECURITY REQUIREMENTS

The successful Bidder shall be required to provide Contract security in accordance with R2890 (2011-05-16) - Contract Security listed in the Terms of Agreement - A1 Contract Documents, within fourteen (14) days after receipt of a notice in writing that the bid was accepted by Canada.

IB 19 GOODS AND SERVICES TAX/HARMONIZED SALES TAX/QUEBEC SALES TAX

- 1) Goods and Services Tax (GST) or Harmonized Sales Tax (HST), whichever is applicable, shall not be included when calculating the amount of any bid security or Contract security that may be required. Any amount levied in respect of the GST/HST shall be billed as a separate item in a

progress claim submitted by the Contractor, and shall be paid to the Contractor in addition to the amount approved by Canada for work performed under the Contract. The Contractor shall be required to remit the appropriate amount to the Canada Revenue Agency in accordance with the applicable legislation.

- 2) The Federal Government is exempt from the Quebec Sales Tax (QST). Bidders shall not include in their prices any amount that is intended to cover the QST on goods and services performed in the execution of the Work except for such amounts for which an Input Tax Refund is not available. The successful Bidder should make arrangements directly with the Province of Quebec to recover any QST paid by it in performing the Work under the resulting Contract.

IB20 COMPLIANCE WITH APPLICABLE LAWS

- 1) 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) For the purpose of validating the certification in paragraph 20.1, a Bidder shall, if requested, provide a copy of every valid licence, 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 said request.
- 3) Failure to comply with the requirements of paragraph 20.2 shall result in disqualification of the bid.

IB21 PERFORMANCE EVALUATION

- 1) Bidders shall take note that the performance of the Contractor during and upon completion of the work shall be evaluated by Canada. The evaluation will be based on the quality of workmanship; timeliness of completion of the work; project management, contract management and management of health and safety. Should the Contractor's performance be considered unsatisfactory, the Contractor's bidding privileges on future work may be suspended indefinitely.

The form PWGSC-TPSGC 2913

(<http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/2913.pdf>),

SELECT- Contractor Performance Evaluation report form, is used to record the performance.

IB22 BID COSTS

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.

IB23 PROCUREMENT BUSINESS NUMBERS

Bidders are required to have a Procurement Business Number (PBN) before Contract award. Bidders may register for a PBN in the Supplier Registration Information system on the Contracts Canada Web site. For non-Internet registration, Bidders may contact the nearest Supplier Registration Agent.

IB24 BID VALIDITY PERIOD

- 1) Canada reserves the right to seek an extension to the bid validity period beyond the Forty-Five (45) days referred to therein. Upon notification in writing from Canada, the Bidders shall have the option to either accept or reject the proposed extension.

-
- 2) If the extension referred to in 24.1 is accepted, in writing, by all those who submitted responsive bids, then Canada shall continue immediately with the evaluation of the bids and its approvals processes.
 - 3) If the extension referred to in 24.1 is not accepted, in writing, by all those who submitted responsive bids then Canada shall, at its sole discretion, either
 - a) continue to evaluate the bids of those who have accepted the proposed extension and seek the necessary approvals; or
 - b) cancel the RFP.
 - 4) The provisions expressed herein do not in any manner limit Canada's rights in law or under Section 15 of the Instructions to Bidders.

IB25 SITE VISIT

It is recommended that the bidder attend the optional site visit at the designated date and time to examine the scope of the work required and the existing conditions. The optional site visit will be held at **10:00 AM on Tuesday, April 10, 2012 at the Mission Institution, PWGSC site office at 8751 Stave Lake St., Mission, BC and 10:30 AM on Wednesday, April 11, 2012 at Kent Institution, PWGSC site office, 4732 Cemetary Road, Agassiz, BC.** Due to limited space, each turnkey (design-build) bidder is limited to no more than 4 persons. Due to security considerations, persons with criminal records may be denied access to the Institution.

All contractors must wear a high visibility vest, which meets WCB standards, for all site visits including a tender site visit. No cameras, cell phones (of any type) or laptop computers are allowed into institutions at any time.

IB26 MANDATORY HEALTH AND SAFETY REQUIREMENTS - ATTACHED AS ANNEX A**IB27 SECURITY REQUIREMENTS**

1. Bidders shall take note of, and comply with, the facility security requirement stipulated as a requirement in the bid and Contract documents. Employees and staff of the Bidder and other members of the Team involved in the project implementation must either be in possession of, or agree to be investigated for, a valid, appropriate level of personnel security screening that may be required under the provisions of the RFP.
2. If security screening is required, each person involved in the project implementation must hold such security screening prior to the commencement of any work.
3. In all contractual arrangements with persons who are to be employed in the performance of the services, the successful Contractor shall make provision for the performance of any obligation that may be imposed upon the Contractor under the provisions of this clause.

IB28 NOTIFICATION

Canada normally expects to advise in writing unsuccessful bidders within one week after entering into a contractual arrangement with the successful Bidder.

IB29 DEBRIEFING

A debriefing will be provided, on request, only following entry by Canada into a contractual arrangement with the successful Bidder. Should a Bidder desire a debriefing, the Bidder should contact the person identified on the front page of the RFP within 15 working days of the notification of the results of the

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solicitation. The debriefing will include an outline of the strengths and weaknesses of the submission, referring to the evaluation criteria. The confidentiality of information relating to other submissions will be protected. The debriefing may be provided in writing, by telephone or in person.

Submission Requirements and Evaluation (SRE's)

SECTION 1 BID FORM AND CONTENT REQUIREMENTS

Canada is seeking bids specific to this project. The bid must demonstrate an analytical and creative response to the specific nature of the project as set out in the Project Manual.

The bid submission itself shall comprise two parts, *Part 1 - Technical Portion* and *Part 2 - Price Portion*.

Part 1 - "Technical Portion":

- should contain all the material necessary to fully represent the technical content of the bid called for in the Request for Proposal document (which includes the Project Manual), in a concise, comprehensive manner. It is to be organized under the technical criteria detailed in the Submission Requirements. These criteria are meant to permit a connected, logical presentation of the bid. While the Submission Requirements explanations describe in general terms the intent and the information to be included under each criterion, they are not necessarily exhaustive. Bidders are responsible for fully representing their bid.
- No reference to "PRICE" is to be included in the "TECHNICAL" portion of the submission

Part 2 - "Price Portion":

- Contains the bid price to perform all the proposed services. Complete one copy only of the Bid Price Form (Annex B), and enclose it together with the bid security in a separate sealed envelope clearly marked with the Bidder's name and the project identification. It is mandatory that the Bid Price Form be used for this purpose.

Provide **one (1) bound and signed original, four (4) bound copies and one (1) CD containing electronic copies in PDF format** of *Part 1 - Technical Portion*; and **one (1) signed original** of *Part 2 - Price Portion*, Bid Price form.

Bidders should not submit promotional materials as part of their submissions and are strongly encouraged,

- not to submit information that is not required by this RFP;
- to be succinct in their submissions;
- to mark each page of their submissions with page numbers.

The maximum number of pages (including text and graphics) for the Technical Portion is thirty (30) pages. Double-sided submissions are preferred. The following format should be implemented when preparing the bid.

One (1) 'page' means one side of a sheet of paper

Paper size - 8.5"x11" (metric equivalent A4)

Font size - minimum 10 pt Times New Roman or equal on all documents including charts etc.

Margin widths - minimum 12 mm

11"x17" fold-out sheets for spreadsheets, schedules, Gantt Charts, WBS, organization charts etc. will be counted as two pages.

The following are not part of the page limitation mentioned herein;

- Covering letter
- Table of Contents
- Front page of the RFP
- Front page of revision(s) to the RFP
- Bid Price Form (Annex B)
- Section Dividers not containing text
- Bidder Identification, Certifications and Bid Security.

Consequence of non-compliance: any pages which extend beyond the above page limitation and any other attachments will be extracted from the bid and will not be forwarded to the Evaluation Board members for evaluation.

SECTION 2: SELECTION

2.1 General

Canada will evaluate the submissions received and such evaluation will be based on the following factors:

- (a) compliance with the terms and conditions of this solicitation;
- (b) the cost representing best value for a technically compliant bid to Canada for the Work;
- (c) assessment of all technical documentation and information for technical compliance;

To be considered responsive, a submission must:

- (a) meet all the mandatory requirements of this solicitation; and
- (b) obtain the required minimum pass mark of **50%** in each category and achieve a minimum total score of **65%** of the available points for the technical criteria specified in this solicitation, which are subject to point rating. The technical rating is performed on a scale of **100** points.

Submissions not meeting (a) or (b) above will be given no further consideration. Only those responsive proposals achieving a minimum Total Technical Points rating of 65 will have their Bid Price Form envelopes opened and be eligible for further consideration.

The responsive bid with the lowest evaluated price will be recommended for award of a contract.

2.2 Financial Evaluation

The evaluated price will be as identified in "Annex B Bid Price Form" at Sub-clause 1.3

SECTION 3: TECHNICAL EVALUATION

Point Rated Criteria:

The *Part 1 - Technical Portion* part of the bid will be evaluated by the Evaluation Board under the technical criteria listed in the Evaluation Criteria Table and as further explained in the Submission Requirements.

The information will be rated from 1 to 10 for each technical criterion/element. The rating is then multiplied by the weight factor shown in the Evaluation Criteria Table to produce a weighted rating. The technical score is obtained by adding the sum of the weighted ratings.

Evaluation Criteria Table

Technical Evaluation Criterion	Weight Factor	Rating	Technical Points Rating
1. Turnkey Capability and Experience			
1.1 Experience of Turnkey Contractor	1	0-10	0-10
1.2 Experience of Design Prime Consultant	1	0-10	0-10
1.3 Team Organization and experience	1	0-10	0-10
2. Project Delivery Management			
2.1. Work Breakdown Structure and Schedule	1	0-10	0-10
2.2. Management of Services and Work	2	0-10	0-20
3. Design Proposal			
3.2.1 Architectural	1	0-10	0-10
3.2.2 Civil and Landscape Architecture	0.5	0-10	0-5
3.2.3 Structural Engineering	0.5	0-10	0-5
3.2.4 Mechanical Engineering	1	0-10	0-10
3.2.5 Electrical Engineering	1	0-10	0-10
	10.0		0-100

Submission Requirements

Category 1 - Turnkey Capability and Experience

1.1 Experience of Turnkey Contractor (Max. 10 Points)

1. The Turnkey Services will include Design Management work and General Contracting Work. Describe the Bidder's accomplishments, achievements and experience as the Turnkey (or Design-build) General Contractor on ONE similar type project completed in the last 8 years in terms of:

- a. How the project is relevant to the requested project
- b. Budget management
- c. Schedule management
- d. Quality Management
- e. Design Management
- f. Change Management
- g. Commissioning
- h. Site Safety and Security

Only the first project listed/submitted will receive consideration and any others will receive none as though not included.

2. Provide client contact information including phone numbers for the above project. The Evaluation Board reserves the right to contact the references

1.2 Experience of Design Prime Consultant (Max. 10 Points)

1. Describe the accomplishments, achievements and experience of the Design Prime Consultant on one similar type project completed in the last 8 years in terms of:

- a. How the project is relevant to the requested project
- b. Design challenges and code compliance;
- c. Coordination of disciplines
- d. Budget management
- e. Schedule management
- f. Commissioning

Only the first project listed/submitted will receive consideration and any others will receive none as though not included.

2. Provide client contact information including phone numbers for the above project. The Evaluation Board reserves the right to contact the references.

1.3 Team Organization and Experience (Max. 10 Points)

Describe the team organization and experience, including at least the following information:

1. Description of overall team and structure, roles and responsibilities, reporting relationships (chart)
2. Examples of past approaches or experience which have had similar proposed team structures and processes, including any prior experience that the proposed Key Team Member have had working together
3. Identification and one page CV, including Certification or Professional Accreditation and any experience in Turnkey construction and responsibilities on past projects, for the following key team personnel:

- A. Contractor Project Manager
- B. Contractor Site Superintendent
- C. Lead Architect
- D. Lead Mechanical Engineer
- E. Lead Electrical Engineer

Category 2 - Project Delivery Management

2.1. Work Breakdown Structure and Schedule (Max. 10 Points)

1. Provide a Work Breakdown Structure (WBS) with deliverables, demonstrating how the bidder plans to execute the project.

2. Attach a Gantt Chart corresponding with the WBS showing the phases of the overall project i.e. design, construction, post-construction, sequence of main activities and deliverables (detailed schedule, design stages, resource plan, permits, inspections, regulatory compliance, commissioning, warranty etc.). Include submission review times by PWGSC/CSC.
3. Indicate the milestones of triggers to monitor scope, risk and schedule.

2.2. Management of Services and Work (Max. 10 Points)

1. Describe the methods/processes that the Turnkey Contractor will implement in providing the following services:
 - a. Management and Control of Scope
 - b. Schedule Management
 - c. Quality management
 - d. Project Risk management (identify risks)
 - e. Environmental Control and waste Management
 - f. Turnkey Contractors decision making structure and response time.
 - g. Sub-Trade management Plan
 - h. Commissioning and Warranty Assurance Plan.
 - i. Site Safety Management and compliance with Safety Regulations.
 - j. Lines of communication and reporting relationship with stakeholders

Category 3 - Design Proposal

The Bidder should submit a design proposal which will demonstrate its understanding of the goals of the project, the functional / technical requirements and the constraints described in the Project Manual and the PWGSC provided concept design.

3.1 General - Design Proposal and Design Proposal Presentation

1. The Design Proposal Drawings submitted to PWGSC should include, in an electronic format and in 4 hard copies (bounded sets in format A1), at a minimum:
 - a. a site plan (1:500);
 - b. floor plans (1:200);
 - c. elevations (north, south, east and west) (1:200);
 - d. typical wall sections (1:10), details indicating wall (cladding with anchoring method) and roof assemblies (floor and roof connections, insulation and vapour barrier details);
 Submit colour or black and white 279 mm x 431 mm (11" by 17") format reductions of each of the drawings for reproduction purposes and
2. A Technical Report, in accordance with Section 3.2 below, and including the following drawings (1:200) (which should be annexed to the Technical Report):
 - comprehensive schematic diagrams (single line diagram) for all mechanical systems (HVAC, plumbing, fire protection, etc.) and electrical systems (including Fire alarm);

3.2 Design Proposal - Technical Report Requirements

Bidders should submit a technical report as part of their Design Proposals which provides the information set out in this Section 3.2 (the "Technical Report"). The Bidder's Technical Report should be in a 216 mm x 279 mm format in a three ring binder and should be divided into sections as described below.

3.2.1 Architectural (Max. 10 Points)

The Bidder should describe the architectural concepts for the building, its design strategies and its rationale for the approach selected. The Bidders should describe, for example, performance, durability and including how the Bidder intends to address the following systems to meet the Technical Requirements, at a minimum:

- (a) roof systems;
- (b) wall systems (and materials);
- (c) window and glazing systems;

3.2.2 Site Work - Civil Engineering & Landscaping (Max. 10 Points)

The Bidder should describe the concepts for the building site and its rationale for the design of systems selected. The Bidder should describe, at a minimum, how the following systems will be addressed to meet the Technical Requirements:

- (a) road access;
- (b) water supply linkages;
- (c) sanitary sewerage;
- (d) site storm sewer.

3.2.3 Structural Engineering (Max. 10 Points)

The Bidder should describe the structural engineering concepts for the building and its rationale for the design of systems selected. The Bidder should describe, at a minimum, how the following systems will be addressed to meet the Technical Requirements:

- (a) foundations;
- (b) columns;
- (c) floor and roof framing systems;
- (d) lateral load resisting system; and
- (e) approach to ensure compliance with the NBC seismic requirements.

3.2.4 Mechanical Engineering (Max. 10 Points)

The Bidder should describe the mechanical engineering concepts for the building and its rationale for the design of systems selected. The Bidder should describe, at a minimum, how the following systems will be addressed to meet the Technical Requirements:

- (a) plumbing systems;
- (b) HVAC systems (description of zones);
- (c) fire protection systems;
- (d) natural gas and/or central heating plant connections as applicable.

3.2.5 Electrical Engineering (Max. 10 Points)

The Bidder should describe the electrical engineering concepts for the building and its rationale for the design of systems selected. The Bidder should describe, at a minimum, how the following systems will be addressed to meet the Technical Requirements:

- (a) how the design will comply with utility requirements, including capacity and connections;
- (b) electrical service and distribution;
- (c) fire alarm and security systems;
- (d) lighting and controls.

3.2.6 Energy Consumption

The Bidder should describe how systems will be selected and designed to meet the energy consumption target.

SECTION 4: MANDATORY SUBMISSION REQUIREMENTS

To be considered compliant, a submission must meet all of the mandatory evaluation criteria. **Submissions not meeting all of the mandatory requirements will be given no further consideration. The Bidder must:**

1. Submit the bid to the Bid Receiving Unit prior to the closing date and time indicated on the front page of the solicitation document;
2. Complete and submit signed Bid Price Form (Annex B);
3. Provide Bid Security per IB17 of the Instructions to Bidders;

SUBMISSION REQUIREMENTS - CHECKLIST

The following list of documents and forms is provided with the intention of assisting the Bidder in ensuring a complete submission. The Bidder is responsible for meeting all submission requirements.

- ☐ **Proposal - one (1) original, plus four (4) bound copies, plus one (1) CD**
- ☐ **Note: the maximum number of pages (including text and graphics) to be submitted for the Technical Portion is 30 pages**
- ☐ **Front page of RFP - acknowledged**
- ☐ **Bid Price Form (in a separate envelope) - completed and signed**
- ☐ **Front page(s) of any solicitation amendment(s) - acknowledged**
- ☐ **Bid Security included with Bid Price Form**

ANNEX A: MANDATORY HEALTH AND SAFETY -

WCB AND SAFETY PROGRAM

- 1) The recommended Bidder shall provide to the Contracting Authority, prior to Contract award:
 - 1.1 a Worksafe BC Premium Rate Statement - or equivalent documentation from another jurisdiction;
 - 1.2 a Workers Compensation Board letter of good standing, also listing covered Directors, Principals, Proprietor(s) or Partners who will be or who are anticipated to be present on the work site(s), or equivalent documentation from another jurisdiction; and
 - 1.3 a Certificate of Recognition (COR) or Registered Safety Plan (RSP). A health and safety policy and program, as required by other provincial/territorial Occupational Health and Safety Acts, will be acceptable in lieu of a COR or RSP.
- 2) The recommended Bidder shall deliver all of the above documents to the Contracting Authority on or before the date stated (usually 3-5 days after notification) by the Contracting Authority. Failure to comply with the request may result in the bid being declared non-compliant.

Workplace Safety and Health

1. EMPLOYER/PRIME CONTRACTOR

- 1.1 The Contractor shall, for the purposes of the Occupational Health and Safety Act, and for the duration of the Work:
 - 1.1.1 act as the Employer, where there is only one employer on the work site, in accordance with the Authority Having Jurisdiction;
 - 1.1.2 accept the role of Prime Contractor, where there are two or more employers involved in work at the same time and space at the work site, in accordance with the Authority Having Jurisdiction; and
 - 1.1.3 agree, in the event of two or more Contractors working at the same time and space at the work site, without limiting the General Conditions, to Canada's order * to:
 - 1.1.3.1 accept, as the Prime Contractor, the responsibility for Canada's other Contractor(s); or
 - 1.1.3.2 accept that Canada's other Contractor is Prime Contractor and conform to that Contractor's Site Specific Health and Safety Plan.

* "order" definition: after contract award, Contractor is ordered by a Change Order

2. SUBMITTALS

- 2.1 The Contractor shall provide to Canada:
 - 2.1.1 prior to the pre-construction meeting, a transmittal and copy of a completed Notice of Project form PWGSC - TPSGC 458 (form will be provided to the proposed contractor prior to award), as sent to the Authority Having Jurisdiction (AHJ); and
 - 2.1.2 prior to commencement of work and without limiting the terms of the General Conditions:
 - 2.1.2.1 copies of all other necessary permits, notifications and related documents as called for in the scope of work/specifications and/or by the AHJ; and

2.1.2.2 a site specific Health and Safety Plan as requested.

ANNEX B: BID PRICE FORM

This Bid Price Form, duly completed, **and** the signed front page of the RFP shall be enclosed and sealed in an envelope provided by the Bidder, and shall be addressed and submitted to the office designated for the receipt of bids.

1.1 Project Identification

Project Name: **Generic Support Buildings**

Project Location: **Correctional Service Canada, Mission Institution, Mission, BC and Kent Institution, Agassiz, BC**

Solicitation Number **EZ899-123251/A**

1.2 Business Name and Address of Bidder

Name:

Address:

Telephone:

Fax:

1.3 Offer

The Bidder, hereby offers to Canada to perform and complete the work for the above named project in accordance with the Scope of Work, at the place and in the manner set out therein for the Total Price (to be expressed in numbers only) of:

GST/HST \$ _____ excluding

which consists of

.1 an Amount of \$ _____ excluding
GST/HST, for the design portion of the Work, plus

.2 an Amount of \$ _____ excluding
GST/HST, for the construction portion of the Work, plus

.3 an Amount of \$ _____ excluding
GST/HST, for the commissioning portion of the Work.

The following will NOT form part of the evaluation process:

Canada intends to use the following Rates quoted for additional Design Services that may be required from time to time. Canada reserves the right to refuse or renegotiate any Rate that Canada, in its sole discretion, deems to be excessive when compared to industry norms.

Principals - All inclusive hourly rate to be fixed for the duration of the Contract *Hourly Rate*

.....	
\$.....	
.....	\$.....
.....	
\$.....	
.....	
\$.....	
.....	\$.....
.....	\$.....
.....	
\$.....	

Hourly Rate increases for staff are to be documented to PWGSC for approval. All key personnel are to be shown.

Staff / Position *Hourly Rate*

.....	
\$.....	
.....	\$
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.....	\$
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.....	\$
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1.4 Acceptance and Contract

Upon acceptance of the Contractor's offer by Canada, a binding Contract shall be formed between Canada and the Contractor. The documents forming the Contract shall be the contract documents identified in Contract Documents.

1.5 Construction Time

The Bidder agrees to complete the work within **Forty-Six (46) weeks** from the date of notification of acceptance of its offer.

1.6 Bid Security

The Bidder is enclosing bid security with its bid in accordance with IB 17 of the Instructions to Bidders.

1.7 Bid Validity Period

The bid shall not be withdrawn for a period of **Forty-Five (45) days** following the date of solicitation closing.

1.8 Signature of Bidder or Joint Venture

Name and title of person authorized to sign on behalf of Bidder or Joint Venture (Type or print)

Signature

Capacity

Name and title of person authorized to sign on behalf of Bidder or Joint Venture (Type or print)

Signature

Capacity

END OF BID PRICE FORM

ANNEX C: TERMS AND CONDITIONS

TERMS OF AGREEMENT

A1 Contract Documents

GENERAL CONDITIONS

GC1 GENERAL PROVISIONS

- GC1.1 Interpretation
- GC1.2 Contract Documents
- GC1.3 Status of the Contractor
- GC1.4 Rights and Remedies
- GC1.5 Time of the Essence
- GC1.6 Indemnification by Contractor
- GC1.7 Indemnification by Canada
- GC1.8 Laws, Permits and Taxes
- GC1.9 Workers' Compensation
- GC1.10 National Security
- GC1.11 Public Ceremonies and Signs
- GC1.12 Conflict of Interest
- GC1.13 International Sanctions
- GC1.14 Certification - Contingency Fees
- GC1.15 Agreements and Amendments
- GC1.16 Unsuitable workers
- GC1.17 Assignment
- GC1.18 Rights to Intellectual Property

GC2 ADMINISTRATION OF THE CONTRACT

- GC2.1 Departmental Representative's Authority
- GC2.2 Interpretation of Contract
- GC2.3 Notices
- GC2.4 Site Meetings
- GC2.5 Review and Inspection of Work
- GC2.6 Superintendent
- GC2.7 Non-discrimination in Hiring and Employment of Labour
- GC2.8 Accounts and Audits

GC3 EXECUTION AND CONTROL OF THE WORK

- GC3.1 Progress Schedule
- GC3.2 Project Design and Role of the Designer
- GC3.3 Construction Safety
- GC3.4 Execution of the Work
- GC3.5 Material
- GC3.6 Subcontracting
- GC3.7 Construction by Other Contractors or Workers
- GC3.8 Labour and Fair wages
- GC3.9 Material, Plant and Real Property become Property of Canada
- GC3.10 Defective Work
- GC3.11 Use of the Work and Cleanup of Site
- GC3.12 Warranty and Rectification of Defects in Work

GC4 PROTECTIVE MEASURES

- GC4.1 Protection of Work and Property
- GC4.2 Precautions against Damage, Infringement of Rights, Fire and Other Hazards
- GC4.3 Material, Plant and Real Property Supplied by Canada
- GC4.4 Contaminated Site Conditions

GC5 TERMS OF PAYMENT

- GC5.1 Interpretation
- GC5.2 Amount Payable
- GC5.3 Increased or Decreased Costs
- GC5.4 Progress Payment
- GC5.5 Substantial Completion of the Work
- GC5.6 Final Completion
- GC5.7 Payment not Binding on Canada
- GC5.8 Claims and Obligations
- GC5.9 Right of Set-off
- GC5.10 Assessments and Damages for Late Completion
- GC5.11 Delay in Making Payment
- GC5.12 Interest on Settled Claims
- GC5.13 Return of Security Deposit

GC6 DELAYS AND CHANGES IN THE WORK

- GC6.1 Changes in the Work
- GC6.2 Changes in Subsurface Conditions
- GC6.3 Human Remains, Archaeological Remains and Items of Historical or Scientific Interest
- GC6.4 Determination of Price
- GC6.5 Delays and Extension of Time

GC7 DEFAULT, SUSPENSION OR TERMINATION OF CONTRACT

- GC7.1 Taking the Work out of the Contractor's Hands
- GC7.2 Suspension of Work
- GC7.3 Termination of Contract
- GC7.4 Security Deposit - Forfeiture or Return

GC8 DISPUTE RESOLUTION

- GC8.1 Interpretation
- GC8.2 Consultation and Co-operation
- GC8.3 Notice of Dispute
- GC8.4 Negotiation
- GC8.5 Mediation
- GC8.6 Confidentiality
- GC8.7 Settlement
- GC8.8 Rules for Mediation of Disputes

SUPPLEMENTARY CONDITIONS

- SC1 Payment for Design Changes and Revisions
- SC2 Security Access Required
- SC3 Professional Liability Insurance Requirements

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TERMS OF AGREEMENT

A1 CONTRACT DOCUMENTS

- 1) The Contractor understands and agrees that, upon acceptance of the offer by Canada
 - (a) a binding Contract shall be formed between Canada and the Contractor; and
 - (b) the contract documents forming the Contract shall be the following:
 - (i) the Front Page and these Terms of Agreement;
 - (ii) the Request for Proposal;
 - (iii) the Terms of Reference;
 - (iv) the terms, conditions, and clauses as amended, identified as:
 - a) the General Conditions;
 - b) the Supplementary Conditions, if any;
 - c) documents incorporated by reference as follows:

R2900D (2008-05-12) - Insurance
 R2910D (2008-12-12) - Insurance Terms
 R2890D (2011-05-16) - Contract Security
 R2940D (2010-01-11) - Fair Wages and Hours of Labour - Labour Conditions;
 R2950D (2007-05-25) - Allowable costs for contract changes under GC6.4.1
 Schedules of Wage Rates for Federal Construction Contracts.
 - (v) the Bidder's Bid;
 - (vi) the Construction Documents;
 - (vii) any amendment incorporated into the solicitation documents before the date of the Contract; and
 - (viii) any amendment or variation of the contract documents that is made in accordance with the General Conditions.
- (c) The documents identified by title, number and date above are incorporated by reference and are set out in the Standard Acquisition Clauses and Conditions (SACC) Manual, issued by Public Works and Government Services Canada (PWGSC). The SACC Manual is available on the PWGSC Website:
<https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R>

- (d) Schedules of Wage Rates for Federal Construction Contracts is included by reference and may be accessed from the Website:
[Http://www.hrsdc.gc.ca/en/labour/employment_standards/contracts/schedule/index.shtml](http://www.hrsdc.gc.ca/en/labour/employment_standards/contracts/schedule/index.shtml)

GENERAL CONDITIONS

GC1 GENERAL PROVISIONS

GC1.1 INTERPRETATION

GC1.1.1 Headings

- 1) The headings in the Contract Documents form no part of the *Contract* but are inserted for convenience of reference only.
- 2) A reference made to a part of the *Contract* by means of numbers preceded by letters is a reference to the particular part of the *Contract* that is identified by that combination of letters and numbers and to any other part of the *Contract* referred to therein.
- 3) A reference to a paragraph or subparagraph followed by an identifying number is, unless specifically stated otherwise, a reference to the paragraph or subparagraph which forms part of the clause within which the reference is made.

GC1.1.2 Definitions

In the *Contract*:

"*Canada*", "*Crown*" or "*Her Majesty*" means Her Majesty the Queen in right of Canada;

"*Construction*" means the performing or furnishing of all labour, *Plant*, *Material*, and other means of construction, other than *Design Services*, to complete the performance of the *Work* as required by the contract documents;

"*Construction Documents*" means the plans, drawings and specifications for *Construction* of the *Work* prepared by or on behalf of the *Contractor* and that are accepted and signed by *Canada* and the *Contractor* after the execution of the *Contract*;

"*Contract*" means the contract documents referred to as such therein and every other document specified or referred to in any of them as forming part of the contract, all as amended by agreement of the parties;

"*Contract Amount*" means the amount stipulated in the *Contract*;

"*Contract Security*" means any security given by the *Contractor* to *Canada* in accordance with the *Contract*;

"*Contractor*" means the person or entity contracting with *Canada* to provide or furnish all designs, professional services, *Construction Documents*, labour, *Material* and *Plant* for the execution of the *Work*, and includes the *Contractor's* authorized representative as designated in writing to the *Departmental Representative*;

"*Design Services*" means the professional services for design and construction administration performed by the *Designer*, or consultants coordinated by the *Designer*, under the terms of the *Contract*;

"*Designer*" means the Architect, Professional Engineer or entity, licensed to practice in the province or territory of the *Work*, and forming the professional component of the *Contractor* to provide the *Design Services* and other services required under the terms of the *Contract*, and includes the *Contractor's* authorized representative as designated to Canada in writing.

"*Certificate of Completion*" means the certificate issued by *Canada* when the *Work* reaches Completion;

"*Final Certificate of Measurement*" means a certificate issued by *Canada* showing the final quantities, unit prices and values of labour, *Plant* and *Material* performed, used and supplied by the *Contractor* for the construction of the part of the *Work* to which a *Unit Price Arrangement* applies;

"*Lump Sum Arrangement*" means that part of the *Contract* that prescribes a lump sum as payment for performance of the work to which it relates;

"*Certificate of Substantial Performance*" means a certificate issued by *Canada* when the *Work* reaches Substantial Completion;

"*Material*" means all commodities, articles, machinery, equipment, fixtures and things required to be furnished in accordance with the *Contract* for incorporation into the *Work*;

"*Plant*" means all tools, implements, machinery, vehicles, structures, equipment, articles and things, other than *Material* or consumed in the performance of the *Contract* and tools customarily provided by a tradesperson in practicing a trade, that are necessary for the *Construction* of the *Work*;

"*Project*" means the total design and *Construction* for which the *Contractor* is responsible, including all *Design Services* and the Completion of the *Work*;

"*Project Requirements*" means the statement included in the *Request for Proposal* detailing the technical and other requirements of *Canada* which are to be met by the successful Bidder, and which are to be addressed in the *Bid*;

"*Bid*" means the bid of the *Contractor* submitted in response to a *Request for Proposal*.

"*Request for Proposal*" means the documentation issued by *Canada* requesting the submission of bids and detailing the *Project Requirements*;

"*Subcontractor*" means a person or entity, other than the *Designer*, having a direct *Contract* with the *Contractor*, subject to GC3.6 SUBCONTRACTING, to perform a part or parts of the *Work*, or to supply *Material* worked to a special design for the *Work*;

"*Superintendent*" means the employee or representative of the *Contractor* who is designated by the *Contractor* to act pursuant to GC2.5 SUPERINTENDENT;

"*Supplementary Conditions*" means the part of the contract documents which amends or supplements the General Conditions;

"*Supplier*" means a person or entity having a direct *Contract* with the *Contractor* to supply *Plant* or *Material* not worked to a special design for the *Work*.

"Unit Price Arrangement" means that part of the *Contract* that prescribes the product of a price per unit of measurement multiplied by a number of units of measurement for performance of the work to which it relates;

"Unit Price Table" means the table set out in the Articles of Contract;

"Work" means, subject only to any express stipulation in the *Contract* to the contrary, everything that is necessary to be done, furnished or delivered by the *Contractor* to complete the *Design Services*, *Construction* and other services required under the *Contract* in accordance with the Contract Documents.

"Working Day" means a day other than a Saturday, Sunday, or a holiday which is observed by the construction industry in the area of the place of the *Work*.

GC1.1.3 Application of Certain Provisions

- 1) Any provisions of the *Contract* that are expressly stipulated to be applicable only to a *Unit Price Arrangement* are not applicable to any part of the *Work* to which a *Lump Sum Arrangement* applies.
- 2) Any provisions of the *Contract* that are expressly stipulated to be applicable only to a *Lump Sum Arrangement* are not applicable to any part of the *Work* to which a *Unit Price Arrangement* applies.

GC1.1.4 Substantial Performance

- 1) The *Work* will be considered to have reached Substantial Performance when,
 - (a) the *Work* or a substantial part thereof has passed inspection and testing and is, in the opinion of Canada, ready for use by *Canada* or is being used for the intended purposes; and
 - (b) when the *Work* is, in the opinion of Canada, capable of completion or correction at a cost of not more than
 - (i) 3% of the first \$500,000, and
 - (ii) 2% of the next \$500,000, and
 - (iii) 1% of the balance
 of the value of the *Contract* at the time this cost is calculated.
- 2) Where the *Work* or a substantial part thereof is ready for use or is being used for the purposes intended and the remainder of the *Work* or a part thereof cannot be completed by the time specified in the *Contract*, or as amended by GC6.5 DELAYS AND EXTENSION OF TIME, for reasons beyond the control of the *Contractor*, or where *Canada* and the *Contractor* agree not to complete a part of the *Work* within the specified time, the cost of that part of the *Work* which was either beyond the control of the *Contractor* to complete or *Canada* and the *Contractor* have agreed not to complete by the time specified, shall be deducted from the value of the *Contract* referred to in paragraph 1)(b) , and the said cost shall not form part of the cost of the work remaining to be done in determining Substantial Performance.

GC1.1.5 Completion

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- 1) The *Work* shall be deemed to have reached Completion when all designs, services, labour, *Plant* and *Material* required have been performed, used or supplied, and the *Contractor* has complied with the *Contract* and all orders and directions made pursuant thereto, all to the satisfaction of Canada.

GC1.2 CONTRACT DOCUMENTS

GC1.2.1 General

- 1) The contract documents are complementary, and what is required by any one shall be as binding as if required by all.
- 2) References in the contract documents to the singular shall be considered to include the plural as the context requires.
- 3) Nothing contained in the contract documents shall create a contractual relationship between *Canada* and any *Subcontractor* or *Supplier* or the *Designer* or any consultant or their agents or employees.

GC1.2.2 Order of Precedence

- 1) In the event of any discrepancy or conflict in the contents of the following documents, such documents shall take precedence and govern in the following order:
 - (a) any amendments or variation of the contract documents that is made in accordance with the General Conditions
 - (b) any amendment issued prior to bid closing ,
 - (c) *Supplementary Conditions*,
 - (d) General Conditions,
 - (e) *The Request for Proposal* ,
 - (f) The duly completed Bid when accepted.

Later dates shall govern within each of the above categories of documents.

- 2) In the event of any discrepancy or conflict in the information contained in the *Construction Documents*, the following rules shall apply:
 - (a) Specifications shall govern over drawings;
 - (b) Dimensions shown in figures on a plan shall govern where they differ from dimensions scaled from the same drawing; and
 - (c) Drawings of larger scale shall govern over those of smaller scale.

GC1.2.3 Security and Protection of Documents and Work

- 1) The Contractor shall guard and protect contract documents, drawings, information, models and copies thereof, whether supplied by Canada or the Contractor, against loss or damage from any cause.

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- 2) The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, and all information developed by the Contractor as part of the Work, and shall not disclose any such information to any person without the written permission of Canada, except that the Contractor may disclose to a subcontractor, authorized in accordance with the Contract, information necessary to the performance of a subcontract. This section does not apply to any information that
 - (a) is publicly available from a source other than the Contractor; or
 - (b) is or becomes known to the Contractor from a source other than Canada, except any source that is known to the Contractor to be under an obligation to Canada not to disclose the information.
 - 3) When the Contract, the Work, or any information referred to in paragraph 2) is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada, the Contractor shall, at all times, take all measures reasonably necessary for the safeguarding of the material so identified, including such measures as may be further specified elsewhere in the Contract or provided, in writing, from time to time by Canada.
 - 4) Without limiting the generality of paragraphs 2) and 3) of GC1.2.3, when the Contract, the Work, or any information referred to in paragraph 2) is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada, Canada shall be entitled to inspect the Contractor's premises and the premises of its subcontractors or suppliers and any other person at any tier, for security purposes at any time during the term of the Contract, and the Contractor shall comply with, and ensure that any such subcontractors or suppliers comply with all written instructions issued by Canada dealing with the material so identified, including any requirement that employees of the Contractor and its subcontractors and suppliers and any other person at any tier execute and deliver declarations relating to reliability screenings, security clearances and other procedures.
 - 5) The Contractor shall safeguard the Work and the Contract, the specifications, drawings and any other information provided by Canada to the Contractor, and shall be liable to Canada for any loss or damage from any causes.

GC1.2.4 Ownership and Re-use of Documents and Models

- 1) Except as may be specified elsewhere in the Contract, *Canada* relinquishes any right to ownership of copyright in any and all documents which are instruments of the services to be provided or furnished and are prepared by or on behalf of the *Contractor* or the *Designer* under the terms of the *Contract*.
- 2) After negotiation with the owner or owners of the copyright, *Canada* may re-use for another project the documents and models referred to in paragraph 1), and shall pay the owner or owners for such re-use an appropriate fee based on current practice.
- 3) Models furnished by the *Contractor* at Canada's expense shall be and remain the property of *Canada*.

GC1.3 STATUS OF THE CONTRACTOR

- 1) The *Contractor* is engaged under the *contract* as an independent contractor.
- 2) The *Contractor*, *its subcontractors*, employees, designers, suppliers and any other persons at any tier are not engaged by the *Contract* as employees, servants or agents of *Canada*.

- 3) For the purposes of the *contract* the *Contractor* shall be solely responsible for any and all payments and deductions required to be made by law including those required for Canada or Quebec Pension Plans, Employment Insurance, Worker's Compensation, provincial health or insurance plans, and Income Tax.

GC1.4 RIGHTS AND REMEDIES

- 1) Except as expressly provided in the Contract, the duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

GC1.5 TIME OF THE ESSENCE

- 1) Time is of the essence of the *Contract*.

GC1.6 INDEMNIFICATION BY THE CONTRACTOR

- 1) The *Contractor* shall pay all royalties and patent fees required for the performance of the *Contract* and, at the *Contractor's* expense, shall defend all claims, actions or proceedings against *Canada* charging or claiming that the services or any part thereof provided or furnished by the *Contractor* to *Canada* infringe any patent, industrial design, copyright trademark, trade secret or other proprietary right enforceable in *Canada*.
- 2) The *Contractor* shall indemnify and save *Canada* harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the *Contractor*, the *Designer*, servants, agents, *Subcontractors* and suppliers in performing the *Work*.
- 3) For the purposes of paragraph 2) , "activities" means any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

GC1.7 INDEMNIFICATION BY CANADA

- 1) Subject to the Crown Liability and Proceedings Act, the Patent Act, and any other law that affects Canada's rights, powers, privileges or obligations, *Canada* shall indemnify and save the *Contractor* harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of the *Contractor's* activities under the *Contract* that are directly attributable to:
- (a) lack of or a defect in Canada's title to the *Work* site if owned by *Canada*, whether real or alleged; or
 - (b) an infringement or an alleged infringement by the *Contractor* of any patent of invention or any other kind of intellectual property occurring while the *Contractor* was performing any act for the purposes of the *Contract* employing a model, plan or design or any other thing related to the *Work* that was supplied by *Canada* to the *Contractor*.

GC1.8 LAWS, PERMITS AND TAXES

- 1) The Contractor shall comply with all federal, provincial and municipal laws and regulations applicable to the performance of the Work or any part thereof including, without limitation, all laws concerning health and labour conditions and the protection of the environment, and shall require compliance therewith by all of its subcontractors and suppliers at any tier as if the Work were being performed for an owner other than Canada. The Contractor shall furnish evidence of

compliance with such laws and regulations to Canada at such times as Canada may reasonably request.

- 2) Unless stipulated otherwise in the Contract, the Contractor shall obtain and maintain all permits, certificates, licences, registrations and authorizations required for the lawful performance of the Work.
- 3) Prior to the commencement of *the Work* at the site, the *Contractor* shall tender to a municipal authority an amount equal to all fees and charges that would be lawfully payable to that municipal authority in respect of building permits as if the *Work* were being performed for a person other than *Canada*.
- 4) Within ten (10) days of making a tender pursuant to paragraph 3), the *Contractor* shall notify *Canada* of the amount properly tendered and whether or not the municipal authority has accepted that amount.
- 5) If the municipal authority has not accepted the amount tendered, the *Contractor* shall pay that amount to *Canada* within six (6) days after the time stipulated in paragraph 4).
- 6) For the purposes of this clause, "municipal authority" means any authority that would have jurisdiction respecting permission to perform the *Work* if the owner were not *Canada*.
- 7) Notwithstanding the residency of the *Contractor*, the *Contractor* shall pay any applicable tax arising from or related to the performance of the *Work* under the *Contract*.
- 8) In accordance with the Statutory Declaration referred to in paragraph 4) of GC5.5 SUBSTANTIAL PERFORMANCE OF THE WORK, a *Contractor* who has neither residence nor place of business in the province or territory in which work under the *Contract* is being performed shall provide *Canada* with proof of registration with the provincial sales tax authorities in the said province.
- 9) For the purpose of the payment of any applicable tax or the furnishing of security for the payment of any applicable tax arising from or related to the performance of the *Work*, and notwithstanding the fact that all *Material*, *Plant* and interest of the *Contractor* in all real property, licences, powers and privileges, become the property of *Canada* after the time of purchase in accordance with GC3.9 MATERIAL PLANT AND REAL PROPERTY BECOME PROPERTY OF CANADA, the *Contractor* shall be liable, as a user or consumer, for the payment or for the furnishing of security for the payment of any applicable tax payable, at the time of the use or consumption of that *Material*, *Plant* or interest of the *Contractor* in accordance with the relevant legislation.

GC1.9 WORKERS' COMPENSATION

- 1) Prior to commencing the *Work*, at the time of Substantial Performance of the *Work*, and prior to issuance of the *Certificate of Completion*, the *Contractor* shall provide evidence of compliance with workers' compensation legislation applicable to the place of the *Work*, including payments due thereunder.
- 2) At any time during the term of the *Contract*, when requested by Canada, the *Contractor* shall provide such evidence of compliance by the *Contractor*, its *Subcontractors* and any other person at any tier and any other person performing part of the *Work* who is required to comply with such legislation.

GC1.10 NATIONAL SECURITY

- 1) If *Canada* determines that the *Work* is of a class or kind that involves national security, *Canada* may order the *Contractor* to
 - (a) provide *Canada* with any information concerning persons or entities employed or to be employed by the *Contractor* for purposes of the *Contract*; and
 - (b) remove any person from the site of the *Work*, if in the opinion of *Canada*, that person may be a risk to the national security,and the *Contractor* shall comply with the order.
- 2) In all contracts with persons who are to be employed in the performance of the *Contract*, the *Contractor* shall make provision for the performance of any obligation that may be imposed upon the *Contractor* under paragraph 1).

GC1.11 PUBLIC CEREMONIES AND SIGNS

- 1) The *Contractor* shall not permit any public ceremony in connection with the *Work* without the prior consent of *Canada*.
- 2) The *Contractor* shall not erect nor permit the erection of any sign or advertising on the *Work* or its site without the prior consent of *Canada*.

GC1.12 CONFLICT OF INTEREST

- 1) It is a term of the *Contract* that no individual, for whom the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Service apply, shall derive a direct benefit from the *Contract* unless that individual is in compliance with the applicable post-employment provisions.

GC1.13 INTERNATIONAL SANCTIONS

- 1) Persons and companies in Canada, and Canadians outside of Canada are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions. Details on existing sanctions can be found at:
[Http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp](http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp).
- 2) It is a condition of the Contract that the *Contractor* not supply to the Government of Canada any goods or services which are subject to economic sanctions.
- 3) By law, the *Contractor* must comply with changes to the regulations imposed during the life of the Contract. During the performance of the Contract should the imposition of sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Contractor, the Contractor may request that the Contract be terminated in accordance with GC7.3 TERMINATION OF CONTRACT.

GC1.14 CERTIFICATION - CONTINGENCY FEES

- 1) The *Contractor* certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay or agree to pay a contingency fee for the solicitation, negotiation or obtaining of the *Contract* to any person other than an employee acting in the normal course of the employee's duties.

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- 2) All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the *Contract* shall be subject to the accounts and audit provisions of the *Contract*.
 - 3) If the *Contractor* certifies falsely under this section or is in default of the obligations contained therein, *Canada* may either take the *Work* out of the *Contractor's* hands in accordance with the provisions of the *Contract* or recover from the *Contractor* by way of reduction to the *Contract Amount* or otherwise the full amount of the contingency fee.
 - 4) In this clause:
 - (a) "contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a Government Contract or negotiating the whole or any part of its terms;
 - (b) "employee" means a person with whom the *Contractor* has an employer/employee relationship;
 - (c) "person" includes an individual or a group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbying Act R.S. 1985 c.44 (4th Supplement) as the same may be amended from time to time.

GC1.15 AGREEMENTS AND AMENDMENTS

- 1) The Contract constitutes the entire and sole agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.
- 2) The failure of either party at any time to require performance by the other party of any provision hereof shall not affect the right thereafter to enforce such provision. Nor shall the waiver by either party of any breach of any covenant, term or condition hereof be taken to be held to be a waiver of any further breach of the same covenant, term or condition.
- 3) The *Contract* may be amended only as provided for in the Contract.

GC1.16 UNSUITABLE WORKERS

- 1) Canada shall instruct the Contractor to remove from the site of the Work any person employed by the Contractor for purposes of the Contract who, in the opinion of Canada, is incompetent or is guilty of improper conduct, and the Contractor shall not permit a person who has been removed to return to the site of the Work.

GC1.17 ASSIGNMENT

- 1) The *Contract* shall not be assigned, in whole or in part by the contractor, without the written consent of *Canada*.
- 2) An assignment of the Contract without such consent shall not relieve the Contractor or the assignee from any obligation under the contract, or impose any liability upon Canada.

GC1.18 RIGHTS TO INTELLECTUAL PROPERTY

1) Definitions

"Background" means all Technical Output that is not Foreground and that is proprietary to or the confidential information of the Contractor, the Contractor's Subcontractors, or any other entity engaged by the Contractor in the performance of the Design Services;

"Foreground" means any Invention first conceived, developed or reduced to practice as part of the Design Services and all other Technical Output conceived, developed, produced or implemented as part of the Design Services;

"IP Rights" means any intellectual property rights recognized by law, including any intellectual property right protected through legislation (such as that governing copyright, patents, industrial design, or integrated circuit topography) or arising from protection of information as a trade secret or as confidential information;

"Invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter, whether or not patentable and without limiting the foregoing the term includes any unique design and construction system;

"Technical Output" means: (i) all information of a scientific, technical, or artistic nature relating to the Design Services, whether oral or recorded in any form or medium and whether or not subject to copyright, including but not limited to any Inventions, designs, methods, reports, photographs, physical models, surveys, drawings, specifications developed for the purpose of the Project; as well as (ii) computer printouts, design notes, calculations, CADD (Computer-aided Design and Drafting) files, and other data, information and material, prepared, computed, drawn, or produced for the purpose of the Project; and (iii) operating and maintenance manuals prepared or collected for the Project; and (iv) any buildings, built works, structures and facilities constructed as, or as part of, the Project. Technical Output does not include data concerned with the administration of the contract by Canada or the Contractor, such as internal financial or management information, unless it is a deliverable under the terms of the contract.

2. Identification and Disclosure of Foreground

The Contractor shall:

- (a) promptly report and fully disclose to Canada all Foreground that could be Inventions, and shall report and fully disclose to Canada all other Foreground not later than the time of completion of the Design Services or such earlier time as Canada or the contract may require, and
- (b) for each disclosure referred to in (a), indicate the names of all Sub-Contractors / Sub-Consultants at any tier, if any, in which IP Rights to any Foreground have vested or will vest.

Before and after final payment to the Contractor, Canada shall have the right to examine all records and supporting data of the Contractor which Canada reasonably decides is pertinent to the identification of the Foreground.

3. IP Rights Vest with Contractor

Subject to paragraphs 10 and 11 and the provisions of GC 1.10 National Security, and without affecting any IP Rights or interests therein that have come into being prior to the contract or that relate to information or data supplied by Canada for the purposes of the contract, all IP

Rights in the Foreground shall immediately, as soon as they come into existence, vest in and remain the property of the Contractor.

4. Ownership Rights in Deliverables

Notwithstanding the Contractor's ownership of the IP Rights in the Foreground that is a prototype, built work, building, structure, facility, model or custom or customized system or equipment together with associated manuals and other operating and maintenance documents and tools, Canada shall have unrestricted ownership rights in those deliverables, including the right to make them available for public use, whether for a fee or otherwise, and the right to sell them.

5. Licence to Foreground

Without limiting any implied licences that may otherwise vest in Canada, and in consideration of Canada's contribution to the cost of development of the Foreground, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free licence to exercise all IP Rights in the Foreground that vest in the Contractor pursuant to paragraph 3, for the purpose of:

- (a) the further development or alteration or evolution of any part of the constructed or implemented Project, including procurement of materials and components for this purpose;
- (b) the further development, modification (including additions or deletions), completion, translation, or implementation of the Foreground and any addition to it as Canada may require for the purposes of the completion, utilization and subsequent evolution of the Project;
- (c) the use, occupancy, operation, exploitation, maintenance, repair or restoration of the constructed or implemented or subsequently modified Project, including the procurement of replacement materials and components required for any such purpose; and
- (d) the publishing and transmission of reproductions of the Project or any part thereof in the form of paintings, drawings, engravings, photographs or cinematographic works, to the public, in hard copy or by any electronic or other means, except for copies in the nature of architectural drawings or plans.

6. Licence to Foreground for Other Projects

The Contractor hereby grants to Canada a non-exclusive, perpetual, worldwide, irrevocable licence to exercise all IP Rights that vest in the Contractor pursuant to paragraph 3 for the purpose of planning, designing and constructing or otherwise implementing any project other than the Project, and for any purpose set out in paragraph 5 as it relates to such other project. In the event that Canada exercises such IP Rights in an other project, and provided that Canada does not already have equivalent rights under a previous contract or otherwise, Canada agrees to pay to the Contractor reasonable compensation determined in accordance with current industry practice and having regard to Canada's contribution to the cost of development of the Foreground. The Contractor shall ensure that in any sale, assignment, transfer or licence of any of the IP Rights that vest in the Contractor under this contract, the purchaser, assignee, transferee or licensee agrees to be bound by the terms of this provision and to accept reasonable compensation as is contemplated herein. The Contractor shall also ensure that any such purchaser, assignee, transferee or licensee of the IP Rights is required to impose the same obligations on any subsequent purchaser, transferee, assignee or licensee.

7. Licence to Background

Without limiting any implied licences that may otherwise vest in Canada, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free Licence to exercise such of the IP Rights in any Background incorporated into the Work or necessary for the performance of the Work as may be required

- (a) for the purposes contemplated in paragraphs 5 and 6;
- (b) for disclosure to any contractor engaged by Canada , or bidder for such a contract, to be used solely for a purpose set out in paragraphs 5 and 6; and the Contractor agrees to make any such Background available to Canada upon request.

8. Canada's Right to Disclose and Sub-license

The Contractor acknowledges that Canada may wish to award contracts, which may include a competitive process, for any of the purposes contemplated in paragraphs 5, 6 and 7. The Contractor agrees that Canada's licence in relation to the IP Rights in the Foreground and in the Background, includes the right to disclose that Foreground and Background to bidders for such contracts, and to sub-license or otherwise authorize the use of that Foreground and Background by any contractor or consultant engaged by Canada for the purpose of carrying out such a contract.

9. Contractor's Right to Grant Licence

- (a) The Contractor represents and warrants that the Contractor has, or the Contractor shall obtain without delay, the right to grant to Canada the licence to exercise the IP Rights in the Foreground and the Background as required by the contract.
- b) Where the IP Rights in any Background or Foreground are or will be owned by a Designer , the Contractor shall either obtain a licence from that Designer that permits compliance with paragraphs 5, 6 and 7 or shall arrange for the Designer to convey directly to Canada the same rights by execution of the form provided for that purpose by Canada no later than the time of disclosure to Canada of that Background and Foreground.

10. Trade Secrets and Confidential Information

The Contractor shall not use or incorporate any trade secrets or confidential information in any Foreground or Background used or created in performance of this contract.

11. Canada Supplied Information

- (a) Where performance of the Design Services involves the preparation of a compilation using information supplied by Canada, then the IP Rights that shall vest under paragraph 3 shall be restricted to the IP Rights in Foreground that are capable of being exploited without the use of the information supplied by Canada. All IP Rights in any compilation, the Foreground in which cannot be exploited without the use of such Canada supplied information shall vest in Canada. The Contractor agrees that the Contractor shall not use or disclose any Canada supplied information for any purpose other than completing the performance of the Work . The Contractor shall maintain the confidentiality of such information. Unless the contract otherwise expressly provides, the Contractor shall deliver to Canada all such information together with every copy, draft, working paper and note thereof that contains such information upon the completion or termination of the contract, or at such earlier time as Canada may require.
- (b) If the Contractor wishes to make use of any Canada supplied information that was supplied for purposes of the contract, for the commercial exploitation or further development of any

of the Foreground, then the Contractor may make a written request for a licence to exercise the required IP Rights in that Canada supplied information, to Canada. The Contractor shall give Canada an explanation as to why such a licence is required. Should Canada agree to grant such a licence, it shall be on terms and conditions to be negotiated between the parties including payment of compensation to Canada.

12. Transfer of IP Rights

- (a) If Canada takes the Work out of the Contractor's hands in accordance with GC 7 of the General Conditions, in whole or in part, or if the Contractor fails to disclose any Foreground in accordance with paragraph 2, Canada may upon reasonable notice, require the Contractor to convey to Canada all of the IP Rights in the Foreground or in the case of a failure to disclose, all the IP Rights in the Foreground not provided. The IP Rights to be conveyed shall include the IP Rights in any Foreground that have vested or are to vest in a Designer. In the case of IP Rights in Foreground which have been sold or assigned to a party other than a Designer, the Contractor shall not be obligated to convey those IP Rights to Canada, but shall pay to Canada on demand an amount equal to the consideration which the Contractor received from the sale or assignment of the IP Rights in that Foreground or, in the case of a sale or assignment was not at arm's length, the fair market value of the IP Rights in that Foreground, in each case including the value of future royalties or licence fees.
- (b) In the event of the issuance by Canada of a notice referred to in (a), the Contractor shall, at the Contractor's own expense and without delay, execute such conveyances or other documents relating to title to the IP Rights as Canada may require, and the Contractor shall, at Canada's expense, afford Canada all reasonable assistance in the preparation of applications and in the prosecution of any applications for, or any registration of, any IP Right in any jurisdiction, including without limitation the assistance of the inventor in the case of Inventions.
- (c) Until the Contractor completes the performance of the Work and discloses all of the Foreground in accordance with paragraph 2, and subject to the provisions of GC 1.10 National Security, the Contractor shall not, without the prior written permission of Canada, sell, assign or otherwise transfer title to the IP Rights in any of the Foreground, or license or otherwise authorize the use of the IP Rights in any of the Foreground by any person.
- (d) In any sale, assignment, transfer or licence of IP Rights in Foreground by the Contractor except a sale or licence for end use of a product based on Foreground, the Contractor shall impose on the other party all of its obligations to Canada in relation to the IP Rights in the Foreground and any restrictions set out in the contract on the use or disposition of the IP Rights in the Foreground (and, if applicable, the Foreground itself), including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee. The Contractor shall promptly notify Canada of the name, address and other pertinent information in regard to any transferee, assignee or licensee.

GC2 ADMINISTRATION OF THE CONTRACT

GC2.1 DEPARTMENTAL REPRESENTATIVES AUTHORITY

- 1) Canada shall designate a Departmental Representative and shall notify the Contractor of the name, address and telephone number of the Departmental Representative.

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- 2) The Departmental Representative shall perform Canada's duties and functions under the contract.
 - 3) The Departmental Representative shall be authorized to issue notices, instructions and directions to the Contractor and to accept on behalf of Canada any notice, order or other communication from the contractor relating to the Work.
 - 4) The Departmental Representative shall, within a reasonable time, review and respond to submissions made by the Contractor in accordance with the requirements of the Contract.

GC2.2 INTERPRETATION OF CONTRACT

- 1) If, at any time before Canada has issued a Certificate of Completion, any question arises between the parties about whether anything has been done as required by the Contract or about what the Contractor is required by the Contract to do, and in particular but without limiting the generality of the foregoing, about
 - (a) the meaning of anything in the Project Manual;
 - (b) the meaning to be given to the Project Manual in case of any error therein, omission therefrom, or obscurity or discrepancy in their wording or intention;
 - (c) whether or not the quality or quantity of any Material or workmanship supplied or proposed to be supplied by the Contractor meets the requirements of the Contract;
 - (d) whether or not the labour, Plant or Material performed, used and supplied by the Contractor for performing the Work and carrying out the Contract are adequate to ensure that the Work shall be performed in accordance with the Contract and that the Contract shall be carried out in accordance with its terms;
 - (e) what quantity of any of the Work has been completed by the Contractor; or
 - (f) the timing and scheduling of the various phases of the performance of the Work as specified in the Contract;

the question shall be decided, subject to the provisions of GC8, " Dispute Resolution", by Canada.

- 2) The Contractor shall perform the Work in accordance with any decisions of Canada that are made under paragraph 1) of GC2.2 and in accordance with any consequential directions given by Canada.
- 3) If the Contractor fails to comply with any instruction or direction issued by Canada pursuant to the Contract, Canada may employ such methods as Canada deems advisable to do what the Contractor failed to do, and the Contractor shall, on demand, pay Canada an amount that is equal to the aggregate of all costs, expenses and damages incurred or sustained by Canada by reason of the Contractor's failure to comply with such instruction or direction, including the cost of any methods employed by Canada in doing what the Contractor failed to do.

GC2.3 NOTICES

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- 1) Subject to paragraph 3) of GC2.3, any notice, order or other communication may be given in any manner, and if required to be in writing, shall be addressed to the party to whom it is intended at the address in the Contract or at the last address of which the sender has received written notice in accordance with this section.
 - 2) Any notice, order or other communication given in writing in accordance with paragraph 1 of GC2.3 shall be deemed to have been received by either party
 - (a) if delivered personally, on the day that it was delivered;
 - (b) if forwarded by mail, on the earlier of the day it was received or the sixth day after it was mailed; and
 - (c) if forwarded by facsimile or electronic mail, 24 hours after it was transmitted.
 3. A notice given under GC7.1, "Taking the Work out of the Contractor's Hands", GC7.2, "Suspension of Work" and GC7.3, "Termination of Contract", shall be given in writing and, if delivered personally, shall be delivered, if the Contractor is a sole proprietor, to the Contractor or, if the Contractor is a partnership or corporation, to an officer thereof.

GC2.4 SITE MEETINGS

- 1) In consultation with Canada, the Contractor shall arrange site meetings at regular intervals, with all involved parties who are to attend, in order to ensure, among other things, the proper co-ordination of the Work.

GC2.5 REVIEW AND INSPECTION OF WORK

- 1) Canada shall review the Work to determine if it is proceeding in conformity with the Contract and to record the necessary data to make an assessment of the value of Work completed. Canada shall measure and record the quantities of labour, Plant and Material performed, used or supplied by the Contractor in performing the Work or any part thereof that is subject to a Unit Price Arrangement and, on request, shall inform the Contractor of those measurements, and permit the Contractor to inspect any records pertaining thereto.
- 2) Canada shall reject Work or Material which in Canada's opinion does not conform to the requirements of the Contract, and shall require inspection or testing of Work, whether or not such Work is fabricated, installed, or completed. If such Work is not in accordance with the requirements of the Contract, the Contractor shall correct the Work and shall pay Canada, on demand, all reasonable costs and expenses that were incurred by Canada in having the examination performed.
- 3) The Contractor shall provide Canada with access to the Work and its site at all times, and at all times shall provide sufficient, safe, and proper facilities for the review and inspection of the Work by persons authorized by Canada and any representatives of those authorities having jurisdiction. If parts of the Work are in preparation at locations other than the site of the Work, Canada shall be given access to such Work whenever it is in progress.
- 4) The Contractor shall furnish Canada with such information respecting the performance of the Contract as Canada may require, and render every possible assistance to enable Canada to verify that the Work is performed in accordance with the Contract, carry out any other duties and exercise any powers in accordance with the Contract.

- 5) If Work is designated for tests, inspections, or approvals in the Contract or by Canada's instructions, or by laws or ordinances of the place of the Work, the Contractor shall give Canada reasonable notice of when such Work shall be ready for review and inspection. The Contractor shall arrange for and shall give Canada reasonable notice of the date and time of inspections, tests or approvals.
- 6) If the Contractor covers, or permits to be covered, Work that has been designated for tests, inspections or approvals before such tests, inspections or approvals are made, completed or given, the Contractor shall, if so directed by Canada, uncover such Work, have the inspections, tests or approvals satisfactorily made, completed or given and make good the covering of the Work at the Contractor's expense.

GC2.6 SUPERINTENDENT

- 1) Prior to commencing the Work, the Contractor shall designate a Superintendent and shall notify Canada of the name, address and telephone number of the Superintendent. The Contractor shall keep the Superintendent at the Work site during working hours until the Work has reached completion.
- 2) The Superintendent shall be in full charge of the operations of the Contractor during the performance of the Work and shall be authorized to accept on behalf of the Contractor any notice, order or other communication given to the Superintendent or the Contractor relating to the Work.
- 3) Upon request of Canada, the Contractor shall remove any Superintendent who, in the opinion of Canada, is incompetent or has been guilty of improper conduct, and shall forthwith designate another Superintendent who is acceptable to Canada.
- 4) The Contractor shall not substitute a Superintendent without the written consent of Canada. If a Superintendent is substituted without such consent, Canada shall be entitled to refuse to issue any documentation or certification relating to progress payments, Substantial Performance or Completion of the Work until the Superintendent has returned to the Work site or another Superintendent who is acceptable to Canada has been substituted.

GC2.7 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT OF LABOUR

- 1) For the purposes of this clause, "persons" include the Contractor, its subcontractors and suppliers at any tier and their respective employees, agents, licensees or invitees and any other individual involved in the performance of the Work or granted access to the Work site. A "person" includes any partnership, proprietorship, firm, joint venture, consortium and corporation.
- 2) Without restricting the provisions of paragraph 3) of GC2.6, " Superintendent", the Contractor shall not refuse to employ and shall not discriminate in any manner against any person because
 - (a) of that person's race, national origin, colour, religion, age, sex or marital status;
 - (b) of the race, national origin, colour, religion, age, sex, or marital status of any person having any relationship or association with that person; or
 - (c) a complaint has been made or information has been given by or in respect of that person relating to an alleged failure by the Contractor to comply with subparagraphs 2)(a) and 2)(b) of GC2.7.

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- 3) Within two working days immediately following receipt of a written complaint pursuant to paragraph 2) of GC2.7, the Contractor shall
 - (a) cause to have issued a written direction to the person or persons named by the complainant to cease all actions that form the basis of the complaint;
 - (b) forward a copy of the complaint to Canada by registered mail or courier service; and
 - (c) when the Labour Conditions are applicable under the circumstances of the complaint, forward a copy of the complaint to HRSDC - Labour to the attention of the appropriate Director as described in the Labour Conditions ("HRSDC - Labour" means the labour component of the federal Department of Human Resources and Social Development).
 - 4) Within 24 hours immediately following receipt of a direction from Canada to do so, the Contractor shall cause to have removed from the site of the Work and from the performance of Work under the Contract, any person or persons whom Canada believes to be in breach of the provisions of paragraph 2) of GC2.7.
 - 5) No later than 30 days after receipt of the direction referred to in paragraph 4) of GC2.7, the Contractor shall cause the necessary action to be commenced to remedy the breach described in the direction.
 - 6) If a direction is issued pursuant to paragraph 4) of GC2.7, Canada may withhold from monies that are due and payable to the Contractor or setoff pursuant to GC5.10, "Right of Setoff", whichever is applicable, an amount representing the sum of the costs and payment referred to in paragraph 8) of GC2.7.
 - 7) If the Contractor fails to proceed in accordance with paragraph 5) of GC2.7, Canada shall take the necessary action to have the breach remedied, and shall determine all supplementary costs incurred by Canada as a result.
 - 8) Canada may make a payment directly to the complainant from monies that are due and payable to the Contractor upon receipt from the complainant of
 - (a) a written award issued pursuant to the federal Commercial Arbitration Act, R.S. 1985, c. 17 (2nd Supp.);
 - (b) a written award issued pursuant to the Canadian Human Rights Act, R.S. 1985, c. H-6;
 - (c) a written award issued pursuant to provincial or territorial human rights legislation; or
 - (d) a judgement issued by a court of competent jurisdiction.
 - 9) If Canada is of the opinion that the Contractor has breached any of the provisions of this clause, Canada may take the Work out of the Contractor's hands pursuant to GC7.1, "Taking the Work out of the Contractor's Hands".
 - 10) Subject to paragraph 7) of GC3.6, "Subcontracting", the Contractor shall ensure that the provisions of this clause are included in all agreements and contracts entered into as a consequence of the Work.

GC2.8 ACCOUNTS AND AUDITS

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- 1) The Contractor shall, in addition to the requirements expressed in paragraph 6) of GC3.4, "Execution of the Work", maintain full records of the Contractor's estimated and actual cost of the Work together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, and shall make them available on request to audit and inspection by Canada and the Deputy Receiver General for Canada or by persons designated to act on behalf of either or both of them.
 - 2) The Contractor shall allow any of the persons referred to in paragraph 1) of GC2.8 to make copies of and take extracts from any of the records and material, and shall furnish such persons or entities with any information those persons or entities may require from time to time in connection with such records and material.
 - 3) The Contractor shall maintain and keep the records intact until the expiration of two years after the date that a Certificate of Completion has been issued or until the expiration of such other period of time as Canada may direct.
 - 4) The Contractor shall cause all subcontractors at any tier and all other persons directly or indirectly controlled by or affiliated with the Contractor and all persons directly or indirectly having control of the Contractor to comply with the requirements of this clause as if they were the Contractor.

GC3 EXECUTION AND CONTROL OF THE WORK

GC3.1 PROGRESS SCHEDULE

- 1) The *Contractor* shall:
 - (a) prior to the submission of the *Contractor's* first progress claim, prepare and submit to *Canada* a progress schedule in accordance with the requirements set out in the Contract ;
 - (b) monitor the progress of the *Work* relative to the schedule and update the schedule as stipulated by the Contract Documents;
 - (c) advise *Canada* of any revisions required to the schedule as the result of any extension of time for completion of the *Contract* which was approved by *Canada*, and
 - (d) at the time of issuance of a *Certificate of Substantial Performance*, prepare and submit to *Canada* an update of any schedule clearly showing a detailed timetable that is acceptable to *Canada* for the completion of any unfinished *Work* and the correction of all listed defects.

GC3.2 PROJECT DESIGN AND ROLE OF THE DESIGNER

- 1) The *Contractor* shall report promptly to *Canada* any error, inconsistency, or omission the *Contractor* may discover when reviewing the contract documents provided by *Canada*. In making a review, the *Contractor* does not assume any responsibility to *Canada* or *Canada* for the accuracy of the review. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the contract documents prepared by or on behalf of *Canada* which the *Contractor* did not discover.

- 2) The *Contractor* shall employ or otherwise engage the architects, professional engineers and other consultants required to provide the *Design Services* to be performed by the *Designer* under the *Contract*.
- 3) The *Contractor* shall perform or furnish all necessary architectural services and structural, electrical, mechanical and other engineering services, and shall complete the design of the *Work* and prepare *Construction Documents* to permit the *Construction* and completion of the *Work*, all in accordance with the *Contract*.
- 4) The *Contractor* shall provide the co-ordination required to integrate all parts of the *Design Services*, and shall review with *Canada* reasonable alternative approaches to completion of the design of the *Work*.
- 5) During the progress of the *Work*, the *Contractor* shall provide or furnish *Canada* with design development documents and other submissions in furtherance of and in compliance with the *Request for Proposal* and *Proposal* and any qualification in the *Proposal* expressly accepted by *Canada*. The documents and submissions shall be submitted for review and acceptance in orderly sequence and sufficiently in advance so as to cause no delay in the *Work*.
- 6) *Canada* shall promptly review all documents and submissions referred to in paragraph 5) for conformity with the *Proposal* and *Request for Proposal*. It is understood and agreed that *Canada* can require the *Contractor*, at no additional expense to *Canada*, to have changes made to ensure that the *Work* shall be completed in accordance with the *Contract*.
- 7) *Canada* may issue additional instructions to the *Contractor* by means of plans, drawings or otherwise, as *Canada* may deem necessary for the performance of the *Work*. All such additional instructions shall be consistent with the *Contract*. The *Contractor* shall perform the *Work* in conformity with the additional instructions, and the *Contractor* shall not perform any such work without such additional instructions. In giving additional instructions, *Canada* may make minor changes to the *Work*, not inconsistent with the *Contract*, for which the *Contractor* shall not be entitled to claim any extra compensation from *Canada*.
- 8) Based on the accepted design development documents and other submissions, the *Contractor* shall furnish *Canada* with plans, drawings and specifications setting forth in detail the requirements for *Construction* of the *Work*. Once reviewed, accepted and signed by *Canada* and the *Contractor*, the plans, drawings and specifications shall be the *Construction Documents* for the purposes of the *Contract* and shall be part of the contract documents.
- 9) The *Contractor* shall cause the *Designer* to
 - (a) review the design, when required, with those public authorities having jurisdiction in order that the necessary consents, approvals, licences and permits referred to in GC1.8 LAWS, PERMITS AND TAXES may be applied for and obtained;
 - (b) on an ongoing basis, provide any required assurances to those authorities respecting conformance of the *Work* with the design approved for the issuance of any building permit;
 - (c) review the *Work* at intervals appropriate to the progress of *Construction* to determine and verify that the *Work* is proceeding in conformance with the *Contract*;

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- (d) estimate and certify the amounts owing to the *Contractor* from time to time in accordance with the provisions of GC5 TERMS OF PAYMENT and provide such estimates in writing to the *Departmental Representative*;
 - (e) prior to the issuance of a *Certificate of Substantial Performance*, review the *Work* and provide Canada with a written declaration describing those parts of the *Work* that, in the *Designer's* professional opinion, are completed in conformance with the Contract, and listing those parts of the *Work* that, in the designer's professional opinion, are not completed in conformance with the Contract;
 - (f) prior to issuance of a *Certificate of Completion*, review the *Work* and provide Canada with
 - (i) a written declaration attesting to the completeness of the *Work*, and
 - (ii) if the *Work* or a portion of the *Work* is subject to a *Unit Price Arrangement*, a certificate of measurement of the final quantities of the *Work*.

GC3.3 CONSTRUCTION SAFETY

- 1) Subject to GC3.7, "Construction by Other Contractors or Workers", the Contractor shall be solely responsible for construction safety at the place of the Work and for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. In any emergency, the Contractor shall either stop the Work, make changes or order extra work to ensure the safety of life and the protection of the Work and neighbouring property.
- 2) Prior to commencing the Work, the Contractor shall notify the authorities having jurisdiction for construction safety at the site of the Work with respect to the intended commencement of the Work, and shall provide such authority with whatever additional information may be required by that authority.

GC3.4 EXECUTION OF THE WORK

- 1) It is acknowledged and agreed by the *Contractor* that any information contained in the *Request for Proposal* regarding soil conditions at the site of the *Work* was provided for information purposes only and that the *Contractor* is required to undertake its own geotechnical investigations for the purpose of determining the soil conditions and obtaining other information which may be required for foundation design or construction methodology purposes. The *Contractor* shall not be entitled to any additional compensation, and shall not have any claim against *Canada*, as a result of any difference between the actual soil conditions encountered by the *Contractor* at the site of the *Work*, and any information relating to soil conditions contained in the *Request for Proposal*.
- 2) The *Contractor* shall provide or furnish, and pay for, all professional services, *Design Services*, labour, *Plant*, *Material*, tools, construction machinery and equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3) Subject to paragraph 4), the *Contractor* shall have complete care, custody and control of the *Work* and shall direct and supervise the *Work* so as to ensure conformity with the Contract. The *Contractor* shall be responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the *Work*, and shall ensure that all necessary safety precautions and protection are maintained throughout the *Work*. In any

emergency, the *Contractor* shall either stop the *Work*, make changes or order extra work to ensure the safety of life and the protection of the *Work* and neighboring property.

- 4) When requested in writing by Canada, the *Contractor* shall make appropriate alterations in the method, *Plant* or work force at any time Canada considers the *Contractor's* actions to be unsafe, or damaging to either the *Work*, existing facilities, persons at the site of the work or the environment.
- 5) The *Contractor* shall have sole responsibility for the design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and for the construction methods required in their use. The *Contractor* shall engage and pay for registered professional engineering personnel, skilled in the appropriate discipline to perform these functions where required by law or by the Contract, and in all cases where such temporary facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 6) The *Contractor* shall keep at least one copy of current contract documents, submittals, reports, and records of meetings at the place of the *Work*, in good order and available to *Canada*.
- 7) Except for any part of the *Work* that is necessarily performed away from or off the site of the *Work*, the *Contractor* shall confine *Plant*, storage of *Material*, and operations of employees to limits indicated by laws, ordinances, permits or the contract documents.

GC3.5 MATERIAL

- 1) Unless otherwise specified in the *Contract*, all *Material* incorporated in the *Work* shall be new.
- 2) Subject to paragraph 3) following, if a specified reused, refurbished, or recycled item of *Material* is not available, the *Contractor* shall apply to Canada to substitute a similar item for the one specified.
- 3) If Canada agrees that the *Contractor's* application for substitution of a reused, refurbished, or recycled item is warranted, and that the substitute item is of acceptable quality and value to that specified and is suitable for the intended purpose, Canada may approve the substitution, subject to the following:
 - (a) the request for substitution shall be made in writing to Canada and shall be substantiated by information in the form of the manufacturer's literature, samples and other data which may be required by Canada;
 - (b) the *Contractor* shall make the request for substitution in a manner that shall not negatively affect the progress schedule of the *Contract* and well in advance of the time the item of *Material* must be ordered;
 - (c) substitution of *Material* shall be permitted only with the prior written approval of Canada, and any substituted items that are supplied or installed without such approval shall be removed from the site of the *Work* at the expense of the *Contractor*, and specified items installed at no additional cost to Canada; and
 - (d) the *Contractor* shall be responsible for all additional expenses incurred by Canada, the *Contractor*, its designers, subcontractors and suppliers at any tier due to the *Contractor's* use of the substitute.

GC3.6 SUBCONTRACTING

- 1) Subject to the provisions of this clause, the *Contractor* may subcontract any part of the *Work* but not the whole of the work.
- 2) The *Contractor* shall notify Canada in writing of the *Contractor's* intention to subcontract.
- 3) A notification referred to in paragraph 2) shall identify the part of the *Work*, and the *Subcontractor* with whom the *Contractor* intends to subcontract.
- 4) Canada may for reasonable cause, object to the intended subcontracting by notifying the *Contractor* in writing within six (6) days of receipt by Canada of a notification referred to in paragraph 2).
- 5) If Canada objects to a subcontracting, the *Contractor* shall not enter into the intended subcontract.
- 6) The *Contractor* shall not change nor permit to be changed the *Designer*, a *Subcontractor* engaged by the *Contractor* in accordance with this clause, or a person or entity named in the *Contractor's Proposal* and accepted by Canada as part of the *Contractor's Proposal*, without the written consent of Canada.
- 7) The *Contractor* shall ensure that all the terms and conditions of the *Contract* that are of general application shall be incorporated in every other contract issued as a consequence of the *Contract*, at whatever tier, except those contracts issued solely to *Suppliers* at any tier for the supply of *Plant* or *Material*.
- 8) Neither a subcontracting nor Canada's consent to a subcontracting shall be construed to relieve the *Contractor* from any obligation under the *Contract* or to impose any liability upon Canada.

GC3.7 CONSTRUCTION BY OTHER CONTRACTORS OR WORKERS

- 1) Canada reserves the right to send other contractors or workers, with or without *Plant* and *Material*, onto the site of the *Work*.
- 2) When other contractors or workers are sent on to the site of the *Work*, Canada shall:
 - (a) to the extent it is possible, enter into separate contracts with the other contractors under conditions of *Contract* that are compatible with the conditions of the *Contract*;
 - (b) ensure that the insurance coverage provided by the other contractors is co-ordinated with the insurance coverage of the *Contractor* as it affects the *Work*; and
 - (c) take all reasonable precautions to avoid labour disputes or other disputes arising from the work of the other contractors or workers.
- 3) When other contractors or workers are sent on to the site of the *Work*, the *Contractor* shall:
 - (a) co-operate with them in the carrying out of their duties and obligations;
 - (b) co-ordinate and schedule the *Work* with the work of the other contractors and workers;
 - (c) participate with other contractors and workers in reviewing their construction schedules when directed to do so;

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- (d) where part of the *Work* is affected by or depends upon for its proper execution the work of other contractors or workers, promptly report to *Canada* in writing and prior to proceeding with that part of the *Work*, any apparent deficiencies in such work. Failure by the *Contractor* to so report shall invalidate any claims against *Canada* by reason of the deficiencies in the work of other contractors or workers except those deficiencies not then reasonably discoverable; and
 - (e) when designated as being responsible for construction safety at the place of the work in accordance with the applicable provincial or territorial laws, carry out its duties in that role and in accordance with those laws.
- 4) If, when entering into the *Contract*, the *Contractor* could not have reasonably foreseen nor anticipated the sending of other contractors or workers on to the site of the *Work* and provided the *Contractor*.
- (a) incurs extra expense in complying with the requirements of paragraph 3), and
 - (b) gives *Canada* written notice of a claim for that extra expense within thirty (30) days of the date that the other contractors or workers were sent onto the site of the *Work*

Canada shall pay the *Contractor* the cost of the extra labour, *Plant* and *Material* that was necessarily incurred, calculated in accordance with GC6.4 DETERMINATION OF PRICE.

GC3.8 LABOUR AND FAIR WAGES

- 1) The Labour Conditions and the Schedules of Wage Rates form part of these General Conditions.
- 2) To the extent to which they are available, consistent with proper economy and the expeditious carrying of the *Work* the *Contractor* shall, in the performance of the *Work*, employ a reasonable proportion of persons who have been on active service with the Armed Forces of *Canada* and have been honourably discharged therefrom.
- 3) The *Contractor* shall maintain good order and discipline among the *Contractor's* employees and workers engaged in the *Work* and shall not employ on the site of the *Work* anyone not skilled in the tasks assigned.

GC3.9 MATERIAL, PLANT AND REAL PROPERTY BECOME PROPERTY OF CANADA

- 1) Subject to paragraph 9) of GC1.8 LAWS PERMITS AND TAXES, all *Material* and *Plant* and the interest of the *Contractor* in all real property, licences, powers and privileges purchased, used or consumed by the *Contractor* for the *Construction* of the *Work* shall immediately after the time of their purchase, use or consumption be the property of *Canada* for the purposes of the *Work* and they shall continue to be the property of *Canada*
 - (a) in the case of *Material*, until *Canada* indicates that it will not be required for the *Work*, and
 - (b) in the case of *Plant*, real property, licences, powers and privileges, until *Canada* indicates that the interest vested in *Canada* therein is no longer required for the purposes of the *Work*.

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- 2) *Material* or *Plant* that is the property of *Canada* by virtue of paragraph 1) shall not be taken away from the site of the *Work* nor used or disposed of except for the purposes of the *Work* without the written consent of the *Canada*.
 - 3) *Canada* is not liable for loss of nor damage from any cause to the *Material* or *Plant* referred to in paragraph 1), and the *Contractor* is liable for such loss or damage notwithstanding that the *Material* or *Plant* is the property of *Canada*.

GC3.10 DEFECTIVE WORK

- 1) The *Contractor* shall promptly remove from the site of the *Work* and replace or re-execute defective *Work* whether or not the defective *Work* has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective *Material*, or damage through carelessness or other act or omission of the *Contractor*.
- 2) The *Contractor*, at the *Contractor's* expense, shall promptly make good other work destroyed or damaged by such removals or replacements.
- 3) If, in the opinion of *Canada* it is not expedient to correct defective *Work* or *Work* not performed as provided for in the Contract, *Canada* may deduct from the amount otherwise due to the *Contractor* the difference in value between the work as performed and that called for by the Contract Documents.
- 4) The failure of *Canada* to reject any defective *Work* or *Material* shall not constitute acceptance of the defective *Work* or *Material*.

GC3.11 USE OF THE WORK AND CLEANUP OF SITE

- 1) The *Contractor* shall be responsible for analyzing conditions at the site of the *Work* and selecting the appropriate design and construction solution for the successful completion of the *Work*.
- 2) Except for any part of the *Work* which is necessarily performed away or off the site of the *Work*, the *Contractor* shall confine *Plant*, storage of *Material*, and operations of employees to limits indicated by laws, ordinances, permits or the Contract.
- 3) The *Contractor* shall not load or permit to be loaded any part of the *Work* or its site with a weight or force that will endanger the safety of the *Work*.
- 4) The *Contractor* shall maintain the *Work* and its site in a tidy condition and free from an accumulation of waste material and debris.
- 5) Before the issue of a *Certificate of Substantial Performance*, the *Contractor* shall remove waste material and debris, and all *Plant* and *Material* not required for the performance of the remaining work and, unless otherwise stipulated in the Contract, shall cause the *Work* and its site to be clean and suitable for occupancy by *Canada*.
- 6) Before the issue of a *Certificate of Completion*, the *Contractor* shall remove all surplus plant and materials, and any waste products and debris from the site of the *Work*.
- 7) The *Contractor's* obligations described in paragraphs 4) to 6) do not extend to waste products and other debris caused by *Canada's* servants, or by other contractors and workers referred to in GC3.7 CONSTRUCTION BY OTHER CONTRACTORS OR WORKERS.

GC3.12 WARRANTY AND RECTIFICATION OF DEFECTS IN WORK

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- 1) Without restricting any warranty or guarantee implied or imposed by law or contained in the Contract, the *Contractor* shall, at the *Contractor's* expense
 - (a) rectify and make good any defect or fault that appears in the *Work* or comes to the attention of *Canada* with respect to those parts of the *Work* accepted in connection with the *Certificate of Substantial Performance* within 12 months from the date of Substantial Performance;
 - (b) rectify and make good any defect or fault that appears in or comes to the attention of *Canada* in connection with those parts of the *Work* described in the *Certificate of Substantial Performance* within 12 months from the date of the *Certificate of Completion*.
 - (c) transfer and assign, to *Canada*, any subcontractor, manufacturer or supplier extended warranties or guarantees implied or imposed by law or contained in the Contract covering periods beyond the 12 months stipulated above. Extended warranties or guarantees referred to herein shall not extend the 12-month period whereby the *Contractor*, except as may be provided elsewhere in the Contract, must rectify and make good any defect or fault that appears in the *Work* or comes to the attention of *Canada*.
 - (d) provide, to *Canada* prior to the issuance of the *Certificate of Completion*, a list of all extended warranties and guarantees referred to in paragraph (c) above.
 - 2) *Canada* may direct the *Contractor* to rectify and make good any defect or fault referred to in paragraph 1) or covered by any other expressed or implied warranty or guarantee, and the *Contractor* shall rectify and make good such defect within the time stipulated in the direction.
 - 3) A direction referred to in paragraph 2) shall be in writing and shall be given to the *Contractor* in accordance with GC2.3 NOTICES.

GC4 PROTECTIVE MEASURES

GC4.1 PROTECTION OF WORK AND PROPERTY

- 1) The *Contractor* shall protect the *Work* and its site against loss or damage from any cause and shall similarly protect all Material, Plant and real property under the *Contractor's* care, custody and control whether or not such Material, Plant and real property are supplied by *Canada* to the *Contractor*.
- 2) The *Contractor* shall provide all facilities necessary for the purpose of maintaining security, and shall assist any person authorized by *Canada* to inspect or to take security measures in respect of the *Work* and its site.
- 3) *Canada* may direct the *Contractor* to do such things and to perform such work as *Canada* considers reasonable and necessary to ensure compliance with or to remedy a breach of paragraph 1) or paragraph 2), and the *Contractor* shall comply with such direction.

GC4.2 PRECAUTIONS AGAINST DAMAGE, INFRINGEMENT OF RIGHTS, FIRE AND OTHER HAZARDS

- 1) The *Contractor* shall do whatever is necessary to ensure that
 - (a) no person, property, material, right, easement or privilege is injured, damaged or infringed upon by reasons of the *Contractor's* activities in performing the *Work*;
 - (b) pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted nor endangered by the performance or existence of the *Work*, *Material* or *Plant*;
 - (c) fire hazards in or about the site of the *Work* are eliminated and, any fire is promptly extinguished;
 - (d) the health and safety of all persons employed in the performance of the *Work* is not endangered by the method nor means of their performance;
 - (e) adequate medical services are available to all persons employed on the *Work* or its site at all times during the performance of the *Work*;
 - (f) adequate sanitation measures are taken in respect of the *Work* and its site; and
 - (g) all stakes, buoys and marks placed on the *Work* or its site by or under the authority of *Canada* are protected and are not removed, defaced, altered or destroyed.
- 2) *Canada* may direct the *Contractor* to do such things and to perform such work as *Canada* considers reasonable and necessary to ensure compliance with or to remedy a breach of paragraph 1), and the *Contractor* shall comply with the direction of *Canada*.

GC4.3 MATERIAL, PLANT AND REAL PROPERTY SUPPLIED BY CANADA

- 1) Subject to paragraph 2) , the *Contractor* is liable to *Canada* for any loss of or damage to *Material*, *Plant* or real property that is supplied or placed in the care, custody and control of the *Contractor* by *Canada* for use in connection with the *Contract*, whether or not that loss or damage is attributable to causes beyond the *Contractor's* control.
- 2) The *Contractor* is not liable to *Canada* for any loss or damage to *Material*, *Plant* or real property referred to in paragraph 1) if that loss or damage results from and is directly attributable to reasonable wear and tear.
- 3) The *Contractor* shall not use any *Material*, *Plant* or real property supplied by *Canada* except for the purpose of performing the *Contract*.
- 4) When the *Contractor* fails to make good any loss or damage for which the *Contractor* is liable under paragraph 1) within a reasonable time, *Canada* may cause the loss or damage to be made good at the *Contractor's* expense, and the *Contractor* shall thereupon be liable to *Canada* for the cost thereof and shall, on demand, pay to *Canada* an amount equal to that cost.
- 5) The *Contractor* shall keep records of all *Material*, *Plant* and real property supplied by *Canada* as *Canada* requires and shall satisfy the *Canada*, when requested, that such *Material*, *Plant* and real property are at the place and in the condition in which they ought to be.

GC4.4 CONTAMINATED SITE CONDITIONS

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- 1) For the purposes of this clause, a contaminated site condition exists when a solid, liquid, gaseous, thermal or radioactive irritant or contaminant, or other hazardous or toxic substance or material, including moulds and other form of fungi is present at the site of the *Work* to an extent that constitutes a hazard, or potential hazard, to the environment, property, or the health or safety of any person.
 - 2) If the *Contractor* encounters a contaminated site condition of which the *Contractor* is not aware or about which the *Contractor* has not been advised, or if the *Contractor* has reasonable grounds to believe that such a site condition exists at the site of the *Work*, the *Contractor* shall
 - (a) take all reasonable steps, including stopping the *Work*, to ensure that no person suffers injury, sickness or death, and that neither property nor the environment is injured or destroyed as a result of the contaminated site condition, and
 - (b) immediately notify Canada of the circumstances in writing, and
 - (c) take all reasonable steps to minimize additional costs which may accrue as a result of any work stoppage.
 - 3) Upon receipt of a notification from the *Contractor*, Canada shall promptly determine whether a contaminated site condition exists, and shall notify the *Contractor* in writing of any action to be taken, or work to be performed, by the *Contractor* as a result of Canada's determination.
 - 4) If the *Contractor's* services are required by Canada, the *Contractor* shall follow the direction of Canada with regard to any excavation, treatment, removal and disposal of the polluting substances or materials.
 - 5) Canada, at Canada's sole discretion, may enlist the services of experts and specialty contractors to assist in determining the existence of, and the extent and treatment of contaminated site conditions, and the *Contractor* shall allow them access and cooperate with them in the carrying out of their duties and obligations.
 - 6) Except as may be otherwise provided for in the *Contract*, the provisions of GC6.4 DETERMINATION OF PRICE shall apply.

GC5 TERMS OF PAYMENT

GC5.1 INTERPRETATION

In these Terms of Payment

- 1) The "payment period" means a period of 30 consecutive days or such other longer period as is agreed between the *Contractor* and Canada.
- 2) An amount is "due and payable" when it is due and payable by Canada to the *Contractor* according to GC5.4 PROGRESS PAYMENT, GC5.5 SUBSTANTIAL PERFORMANCE OF THE WORK, or GC5.6 FINAL COMPLETION;
- 3) An amount is overdue when it remains unpaid on the first day following the day upon which it is due and payable.

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- 4) The "date of payment" means the date of the negotiable instrument of an amount due and payable by the Receiver General for Canada.
 - 5) The "Bank Rate" means the rate of interest established by the Bank of Canada as the minimum rate at which it makes short term advances to members of the Canadian Payments Association.
 - 6) The "Average Bank Rate" means the simple arithmetic mean of the Bank Rate in effect at 4:00 p.m. Eastern Time each day during the calendar month which immediately precedes the calendar month in which payment is made.

GC5.2 AMOUNT PAYABLE

- 1) Subject to any other provisions of the *Contract*, *Canada* shall pay the *Contractor*, at the times and in the manner hereinafter set out, the amount by which the amounts payable by *Canada* to the *Contractor* in accordance with the *Contract* exceed the amounts payable by the *Contractor* to *Canada*, and the *Contractor* shall accept that amount as payment in full satisfaction for everything furnished and done by the *Contractor* in respect of the work to which the payment relates.
- 2) When making any payment to the *Contractor*, the failure of *Canada* to deduct an amount payable to *Canada* by the *Contractor* shall not constitute a waiver of the right to do so, or an admission of lack of entitlement to do so in any subsequent payment to the *Contractor*.
- 3) Should any payment be made by *Canada* in excess of what is owed to the *Contractor* for the actual work performed, the *Contractor* will reimburse *Canada* the excess immediately, with or without demand, and any amounts outstanding shall bear simple interest at the Average Bank rate plus 3 percent per annum from the date of overpayment until the day prior to the date of repayment by the *Contractor*.
- 4) No payment other than a payment that is expressly stipulated in the *Contract*, shall be made by *Canada* to the *Contractor* for any extra expense or any loss or damage incurred or sustained by the *Contractor*.

GC5.3 INCREASED OR DECREASED COSTS

- 1) The Contract Amount shall not be increased nor decreased by reason of any increase or decrease in the cost of the Work that is brought about by an increase or decrease in the cost of labour, Plant, Material or any wage adjustment arising pursuant to the Labour Conditions.
- 2) Notwithstanding paragraph 1) of GC5.3, if any change, including a new imposition or repeal, of any tax, customs or other duty, charge, or any similar imposition that is imposed under sales, customs or excise tax legislation of the Government of Canada or any Provincial or Territorial legislation, affects the cost of the Work to the *Contractor*, and occurs
 - (a) after the date of submission by the *Contractor* of its bid; or
 - (b) after the date of submission of the last revision, if the *Contractor's* bid was revised;
 - (c) the Contract Amount shall be adjusted in the manner provided in paragraph 3) of GC5.3.
- 3) If a change referred to in paragraph 2) of GC5.3 occurs, the Contract Amount shall be increased or decreased by an amount established by an examination by *Canada* of the relevant records of the *Contractor* referred to in GC2.8, "Accounts and Audits", to be the increase or decrease in the cost incurred by the *Contractor* that is directly attributable to that change.

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- 4) For the purpose of paragraph 2) of GC5.3, if a tax is changed after the tender closing, but public notice of the change has been given by the Minister of Finance or the corresponding Provincial or Territorial authority before that closing, the change shall be deemed to have occurred before the solicitation closing.
- 5) Notwithstanding paragraphs 2) to 4) of GC5.3, no adjustment to the Contract Amount in respect of the Work or a part thereof shall be made for a change in any imposition referred to in this section that occurs after the date required by the Contract for completion of the Work or that part of the Work.

GC5.4 PROGRESS PAYMENT

- 1) On the expiration of a payment period, the *Contractor* shall deliver to *Canada*
- (a) a written progress claim in a form acceptable to *Canada*, and certified by the *Designer*, that fully describes any part of the *Work* that has been completed, and any *Material* that was delivered to the *Work* site but not incorporated into the *Work*, during that payment period, and
 - (b) a completed and signed statutory declaration containing a declaration that up to the date of the progress claim, the *Contractor* has complied with all lawful obligations with respect to the Labour Conditions and that, in respect of the *Work*, all lawful obligations of the *Contractor* to its *Subcontractors*, *Suppliers* and the *Designer* (referred to collectively in the declaration as "subcontractors and suppliers") have been fully discharged.
- 2) Within 10 days of receipt of a progress claim and statutory declaration from the *Contractor*, *Canada* shall inspect, or cause to have inspected, the part of the *Work* and the *Material* described in the progress claim, and shall issue a progress report to the *Contractor*, that indicates the value of the part of the *Work* and the *Material* described in the progress claim that, in the opinion of *Canada*
- (a) is in accordance with the *Contract*, and
 - (b) was not included in any other progress report relating to the *Contract*.
- 3) Subject to GC5.2 AMOUNT PAYABLE and paragraph 5) following, *Canada* shall pay the *Contractor* an amount that is equal to 100% of the value that is indicated in *Canada's* progress report with respect to the provision of the *Design Services*, together with an amount that is equal to
- (a) 95% of the value that is indicated in *Canada's* progress report with respect to the *Construction*, if a labour and material payment bond has been furnished by the *Contractor*, or
 - (b) 90% of the value that is indicated in the progress report with respect to the *Construction*, if a labour and material payment bond has not been furnished by the *Contractor*.
- 4) *Canada* shall pay the amount referred to in paragraph 3) not later than
- (a) 30 days after the receipt by *Canada* of a progress claim and statutory declaration referred to in paragraph 1), or

- (b) 15 days after the *Contractor* has submitted to Canada a progress schedule or updated progress schedule in accordance with GC3.1 PROGRESS SCHEDULE,

whichever is later.

- 5) In the case of the *Contractor's* first progress claim, it is a condition precedent to Canada's obligation under paragraph 3) that the *Contractor* has provided all necessary documentation required by the Contract for the first progress claim.

GC5.5 SUBSTANTIAL PERFORMANCE OF THE WORK

- 1) If, at any time before the issuance of a *Certificate of Completion*, Canada determines that the *Work* has reached Substantial Performance as described in subparagraph 1) (b) of GC1.1.4 SUBSTANTIAL PERFORMANCE, Canada shall request the *Contractor* to provide a written declaration prepared and signed by the *Designer* in accordance with subparagraph 9)(e) of GC3.2 PROJECT DESIGN AND ROLE OF THE DESIGNER. Following receipt of the declaration, Canada shall inspect the *Work*, and if satisfied that the *Work* has reached Substantial Performance, shall issue a *Certificate of Substantial Performance* to the *Contractor*. The *Certificate of Substantial Performance* shall state the date of Substantial Performance and shall describe the parts of the *Work* not completed to the satisfaction of Canada, and all things that must be done by the *Contractor* before a *Certificate of Completion* is issued, and before the 12-month warranty period referred to in GC3.12 WARRANTY AND RECTIFICATION OF DEFECTS IN WORK shall commence for the said parts and all the said things.
- 2) The issuance of a *Certificate of Substantial Performance* does not relieve the *Contractor* from the *Contractor's* obligations under GC3.10 DEFECTIVE WORK.
- 3) Subject to GC5.2 AMOUNT PAYABLE and paragraph 4) following, Canada shall pay the *Contractor* the amount referred to in paragraph 1) of GC5.2 AMOUNT PAYABLE less the aggregate of
- (a) the sum of all payments that were made pursuant to GC5.4 PROGRESS PAYMENT;
 - (b) an amount that is equal to Canada's estimate of the cost to Canada of rectifying defects described in the *Certificate of Substantial Performance* ; and
 - (c) an amount that is equal to Canada's estimate of the cost to Canada of completing the parts of the *Work* described in the *Certificate of Substantial Performance* , other than defects listed therein.
- 4) Canada shall pay the amount referred to in paragraph 3) not later than
- (a) 30 days after the date of issue of a *Certificate of Substantial Performance* , or
 - (b) 15 days after the *Contractor* has delivered to Canada
 - (i) a statutory declaration containing a declaration by the *Contractor* that up to the date of the *Certificate of Substantial Performance* , the *Contractor* has complied with all lawful obligations with respect to the Labour Conditions, discharged all its lawful obligations to its *Subcontractors*, *Suppliers* and the *Designer* in respect of the work under the *Contract*, and discharged its lawful obligations referred to in GC1.8 LAWS, PERMITS AND TAXES, and

- (ii) evidence of compliance with workers' compensation legislation in accordance with GC1.9 WORKERS' COMPENSATION, and
- (iii) an update of the progress schedule in accordance with the requirements of GC3.1 PROGRESS SCHEDULE

whichever is later.

GC5.6 FINAL COMPLETION

- 1) When Canada is of the opinion that the *Work* has been completed, the *Contractor* shall, on request, cause the *Designer* to provide Canada with
 - (a) a written declaration attesting to the completeness of the *Work*, and
 - (b) if the *Work* or a portion of the *Work* is subject to a *Unit Price Arrangement*, a certificate of measurement of the final quantities of the *Work*

both to the satisfaction of Canada.
- 2) Within five (5) days of the receipt of satisfactory documentation described in paragraph 1), if Canada is satisfied that the *Contractor* has complied with the *Contract* and all orders and directions made pursuant thereto, and that the *Work* has been completed, Canada shall issue a *Certificate of Completion* to the *Contractor* and, if the *Work* or a portion of the *Work* is subject to a *Unit Price Arrangement*, Canada shall issue a *Final Certificate of Measurement* which shall be binding upon and conclusive between Canada and the *Contractor* as to the quantities referred to therein.
- 3) Subject to GC5.2 AMOUNT PAYABLE and paragraph 4) following, Canada shall pay the *Contractor* the amount referred to in GC5.2 less the aggregate of
 - (a) the sum of all payments that were made pursuant to GC5.4 PROGRESS PAYMENT, and
 - (b) the sum of all payments that were made pursuant to GC5.5 SUBSTANTIAL PERFORMANCE OF THE WORK.
- 4) Canada shall pay the amount referred to in paragraph 3) not later than
 - (a) 60 days after the date of issue of a *Certificate of Completion*, or
 - (b) 15 days after the *Contractor* has delivered to Canada
 - (i) a statutory declaration which contains a declaration by the *Contractor* that all of the *Contractor's* lawful obligations and any lawful claims against the *Contractor* that arose out of the performance of the *Contract* have been discharged and satisfied, and
 - (ii) evidence of compliance with workers' compensation legislation in accordance with GC1.9 WORKERS' COMPENSATION

whichever is later.

GC5.7 PAYMENT NOT BINDING ON CANADA

- 1) Neither acceptance of a progress claim or progress report, nor any payment made by *Canada* under the *Contract*, nor partial or entire use or occupancy of the *Work* by *Canada* shall constitute an acceptance by *Canada* of any portion of the *Work* or *Material* that is not in accordance with the requirements of the *Contract*.

GC5.8 CLAIMS AND OBLIGATIONS

- 1) The *Contractor* shall discharge all the *Contractor's* lawful obligations and shall satisfy all lawful claims against the *Contractor* arising out of the performance of the *Work* at least as often as the *Contract* requires *Canada* to pay the *Contractor*.
- 2) Whenever requested to do so by *Canada*, the *Contractor* shall make a statutory declaration declaring to the existence and condition of any obligations and claims against the *Contractor* arising out of the performance of the *Work*.
- 3) In order to discharge lawful obligations of and satisfy lawful claims against the *Contractor*, or its *Designers* or *Subcontractors* arising out of the performance of the *Contract*, *Canada* may pay an amount that is due and payable to the *Contractor* directly to the claimant. Such payment is, to the extent of the payment, a discharge of *Canada's* liability to the *Contractor* under the *Contract* and may be deducted from any amount payable to the *Contractor* under the *Contract*.
- 4) For the purposes of paragraph 3), and subject to paragraph 6) following, a claim or obligation shall be considered lawful when it is so determined by
 - (a) a court of legal jurisdiction, or
 - (b) an arbitrator duly appointed to arbitrate the claim, or
 - (c) the written consent of the *Contractor* authorizing payment of the claim or obligation.
- 5) If a claim or obligation would have been subject to the provisions of Provincial or Territorial lien legislation or, in the Province of Quebec, the law relating to legal hypothecs had the *Contractor* been performing the *Work* for a entity other than *Canada*:
 - (a) such amount as may be paid by *Canada* pursuant to paragraphs 3) and 4) shall not exceed the amount which the *Contractor* would have been obliged to pay had the provisions of such legislation or law been applicable to the *Work*;
 - (b) a claimant need not comply with the provisions of such legislation setting out the steps by way of notice, registration or otherwise as might have been necessary to preserve or perfect any claim for lien or privilege which the claimant might have had, and
 - (c) for the purposes of determining the entitlement of a claimant, the notice required by paragraph 8) following shall be deemed to replace the registration or provision of notice after the performance of work as required by any applicable legislation and no claim shall be deemed to have expired, become void or unenforceable by reason of the claimant not commencing any action within the time prescribed by such legislation.
- 6) The *Contractor*, shall at the request of any claimant, submit to binding arbitration, those questions that need be answered to establish any entitlement of the claimant to payment. The arbitration shall have as parties to it any *Designer*, *Subcontractor*, or suppliers to whom the claimant supplied *Material*, performed work or rented equipment

should such *Subcontractor, Designer*, or supplier wish to be adjoined, and *Canada* shall not be a party to such arbitration. Subject to any agreement between the *Contractor* and the claimant, the arbitration shall be conducted in accordance with the governing Provincial or Territorial legislation applicable to the site of the *Work*.

- 7) Paragraph 3) shall apply only to claims and obligations
- (a) the notification of which has set forth the amount claimed to be owing and the person or entity who by contract is primarily liable and has been received by *Canada* in writing before final payment is made to the *Contractor* pursuant to GC5.6 FINAL COMPLETION, and within 120 days of the date on which the claimant
 - (i) should have been paid in full under the claimant's contract with the *Contractor*, its *Designer, Subcontractor or Supplier*, if the claim is for money that was lawfully required to be held back from the claimant; or
 - (ii) performed the last of the services, work, labour, or furnished the last of the *Material* pursuant to the claimant's Contract with the *Contractor, its Designer, Subcontractor, or Supplier* where the claim is for money not lawfully required to be held back from the claimant, and
 - (b) the proceedings to determine the right to payment of which, pursuant to paragraph 5), shall have commenced within one year from the date that the notification required by subparagraph 7)(a) was received by *Canada*.
- 8) Upon receipt of a notice of claim, *Canada* may withhold from any amount that is due and payable to the *Contractor* pursuant to the *Contract*, the full amount of the claim or any portion thereof.
- 9) *Canada* shall notify the *Contractor* in writing in a timely manner of receipt of any claim and of the intention of *Canada* to withhold funds. At any time thereafter and until payment is made to the claimant, the *Contractor* may be entitled to post, with *Canada*, security in a form acceptable to *Canada* in an amount equal to the value of the claim, and upon receipt of such security *Canada* shall release to the *Contractor* any funds which would be otherwise payable to the *Contractor*, that were withheld pursuant to the provisions of this clause in respect of the claim of any claimant for whom the security stands.

GC5.9 RIGHT OF SET-OFF

- 1) Without limiting any right of setoff or deduction given or implied by law or elsewhere in the Contract, *Canada* may set off any amount payable to *Canada* by the *Contractor* under the Contract, or under any current contract, against any amount payable to the *Contractor* under The Contract.
- 2) For the purposes of paragraph 1) of GC5.9, "current contract" means a contract between *Canada* and the *Contractor*
 - (a) under which the *Contractor* has an undischarged obligation to perform or supply work, labour or material; or
 - (b) in respect of which *Canada* has, since the date of the Contract, exercised any right to take the work that is the subject of that contract out of the *Contractor's* hands.

GC5.10 ASSESSMENTS AND DAMAGES FOR LATE COMPLETION

- 1) For the purposes of this clause
 - (a) the *Work* shall be deemed to be completed on the date of *Certificate of Completion*, and
 - (b) the "period of delay" means the number of days commencing on the day fixed for completion of the *Work* and ending on the day immediately preceding the day on which the *Work* is completed but does not include any day within a period of extension granted pursuant to GC6.5 DELAYS AND EXTENSION OF TIME, and any other day on which, in the opinion of Canada, completion of the *Work* was delayed for reasons beyond the control of the *Contractor*.
- 2) If the *Contractor* does not complete the *Work* by the day fixed for its completion but completes it thereafter, the *Contractor* shall pay *Canada* an amount equal to the aggregate of
 - (a) all salaries, wages and traveling expenses incurred by *Canada* in respect of persons overseeing the performance of the *Work* during the period of delay;
 - (b) the cost incurred by *Canada* as a result of the inability to use the completed *Work* for the period of delay; and
 - (c) all other expenses and damages incurred or sustained by *Canada* during the period of delay as a result of the *Work* not being completed by the day fixed for its completion.
- 3) *Canada* may waive the right of *Canada* to the whole or any part of the amount payable by the *Contractor* pursuant to paragraph 2) if, in the opinion of *Canada*, it is in the public interest to do so.

GC5.11 DELAY IN MAKING PAYMENT

- 1) Notwithstanding GC1.5 TIME OF THE ESSENCE, any delay by *Canada* in making any payment when it is due pursuant to these TERMS OF PAYMENT shall not be a breach of the *Contract* by *Canada*.
- 2) Subject to paragraph 3) following, *Canada* shall pay to the *Contractor* simple interest at the Average Bank Rate plus 3 percent per annum on any amount which is overdue pursuant to paragraph 3) of GC5.1 INTERPRETATION, and the interest shall apply from and include the day such amount became overdue until the day prior to the date of payment.
- 3) Interest shall be paid without demand by the *Contractor* except that
 - (a) in respect of amounts that are less than 15 days overdue, no interest shall be paid in respect of payment made within such 15 days unless the *Contractor* so demands after such amounts have become due and payable, and
 - (b) interest shall not be payable or paid on overdue advance payments, if any.

GC5.12 INTEREST ON SETTLED CLAIMS

- 1) For the purposes of this clause, a claim means a disputed amount subject to negotiation between *Canada* and the *Contractor* under the *Contract*.
- 2) A claim is deemed to have been settled when an agreement in writing is signed by *Canada* and the *Contractor* setting out the amount of the claim to be paid by *Canada* and the items of work for which the said amount is to be paid.

- 3) A settled claim is deemed to be outstanding from the day immediately following the date the said claim would have been due and payable under the *Contract* had it not been disputed.
- 4) *Canada* shall pay to the *Contractor* simple interest on the amount of a settled claim at the Average Bank Rate plus 3 per cent per annum from the date the settled claim was deemed to be outstanding until the day prior to the date of payment.

GC5.13 RETURN OF SECURITY DEPOSIT

- 1) After a *Certificate of Substantial Performance* has been issued, and if the *Contractor* is not in breach of nor in default under the *Contract*, *Canada* shall return to the *Contractor* all or any part of a Security Deposit that, in the opinion of *Canada*, is not required for the purposes of the *Contract*.
- 2) After a *Certificate of Completion* has been issued, *Canada* shall return to the *Contractor* the remainder of any security deposit unless the *Contract* stipulates otherwise.
- 3) If the security deposit was paid into the Consolidated Revenue Fund of *Canada*, *Canada* shall pay interest thereon to the *Contractor* at a rate established from time to time pursuant to section 21(2) of the Financial Administration Act.

GC6 DELAYS AND CHANGES IN THE WORK

GC6.1 CHANGES IN THE WORK

- 1) At any time before issuing a *Certificate of Completion*, *Canada* may issue orders for additions, deletions or other changes to the *Work*, or changes in the location or position of the whole or any part of the *Work*, if the addition, deletion, change or other revision is deemed by *Canada* to be, consistent with the general intent of the *Contract*.
- 2) An order referred to in paragraph 1) shall be in writing and given to the *Contractor* in accordance with GC2.3 NOTICES.
- 3) Upon receipt of an order, the *Contractor* shall promptly perform the work in accordance with the order as if the order had appeared in and been part of the original *Contract*.
- 4) If anything done or omitted by the *Contractor* pursuant to an order increases or decreases the cost of the *Work* to the *Contractor*, payment for the work shall be made in accordance with GC6.4 DETERMINATION OF PRICE.

GC6.2 CHANGES IN SUBSURFACE CONDITIONS

- 1) If, during the performance of the *Work*, the *Contractor* encounters subsurface conditions that are substantially different from the subsurface conditions described in the Request for Proposal documents supplied to the *Contractor*, or a reasonable assumption of fact based thereon, the *Contractor* shall give notice to *Canada* immediately upon becoming aware of the situation.
- 2) If the *Contractor* is of the opinion that the *Contractor* may incur or sustain any extra expense or any loss or damage that is directly attributable to the changed subsurface conditions, the *Contractor* shall within 10 days of the date the changed subsurface conditions were encountered, give *Canada* written notice of intention to claim for that extra expense, loss or damage.

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- 3) If the Contractor has given a notice referred to in paragraph 2) of GC6.2, the Contractor shall give Canada a written claim for extra expense, loss or damage no later than 30 days after the date that a Certificate of Substantial Performance is issued.
 - 4) A written claim referred to in paragraph 3) of GC6.2 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable Canada to determine whether or not the claim is justified, and the Contractor shall supply such further and other information for that purpose as Canada requires.
 - 5) If Canada determines that a claim referred to in paragraph 3) of GC6.2 is justified, Canada shall make an extra payment to the Contractor in an amount that is calculated in accordance with GC6.4, "Determination of Price".
 - 6) If, in the opinion of Canada, the Contractor effects a saving of expenditure that is directly attributable to a substantial difference between the information relating to subsurface conditions at the site of the Work that is contained in the Request for Proposal documents, or a reasonable assumption of fact based thereon, and the actual subsurface conditions encountered by the Contractor, the Contract Amount shall be reduced by the amount of the saving of expenditure determined in accordance with GC6.4, "Determination of Price".
 - 7) If the Contractor fails to give a notice referred to in paragraph 2) of GC6.2 and a claim referred to in paragraph 3) of GC6.2 within the times stipulated, an extra payment shall not be made to the Contractor in respect of the occurrence.
 - 8) Canada does not warrant the content expressed in any subsurface report available for the perusal of the Contractor that does not form part of the Request for proposal and contract documents.

GC6.3 HUMAN REMAINS, ARCHAEOLOGICAL REMAINS AND ITEMS OF HISTORICAL OR SCIENTIFIC INTEREST

- 1) For the purposes of this clause
 - (a) "human remains" means the whole or any part of a deceased human being, irrespective of the time of death;
 - (b) "archaeological remains" are items, artifacts or things made, modified or used by human beings in antiquity and may include, but not be limited to, stone, wood or iron structures or monuments, dump deposits, bone artifacts, weapons, tools, coins, and pottery;
 - (c) "items of historical or scientific interest" are naturally occurring or manufactured objects or things of any age that are not archaeological remains but may be of interest to society because of their historical or scientific significance, value, rarity, natural beauty, or other quality.
- 2) If, during the course of the *Work*, the *Contractor* encounters any object, item or thing which is described in paragraph 1) or which resembles any object, item or thing described in paragraph 1), the *Contractor* shall
 - (a) take all reasonable steps, including stopping work in the affected area, to protect and preserve the object, item or thing,
 - (b) immediately notify Canada of the circumstances in writing, and

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- (c) take all reasonable steps to minimize additional costs which may accrue as a result of any work stoppage.
- 3) Upon receipt of a notification in accordance with paragraph 2)(b), Canada shall promptly determine whether the object, item or thing is one described in, or contemplated by paragraph 1), and shall notify the *Contractor* in writing of any action to be performed, or work to be carried out, by the *Contractor* as a result of Canada's determination.
 - 4) Canada may, at any time, enlist the services of experts to assist in the investigation, examination, taking of measurements or other such recordings, placing of permanent protection around or removing of the object, item or thing encountered by the *Contractor*, and the *Contractor* shall, to the satisfaction of Canada, allow them access and cooperate with them in the carrying out of their duties and obligations.
 - 5) Human remains, archaeological remains and items of historical or scientific interest encountered at the site of the *Work* shall be deemed to be the property of *Canada*.
 - 6) Except as may be otherwise provided for in the *Contract*, the provisions of GC6.4 DETERMINATION OF PRICE, and GC6.5 DELAYS AND EXTENTION OF TIME shall apply.

GC6.4 DETERMINATION OF PRICE

GC6.4.1 Price Determination Prior to Undertaking Changes

- 1) If a Lump Sum Arrangement applies to the Contract or a part thereof, the price of any change shall be the aggregate estimated cost of labour, Plant and Material that is required for the change as agreed upon in writing by the Contractor and Canada plus an allowance for supervision, co-ordination, administration, overhead, margin and the risk of undertaking the work within the stipulated amount, which allowance shall be equal to
 - (a) 20 percent of the aggregate costs referred to herein for that portion of the Work done by the Contractor's own forces, if the aggregate cost of the Work does not exceed \$50,000;
 - (b) 15 percent of the aggregate costs referred to herein for that portion of the Work that is done by subcontract, if the aggregate cost of the Work does not exceed \$50,000; or
 - (c) a negotiated percentage of the aggregate costs referred to herein or a negotiated amount
 - (i) if the aggregate cost of the Work exceeds \$50,000; or
 - (ii) if the Contractor and Canada agree in writing.
- 2) If a Unit Price Arrangement applies to the Contract or a part thereof, the Contractor and Canada may, by agreement in writing, add items, units of measurement, estimated quantities and prices per unit to the Unit Price Table.
- 3) A price per unit referred to in paragraph 2) of GC6.4.1 shall be determined on the basis of the aggregate estimated cost of labour, Plant and Material that is required for the additional item as agreed upon by the Contractor and Canada, plus an allowance determined in accordance with paragraph 1) of GC6.4.1.

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- 4) To facilitate approval of the price of the change or the additional price per unit as applicable, the Contractor shall submit a cost estimate breakdown identifying, as a minimum, the estimated cost of labour, Plant, Material, each subcontract amount, and the amount of the allowance.
 - 5) If no agreement is reached as contemplated in paragraph 1) of GC6.4.1, the price shall be determined in accordance with GC6.4.2.
 - 6) If no agreement is reached, as contemplated in paragraphs 2) and 3) of GC6.4.1, Canada shall determine the class and the unit of measurement of the item of labour, Plant or Material and the price per unit shall be determined in accordance with GC6.4.2.

GC6.4.2 Price Determination Following Completion of Changes

- 1) If it is not possible to predetermine, or if there is failure to agree upon the price of a change in the Work, the price of the change shall be equal to the aggregate of
 - (a) all reasonable and proper amounts actually expended or legally payable by the Contractor in respect of the labour, Plant and Material that fall within one of the classes of expenditure described in paragraph 2) of GC6.4.2, that are directly attributable to the performance of the Contract;
 - (b) an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, in an amount that is equal to 10% of the sum of the expenses referred to in subparagraph 1)(a) of GC6.4.2; and
 - (c) interest on the amounts determined under subparagraphs 1)(a) and 1)(b) of GC6.4.2 calculated in accordance with GC5.12, "Interest on Settled Claims";
- 2) The cost of labour, Plant and Material referred to in subparagraph 1)(a) of GC6.4.2 shall be limited to the following categories of expenditure:
 - (a) payments to Subcontractors and Suppliers;
 - (b) wages, salaries, bonuses and, if applicable, travel and lodging expenses of employees of the Contractor located at the site of the Work and that portion of wages, salaries, bonuses and, if applicable, travel and lodging expenses of personnel of the Contractor generally employed at the head office or at a general office of the Contractor provided they are actually and properly engaged on the Work under the Contract;
 - (c) assessments payable under any statutory authority relating to workers' compensation, employment insurance, pension plan or holidays with pay, provincial health or insurance plans, environmental reviews, and GST/HST collection costs;
 - (d) rent that is paid for Plant, or an amount equivalent to the said rent if the Plant is owned by the Contractor, that is necessary for and used in the performance of the Work, if the rent or the equivalent amount is reasonable and use of that Plant has been approved by Canada;
 - (e) payments for maintaining and operating Plant necessary for and used in the performance of the Work, and payments for effecting repairs thereto that, in the opinion of Canada, are necessary for the proper performance of the Contract, other than payments for any repairs to the Plant arising out of defects existing before its allocation to the Work;

- (f) payments for Material that is necessary for and incorporated in the Work, or that is necessary for and consumed in the performance of the Contract;
- (g) payments for preparation, delivery, handling, erection, installation, inspection, protection and removal of the Plant and Material necessary for and used in the performance of the Contract; and
- (h) any other payments made by the Contractor with the approval of Canada that are necessary for the performance of the Contract in accordance with the contract documents.

GC6.4.3 Price Determination - Variations in Tendered Quantities

For the purpose of this clause "tendered quantities" means the estimated quantities identified in the Request for Proposal documents.

- 1) Except as provided in paragraphs 2), 3), 4) and 5) of GC6.4.3, if it appears that the final quantity of labour, Plant and Material under a price per unit item shall exceed or be less than the estimated tendered quantity, the Contractor shall perform the Work or supply the Plant and Material required to complete the item and payment shall be made for the actual Work performed or Plant and Material supplied at the price per unit set out in the Contract.
- 2) If the final quantity of the price per unit item exceeds the estimated tendered quantity by more than 15 percent, either party to the Contract may make a written request to the other party negotiate an amended price per unit for that portion of the item which exceeds 115 percent of the estimated tendered quantity, and to facilitate approval of any amended price per unit, the Contractor shall, on request, provide Canada with
 - (a) detailed records of the actual cost to the Contractor of performing or supplying the tendered quantity for the price per unit item up to the time the negotiation was requested, and
 - (b) the estimated unit cost of labour, Plant and Material required for the portion of the item that is in excess of 115 percent of the tendered quantity.
- 3) If agreement is not reached as contemplated in paragraph 2) of GC6.4.3, the price per unit shall be determined in accordance with GC6.4.2.
- 4) If it appears that the final quantity of labour, Plant and Material under a price per unit item shall be less than 85 percent of the estimated tendered quantity, either party to the Contract may make a written request to the other party to negotiate a change to the price per unit for the item if
 - (a) there is a demonstrable difference between the unit cost to the Contractor of performing or supplying the estimated tendered quantity and the unit cost to the Contractor for performing or supplying the final quantity; and
 - (b) the difference in unit cost is due solely to the decrease in quantity and not to any other cause.
- 5) For the purposes of the negotiation referred to in paragraph 4) of GC6.4.3
 - (a) the onus of establishing, justifying and quantifying a proposed change lies with the party making the request for negotiation; and

- (b) in no event shall the total price for an item that has been amended as a result of a reduction in quantity pursuant to paragraph 4) of GC6.4.3 exceed the amount that would have been payable to the Contractor had 85 percent of the tendered quantity actually been performed or supplied.

GC6.5 DELAYS AND EXTENSION OF TIME

- 1) Upon application of the Contractor made before the date first fixed for completion of the Work or before any other date previously fixed under this clause, Canada may extend the time for completion of the Work by fixing a new date if Canada determines that causes beyond the control of the Contractor have delayed its completion.
- 2) The Contractor's application shall be accompanied by the written consent of the bonding company whose bond forms part of the Contract Security.
- 3) Subject to paragraph 4) of GC6.5, no payment, other than a payment that is expressly stipulated in the Contract, shall be made by Canada to the Contractor for any extra expense, loss or damage incurred or sustained by the Contractor due to delay, whether or not the delay is caused by circumstances beyond the control of the Contractor.
- 4) If the Contractor incurs or sustains any extra expense or any loss or damage that is directly attributable to any neglect or delay that occurs after the date of the Contract on the part of Canada in providing any information or in doing any act that the Contract either expressly requires Canada to do or that would ordinarily be done by an owner in accordance with the practice of the trade, the Contractor shall give Canada written notice of intention to claim for that extra expense or loss or damage within ten working days of the date the neglect or delay first occurred.
- 5) When the Contractor has given a notice referred to in paragraph 4) of GC6.5, the Contractor shall give Canada a written claim for the extra expense, loss or damage no later than 30 days after the date that a Certificate of Completion is issued and not afterwards.
- 6) A written claim referred to in paragraph 5) of GC6.5 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable Canada to determine whether or not the claim is justified and the Contractor shall supply such further and other information for that purpose as Canada may require.
- 7) If Canada determines that a claim referred to in paragraph 5) of GC6. 5 is justified, Canada shall make an extra payment to the Contractor in an amount that is calculated in accordance with GC6.4, "Determination of Price".
- 8) If the Contractor fails to give a notice referred to in paragraph 4) and a claim referred to in paragraph 5) of GC6.5 within the times stipulated, an extra payment shall not be made to the Contractor in respect of the occurrence.

GC7 DEFAULT, SUSPENSION OR TERMINATION OF CONTRACT

GC7.1 TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS

- 1) By giving notice in writing to the Contractor in accordance with GC2.3, "Notices", Canada, without any other authorization, may take all or any part of the Work out of the Contractor's hands, and may employ such means as Canada sees fit to have the Work completed if the Contractor

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- (a) fails to remedy any delay in the commencement or default in the diligent performance of the Work to the satisfaction of Canada within six days of Canada giving notice to the Contractor in writing in accordance with GC2.3, "Notices";
 - (b) defaults in the completion of any part of the Work within the time fixed for its completion by the Contract;
 - (c) becomes insolvent, or has committed an act of bankruptcy, and has neither made a proposal to its creditors nor filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act;
 - (d) abandons the work;
 - (e) makes an assignment of the Contract without the consent required by GC1.17, "Assignment", or
 - (f) otherwise fails to observe or perform any of the provisions of the Contract.
- 2) If the whole or any part of the Work is taken out of the Contractor's hands, the Contractor's right to any further payment that is due or accruing due under the Contract is, subject only to paragraph 3) of GC7.1, extinguished, and the Contractor is liable to pay Canada, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by Canada in respect of the Contractor's failure to complete the Work.
 - 3) If the whole or any part of the Work that is taken out of the Contractor's hands is completed by Canada, Canada may pay the Contractor the amount, if any, of the holdback or a progress claim as determined by Canada that had accrued and was due prior to the date on which the Work was taken out of the Contractor's hands and that is not required for the purposes of having the Work performed or of compensating Canada for any other loss or damage incurred or sustained by reason of the Contractor's default.
 - 4) The taking of the Work or any part thereof out of the Contractor's hands does not relieve the Contractor from any obligation under the Contract or imposed by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's hands.
 - 5) If the Work or any part thereof is taken out of the Contractor's hands, all Plant and Material and the interest of the Contractor, or its suppliers or subcontractors at any tier, in all real property, licences, powers and privileges acquired, used or provided by the Contractor, or its suppliers or subcontractors at any tier, under the Contract shall continue to be the property of Canada without compensation.
 - 6) When Canada certifies that any Plant, Material, or any interest of the Contractor 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, it shall revert to the Contractor.
 - 7) If the Contractor has become insolvent or has committed an act of bankruptcy, and has either made a proposal to its creditors or filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act, the Contractor shall immediately forward a copy of the proposal or the notice of intention to Canada.

GC7.2 SUSPENSION OF WORK

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- 1) When, in Canada's opinion, it is in the public interest to do so, Canada may require the Contractor to suspend performance of the Work either for a specified or an unspecified period, by giving a notice of suspension in writing to the Contractor in accordance with GC2.3, "Notices".
 - 2) When a notice of suspension is received by the Contractor, the Contractor shall suspend all operations in respect of the Work except those that Canada determines are necessary for the care and preservation of the Work, Plant and Material.
 - 3) During a period of suspension, the Contractor shall not remove any part of the Work, Plant or Material from its site without the consent of Canada.
 - 4) If a period of suspension is 60 days or less, the Contractor shall resume the performance of the Work on the expiration of that period, and the Contractor is entitled to be paid the extra costs necessarily incurred by the Contractor as a result of the suspension, determined in accordance with GC6.4, "Determination of Price".
 - 5) If a period of suspension is more than 60 days, Canada and the Contractor may agree that the performance of the Work shall be continued by the Contractor, and the Contractor shall resume performance of the Work subject to any terms and conditions agreed upon by Canada and the Contractor. If Canada and the Contractor do not agree that performance of the Work shall be continued by the Contractor, or upon the terms and conditions under which the Contractor shall continue the Work, the notice of suspension shall be deemed to be a notice of termination pursuant to GC7.3, "Termination of Contract".

GC7.3 TERMINATION OF CONTRACT

- 1) Canada may terminate the Contract at any time by giving a notice of termination in writing to the Contractor in accordance with GC2.3, "Notices".
- 2) If the Contractor receives a notice of termination, the Contractor shall forthwith cease all operations in performance of the Contract, subject to any conditions stipulated in the notice.
- 3) Subject to paragraph 4) of GC7.3, if the Contract is terminated, Canada shall pay the Contractor an amount determined to be due to the Contractor pursuant to GC6.4, "Determination of Price", less the aggregate of all amounts that were paid to the Contractor by Canada and all amounts that are due to Canada from the Contractor pursuant to the Contract.
- 4) In no event shall the total amount payable by Canada to the Contractor exceed the amount, calculated in accordance with GC5, "Terms of Payment", that would have been payable to the Contractor had the Contractor completed the Work.
- 5) Payment to the Contractor, if any, shall be made as soon as practicable under the circumstances.

GC7.4 SECURITY DEPOSIT - FORFEITURE OR RETURN

- 1) If the Work is taken out of the Contractor's hands, or the Contractor is in breach of, or in default under, the Contract, Canada may convert a security deposit to Canada's own use.
- 2) If Canada converts a security deposit, the amount realized shall be deemed to be an amount due from Canada to the Contractor under the Contract.
- 3) Any balance of the amount realized that remains after payment of all losses, damage and claims of Canada and others shall be paid by Canada to the Contractor if, in the opinion of Canada, it is not required for the purposes of the Contract.

GC8 DISPUTE RESOLUTION

GC8.1 INTERPRETATION

- 1) "dispute" means any disagreement regarding any issue identified by the Contractor in the notice submitted to Canada in accordance with paragraph 2 of GC8.3, "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.
- 2) The alternative dispute resolution procedures set out in GC8, do not apply to any claim by Canada against the Contractor except any counterclaim in a dispute as defined in paragraph 1 of GC8.1, including, but not limited to, any claim of setoff regarding any amount due to Canada under GC5.10, "Assessment and Damages for Late Completion".

GC8.2 CONSULTATION AND CO-OPERATION

- 1) The parties agree to maintain open and honest communication throughout the performance of the Contract.
- 2) 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.

GC8.3 NOTICE OF DISPUTE

- 1) Any difference 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 the Contractor against Canada, and which is not settled by consultation and co-operation as envisaged in GC8.2, "Consultation and Co-operation", shall be resolved in the first instance by Canada, whose written decision or direction shall be final and binding subject only to the provisions of GC8. Such written decision or direction includes, but is not limited to, any written decision or direction by Canada under any provision of the General Conditions.
- 2) The Contractor shall be deemed to have accepted the decision or direction of Canada referred to in paragraph 1) of GC8.3 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 GC8.4, "Negotiation". Such notice shall refer specifically to GC8.4, "Negotiation", and shall specify the issues in contention and the relevant provisions of the Contract.
- 3) The giving of a written notice in accordance with paragraph 2) of GC8.3 shall not relieve the Contractor from complying with the decision or direction that is the subject of the dispute. Such compliance, however, shall not be construed as an admission by the Contractor of the correctness of such decision or direction.
- 4) If a dispute is not resolved promptly, Canada shall 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 shall continue to perform the

Work in accordance with the provisions and requirements of the Contract and the instructions of Canada. Such performance shall not prejudice any claim that the Contractor may have.

- 5) Nothing in GC8 relieves the Contractor from its obligation to provide any other notice required by the Contract within the time specified in the Contract, including but not limited to, any notice required under GC6.2, "Changes in Subsurface Conditions".

GC8.4 NEGOTIATION

- 1) Within 10 working days after receipt by Canada of a notice referred to in paragraph 2) of GC8.3, "Notice of Dispute", or within such other period of time as may be mutually agreed to, the parties shall commence formal negotiations in order to resolve the dispute. Negotiations shall occur initially between representatives of the Contractor and Canada who play a direct supervisory role in the performance, administration or management of the Contract.
- 2) If the representatives referred to in paragraph 1) of GC8.4 are unable to resolve some or all of the issues which are the subject of the negotiations within 10 working days, the parties shall refer the remaining issues which are in dispute to a second level of negotiation between a principal or principals of the Contractor and a senior level manager or senior level managers representing Canada.
- 3) If negotiations fail to resolve the dispute within 30 working days from the date of delivery of the notice referred to in paragraph 2) of GC8.3, "Notice of Dispute", or within such longer period as may have been agreed to by the parties, the Contractor may, by giving written notice to Canada, in accordance with GC2.3, "Notices", within 10 working days from the end of such period, request that mediation be undertaken to assist the parties to reach agreement on the outstanding issues.
- 4) If the Contractor does not request mediation within the period permitted by paragraph 3) of GC8.4, the Contractor shall be deemed to have accepted the decision or direction of Canada under paragraph 1) of GC8.3, "Notice of Dispute", and to have expressly waived and released Canada from any claim in respect of the particular matter dealt with in that decision or direction.

GC8.5 MEDIATION

- 1) If the Contractor has requested mediation in accordance with paragraph 3) of GC8.4, "Negotiation", mediation shall be conducted in accordance with GC8.8, "Rules for Mediation of Disputes".
- 2) If a Project Mediator has not previously been appointed for the purposes of the Contract, a Project Mediator shall be appointed in accordance with GC8.8, "Rules for Mediation of Disputes", forthwith after delivery of a notice in accordance with paragraph 3) of GC8.4, "Negotiation", requesting mediation.
- 3) If the dispute has not been resolved within
 - (a) 10 working days following the appointment of a Project Mediator in accordance with paragraph 2) of GC8.5, if a Project Mediator was not previously appointed;
 - (b) 10 working days following receipt by Canada of a written notice in accordance with paragraph 3) of GC8.4, "Negotiation", 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 shall terminate the mediation by giving written notice to the parties stating the effective date of termination.

GC8.6 CONFIDENTIALITY

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

GC8.7 SETTLEMENT

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

GC8.8 RULES FOR MEDIATION OF DISPUTES**GC8.8.1 Interpretation**

In these Rules

- 1) "Coordinator" means the person designated by Canada to act as the Dispute Resolution Coordinator.

GC8.8.2 Application

- 1) By mutual agreement, the parties may change or make additions to the Rules.

GC8.8.3 Communication

- 1) Written communications pursuant to these Rules shall be given in accordance with GC2.3, "Notices".

GC8.8.4 Appointment of Project Mediator

- 1) 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 shall jointly enter into a contract with the appointed Project Mediator, which contract shall be in a form drafted by the Coordinator and agreed to by the parties.

- 2) If the parties do not appoint a Project Mediator pursuant to paragraph 1) of GC8.8.4, the parties shall appoint a Project Mediator within 17 working days following receipt of a written notice from the Contractor, in accordance with GC2.3, "Notices", 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 shall meet the requirements as set out for the contract described in paragraph 1) of GC8.8.4.

- 3) When mediation is requested by the Contractor pursuant to paragraph 3) of GC8.4, "Negotiation", if the parties have previously entered into a contract with a Project Mediator, the parties shall within 2 days send to both the Project Mediator and the Coordinator
 - (a) a copy of the notice requesting negotiation under paragraph 2) of GC8.3, "Notice of Dispute";
 - (b) a copy of Canada's written position in relation to the notice, the issues in contention and the relevant provisions of the contract; and

- (c) a copy of the Contractor's written request for mediation required under paragraph 3) of GC8.4, "Negotiation".
- 4) If the parties have not agreed on a Project Mediator, the parties shall forthwith provide the Coordinator with the written materials referred to in subparagraphs 3)(a), 3)(b) and 3)(c) of GC8.8.4 together with a request that the Coordinator assist in the appointment of a mutually acceptable Project Mediator in accordance with these Rules.
 - 5) Within 5 working days following receipt of the request and materials referred to in paragraph 4) of GC8.8.4, the Coordinator shall provide the parties with a list of qualified private sector mediators obtained from an independent and impartial entity, together with instructions to each party to individually and confidentially select and rank their preferred and fully acceptable choices of mediator in descending order. Each mediator listed shall be impartial and independent of the parties, and shall be an experienced and skilled commercial mediator, preferably with knowledge of the subject matter of the dispute.
 - 6) Within 10 working days of receipt of the list referred to in paragraph 5) of GC8.8.4 each party shall comply with the instructions accompanying the list(s) and shall deliver the completed listing to the Coordinator.
 - 7) Within 2 working days following receipt of the completed listings, the Coordinator shall select the highest common ranked mediator to act as Project Mediator for the purposes of the contract.
 - 8) In the event of a tie, the Coordinator shall consult both parties to re-evaluate their rankings in order to assist the Coordinator in selecting a Project Mediator acceptable to both parties. If the parties cannot agree upon a Project Mediator, the Coordinator shall forthwith provide the parties with a second list of mediators and the procedure shall be repeated.
 - 9) If the parties have not previously entered into a contract with a mutually acceptable Project Mediator, the Coordinator shall use reasonable efforts to negotiate a contract with a mutually acceptable Project Mediator on behalf of the parties, which contract shall incorporate or otherwise comply with the provisions of these Rules. 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 Coordinator shall repeat the process with the second-highest common ranked mediator.
 - 10) The parties agree that, upon successful completion of the negotiations referred to in paragraph 9) of GC8.8.4, they shall jointly enter into a contract with the selected Project Mediator, which contract shall be in a form drafted by the Coordinator and agreed to by the parties.
 - 11) Upon execution of the contract with the Project Mediator referred to in paragraph 10) of GC8.8.4 the Coordinator shall provide the Project Mediator with copies of the documents referred to in paragraph 3) of GC8.8.4.

GC8.8.5 Confidentiality

- 1) Subject to paragraph 2) of GC8.8.5, and unless otherwise agreed in writing by the parties, the Project Mediator, the parties and their counsel or representatives shall 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.

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- 2) Evidence that is independently admissible or discoverable in any arbitral or judicial proceeding shall not be rendered inadmissible or non-discoverable by virtue of its use in mediation proceedings.
 - 3) Neither party shall make transcripts, minutes or other records of a mediation conference.
 - 4) 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.
 - 5) All information exchanged during mediation procedures, by whatever means, shall be without prejudice and shall be treated as confidential by the parties and their representatives, unless otherwise required by law.

GC8.8.6 Time and Place of Mediation

- 1) The Project Mediator, in consultation with the parties shall 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 10 working days are available within which to attempt to settle the dispute.

GC8.8.7 Representation

- 1) Representatives of the parties may be accompanied at the mediation conference by legal counsel or any other person.
- 2) If the Project Mediator is a lawyer, the Project Mediator shall 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.

GC8.8.8 Procedure

- 1) 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 shall be completed no later than 2 working days prior to the date set for a mediation conference.
- 2) The Project Mediator shall 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.
- 3) The parties may agree to extend the 10 working days available for settlement of the dispute through mediation, and the Project Mediator shall record that agreement in writing.

GC8.8.9 Settlement Agreement

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

- 2) 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.

GC8.8.10 Termination of Mediation

- 1) Either party may withdraw from mediation at any time without reason and, in that event, the Project Mediator shall give each party a written notice terminating the mediation and establishing the effective date of termination.
- 2) 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.
- 3) If a dispute has not been resolved within 10 working days or such other longer period as may have been agreed to by the parties, the Project Mediator shall terminate the mediation by giving written notice to the parties stating the effective date of termination.

GC8.8.11 Costs

- 1) 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, shall be borne equally by the parties.

GC8.8.12 Subsequent Proceedings

- 1) The parties shall 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,
 - (a) any documents of other parties that are not otherwise producible in those proceedings;
 - (b) any views expressed or suggestions made by any party in respect of a possible settlement of issues;
 - (c) any admission made by any party in the course of mediation unless otherwise stipulated by the admitting party; and
 - (d) the fact that any party has indicated a willingness to make or accept a proposal or recommendation for settlement.
- 2) The Project Mediator shall 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.
- 3) The Project Mediator shall not be subpoenaed to give evidence relating to
 - (a) the Project Mediator's role in mediation; or
 - (b) 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.

SUPPLEMENTARY CONDITIONS

SC1 PAYMENT FOR DESIGN CHANGES AND REVISIONS

1. Payment for any additional or reduced Design Services authorized by Canada prior to their performance, and for which a basis of payment has not been established at the time of execution of the Contract, shall be in an amount or amounts to be mutually agreed upon from time to time, subject to the Terms of Payment and the approval of Canada.
2. Where it is not possible, or appropriate, to agree upon a fixed price fee or percentage fee prior to the performance of the additional or reduced Design Services, payment shall be made on the basis of a time based fee as follows:
 - (a) The *Designer's* principals and executives, and other personnel approved in that capacity by Canada shall be paid at the hourly rates provided for in clause 1.3.4 of the Price Bid Form.
 - (b) The *Designer's* staff approved by Canada shall be paid at the hourly rate specified in Annex B..
 - (c) The normal working hours per day for *Designer's* principals, executives and the employees, shall be deemed to be seven and a half (7.5) hours of any day during which they are actually engaged in the performance of the *Design Services*.
 - (d) Travel time during normal working hours, that is related to the Project and authorized by Canada, shall be chargeable as time worked.
 - (e) The maximum amount(s) that applies (apply) to the *Design Services* to be carried out at time rates shall be as specified in the change request notice issued by Canada, which amount(s) shall not be exceeded without the prior authorization of Canada.
3. Subject to paragraph 5 below and prior to the performance of additional or reduced *Design Services* on the basis of a time based fee, the *Contractor* shall comply with any request made by Canada regarding persons to be employed by its *Designer* or its *Designer's subconsultants* to provide the additional or reduced *Design Services*. In addition, Canada shall determine, based on industry practice and input from the Contractor, hourly rates for any of those persons for whom the relevant information does not appear in the Price Bid Form.
4. The *Contractor* shall, on request, submit to Canada for approval, the names, addresses, qualifications, experience and proposed roles of all persons, including principals, to be employed by its *Designer* to provide the *Design Services* for the Project and, on request, submit any subsequent changes to Canada for approval.
5. Payment for additional *Design Services* not identified at the time of execution of the Contract shall be made only to the extent that
 - (a) the additional *Design Services* are *Services* that are not included in stated *Design Services* in the *Contract*,
 - (b) the additional *Design Services* are required for reasons beyond the control of the Contractor, and

- (c) any fee adjustment for *Design Services* resulting from an adjustment in the Construction Cost Estimate arising from the additional *Services* is not commensurate with the additional *Services* performed.

SC2 SECURITY ACCESS REQUIRED:

1. NIL security screening required, no access to sensitive information or assets. Contractor/Offeror personnel will be escorted in specific areas of the institution as/where required, by authorized Correctional Services Canada personnel.
2. Contractor/Offeror personnel shall submit to a local verifications of identity/information, by Correctional Services Canada, prior to admittance to the institution. Correctional Services Canada reserves the right to deny access to the institution, of any Contractor/Offeror personnel, at any time.

SC3 PROFESSIONAL LIABILITY INSURANCE REQUIREMENTS:

1. The Contractor shall ensure that appropriate Professional Liability insurance coverage is in place to cover the Designers and other consultants engaged for the services required in the performance of the Work. If required, the Contractor shall furnish evidence satisfactory to Canada of such insurance coverage and any renewals thereof.
2. The Professional Liability insurance coverage shall be in an amount usual for the nature and scope of the services but, shall have a limit of liability of not less than \$1,000,000 per claim, and be continually maintained from the commencement of performance of the services until five (5) years after their completion..