

RETURN BIDS TO:
RETOURNER LES SOUMISSIONS À:
Bid Receiving - PWGSC/Réception des soumissions -
TPSGC
11 Laurier/11 rue Laurier
Place du Portage, Phase III
Core 0A1/Noyau 0A1
Gatineau, Québec K1A 0S5
Gatineau
Ontario
K1A 0S5
Bid Fax: (819) 775-7279

SOLICITATION AMENDMENT
MODIFICATION DE L'INVITATION

The referenced document is hereby revised; unless otherwise indicated, all other terms and conditions of the Solicitation remain the same.

Ce document est par la présente révisé; sauf indication contraire, les modalités de l'invitation demeurent les mêmes.

Comments - Commentaires

Vendor/Firm Name and Address
Raison sociale et adresse du
fournisseur/de l'entrepreneur

Issuing Office - Bureau de distribution
Property Management Project Division/Division du
projet de gestion immobilière
Sir Charles Tupper Building 4th Fl
Édifice Sir Charles Tupper 4e étage
A-425-F
2720 Riverside Drive/
2720, promenade Riverside
Ottawa
Ontario
K1A 0S5

Title - Sujet Real Property 1 (RP1) - RFI2	
Solicitation No. - N° de l'invitation EP008-112560/C	Amendment No. - N° modif. 014
Client Reference No. - N° de référence du client 20112560	Date 2013-09-27
GETS Reference No. - N° de référence de SEAG PW-\$SGC-002-61220	
File No. - N° de dossier gc002.EP008-112560	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2013-10-08	Time Zone Fuseau horaire Eastern Daylight Saving Time EDT
F.O.B. - F.A.B. Plant-Usine: <input type="checkbox"/> Destination: <input type="checkbox"/> Other-Autre: <input type="checkbox"/>	
Address Enquiries to: - Adresser toutes questions à: Wong, Lisa	Buyer Id - Id de l'acheteur gc002
Telephone No. - N° de téléphone (613) 736-3058 ()	FAX No. - N° de FAX (613) 736-3114
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction:	

Instructions: See Herein

Instructions: Voir aux présentes

Delivery Required - Livraison exigée	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

AMENDMENT 014

REQUEST FOR INFORMATION (RFI) REGARDING REAL PROPERTY 1 (RP-1) - PROPERTY MANAGEMENT AND PROJECT DELIVERY SERVICES (FORMERLY KNOWN AS ALTERNATIVE FORMS OF DELIVERY) FOR PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

THIS AMENDMENT HAS BEEN RAISED TO EFFECT THE FOLLOWING CHANGE:

Insert:

- 1) The new closing date will be October 8, 2013 @ 14h00
- 2) Insert the following Annex to the Request for Information:
Annex O - Real Property 1 (RP-1) RFI AMD 012, Phase 7 Responses

ANNEX O

REAL PROPERTY 1 (RP-1)

RFI AMD 012, PHASE 7 RESPONSES

The following comments were received from industry in response to Phase 7 which requested feedback on the draft RFP.

**Unless noted, all page numbers identified correspond to the pagination of the Amendment 12, Phase 7 PDF file.*

No.	SECTION	QUESTIONS/COMMENTS	PROPOSED RESPONSES
1	Section 4.c of SRE 1 Bid Preparation Instructions	It states that the total page count limitation for the Bidder's entire response is 450 pages. Based on the expanded scope included in the latest draft of the RFP, it is suggested that PWGSC consider increasing the page count limitation to 650, an addition of 200 pages. We are recommending this in order for the service providers to articulate their responses more effectively, while making it easier for PWGSC to effectively evaluate the bid submission requirements.	After careful review of the bid submission requirements and consideration of industry's input, the page count for the entire response has been increased to 475 pages. The page count excludes certain pages, which will be described further in the RFP.
2	Question/Answer #5 included in Amendment 11	It states that contemplated changes to the procurement are included in the latest Terms of Payment and these changes may address a portion of the issue regarding Transition Costs. However, the changes are not easily apparent. Can PWGSC provide more detail concerning the changes; including regarding reimbursement for specific startup costs and for transition in of new assets during the contract term?	The Terms of Payment have been updated and will be shared when the Request for Proposal is issued on Buy and Sell.
3	Within the RFP	Building plans and costs are referred to both as O&M and O&U. For clarity, it would be beneficial	O&M (Operations and Maintenance) refers to Operations and Maintenance

		to include a definition of these acronyms. What is the difference, if any, between these two acronyms?	functions. O&U (O&M and Utilities) refers to costs associated with O&M and Utilities.
4		Performance bonds will not be issued by a surety company for a term greater than 5 years. Would it be acceptable to PWGSC to obtain a 5 year performance bond with agreed renewal terms?	Performance bonds are to be submitted on the PWGSC Performance Bond form. The wording of the bond does not allow the bond to expire before the end of the contract. If a contractor is unable to obtain such a bond, the contractor would have to provide another form of acceptable contract security specified in SC06.
5		We have received a letter from our insurance broker indicating that the wrap up insurance product is not available in Canada for RP1. Further, our broker has confirmed with major Canadian insurers that wrap up insurance is not available in the marketplace. Would PWGSC be open to accepting standard general commercial liability policies that are readily available and are industry standard in the market place? If not, could PWGSC provide the names of the companies that PWGSC has confirmed would provide the requested wrap up insurance for RP1? The insurance that PWGSC is requesting is a custom insurance product that can be 2 - 4 times more expensive than a standard product with minimal to no additional benefit to PWGSC and ultimately, in our opinion, does not provide best value to Canada.	<p>PWGSC will not accept substitutes for the Wrap-up insurance.</p> <p>PWGSC has consulted the insurance industry via the Insurance Bureau of Canada (IBC). The results of the consultation confirmed that the RP-1 insurance requirement is reasonable and that the coverages are available. The IBC can assist bidders in finding underwriters that offer insurance policies meeting the insurance requirement. Bidders can contact any IBC Consumer Information Centre: http://www.ibc.ca/en/contact_us.asp</p> <p>PWGSC recognizes that setting such coverage is quite an undertaking for brokers that are not familiar with this type of exposure. It is imperative that Bidders allow their broker sufficient time to secure the proper coverages. Bidders can look to the Insurance Brokers Association of Canada: http://ibac.ca/ or their</p>

			provincial Brokers association for assistance in finding a competent broker.
6		Will PWGSC please provide a black line comparison of the RFP vs. this Final Draft RFP, so those who have reviewed the document in detail may only need to review the changes, rather than the entire document?	As there have been many changes to the draft RFP issued in August and for simplicity purposes, a black lined version of the final RFP will not be provided.
7	SI11 Real Property 1 – Technical Information: Item 4.3	Item 4.3: Please clarify that the service call volumes will not be limited to calls, but also include relevant “by location” work order information delineated by preventive, predictive and reactive work order types. If not, please advise if these can be made available as well.	Information will be provided on service calls received by the National Service Call Centre aggregated at the building and regional levels. The information therein will specify the type of service call and type of call.
8	GI05 – Bid Security Requirements	The Bidder shall submit bid security with the bid in a form of a bid bond or a security deposit in the amount of \$2M. Please confirm that the bid bond is for all regions we bid and that we do not need to include a bid bond in the amount of \$2M for each Region we submit a bid for.	There is a requirement for bid security in the form of a bid bond or a security deposit in the amount of \$2,000,000 with each Financial Bid Form.
9	GI21 – Ontario Labour Legislation	Pursuant to Employment Standards Act, 2000, S.O. 2000 c.41, please consider providing the current providers’ item #1 (a-f) and item #3 (if applicable) in the initial RFP package. Alternatively, please consider this as a formal request for this material once it is available for publication to the proponents.	The request has been noted and the information has been requested.

10	SRE 1 – Bid Preparation Instructions	<p>Bidders must submit one bid package in response to all the Regions they wish to bid on. Bidders must clearly identify in the Bid Submission Form which Region(s) they are bidding on.</p> <p>Based on the above, we assume that one bid package can be used to meet Technical Evaluation and Rated Evaluation Scenarios for each Region. For example, we do not need to write up to six (6) different Technical and Rated responses for each of the six regions. Please confirm.</p>	Yes, the assumption is correct.
11	SRE 1 – 4 Bid Preparation Instructions	<p>In terms of the 450 page limit, does that include all documents, including attachments/exhibits?</p> <p>Are there any exceptions or exclusions from the 450 page limit?</p>	<p>After careful review of the bid submission requirements and consideration of industry's input, the page count for the entire response has been increased to 475 pages. This page count includes all attachments and exhibits except the pages described further in the RFP</p>
12		<p>Management Services Experience – in order to satisfy the Mandatory Technical Evaluation Criteria, does our experience need to be limited to Canada? Can we leverage experience we have gained in other geographic regions (i.e. United States)?</p> <p>In terms of the evaluation criteria, we would recommend that these services must be continuous for at least 36 months as opposed to the 60 months currently required.</p>	<p>Experience from other geographic regions will be accepted from the Bidder.</p> <p>PWGSC considers that 60 months experience is necessary to provide sufficient demonstration of a bidder's capabilities to meet the mandatory requirements.</p>

13	SRE 4 – M-2 Mandatory Technical Evaluation Criteria	<p>Lease Administration Experience - in order to satisfy the Mandatory Technical Evaluation Criteria, does our experience need to be limited to Canada? Can we leverage experience we have gained in other geographic regions (i.e. United States)?</p> <p>In terms of the evaluation criteria, we would recommend that these services must be continuous for at least 36 months as opposed to the 60 months currently required.</p>	<p>Experience from other geographic regions will be accepted from the Bidder.</p> <p>PWGSC considers that 60 months experience is necessary to provide sufficient demonstration of a bidder's capabilities to meet the mandatory requirements.</p>
14	SRE 4 – M-3 Mandatory Technical Evaluation Criteria	<p>Project Delivery Services Experience - in order to satisfy the Mandatory Technical Evaluation Criteria, does our experience need to be limited to Canada? Can we leverage experience we have gained in other geographic regions (i.e. United States)?</p> <p>In terms of the evaluation criteria, we would recommend that these services must be continuous for at least 36 months as opposed to the 60 months currently required.</p>	<p>Experience from other geographic regions will be accepted from the Bidder..</p> <p>M-3, the 60 month requirement does not apply. Bidders must have delivered a designated value of project Work within a single consecutive 12 month period. That 12 month period must be within the 36 month period ending with the date of the Solicitation.</p>
15	SRE 5 Rated Technical Evaluation Criteria	<p>R-3 Organizational Model. In bullets 2 and 3 there is a requirement to show how the proponent will "manage relationships with internal resources," and, "describe how the organization will interface with PWGSC." While GI 17.2 is duly noted, for this rated requirement unfair advantage is de facto achieved by the incumbents given their existing connectivity with internal and PWGSC TA resources. Please confirm and provide a current PWGSC and incumbent organizational chart (at a</p>	<p>The RP-1 solicitation differs from previous contracts in terms of the nature and scope of the service delivery relationship. PWGSC has a responsive contract oversight structure that will be adjusted to ensure best value in internal government operations and effective relationships with Contractor organizations. PWGSC does not want to dictate a Contractor organizational model. The ultimate RP-1</p>

		minimum showing all direct incumbent points of contact with existing PWGSC staff) with existing relationship structure, title and role and connectivity will be shared in the RFP package or made available in the USB material as cited in SI 11.4.	organizational interfaces are expected to be tailored to the specific RP-1 requirements.
16	SRE 7 Evaluation Procedures & SRE 9 Basis of Selection	Section 7 appears to begin at 7.3 (rather than 7.0 or 7.1), suggesting that SRE 7.1 and 7.2 are missing or reserved. This is supported by SRE 9 “Basis of Selection” paragraph 1.c which references SRE 7.2 as a financial scenario explicitly. That said SRE 6.2 is a financial scenario and this could therefore simply be an inaccurate reference. Please clarify both of these sections if possible.	The draft RFP has been amended to reflect correct formatting and referencing.
17	Government Furnished Accommodations BSF 1-6 SOW 3.1.10.1	Please delineate the locations (by address) and capacity of GFA within each region as this assumption will have a material and direct bearing on the number of positions accommodated within proponent space vs. GFA space. If not provided, the absence of this information may cause significant variability in fee and cost assumptions.	A list of the GFA will be provided in the Contract Inventory as well as the Supplementary Asset Information will be available with the RFP.
18	Draft Contract – SC06 – Contract Financial Security	The contract financial security must be in the amount of \$5M for the duration of the contract. Please confirm that this \$5M amount would be in the event a Service Provider secures the entire portfolio (i.e. all six regions). What amount of security would be required if a Service Provider only secure 1 region?	There is a requirement for contract financial security in the amount of \$5,000,000 for each of the six Contracts for the duration of the contract.
19	Terms of Payment 3.1.1.1/3.1.1.1.7	3.1.1.1 states that “The Fees shall be considered as full compensation unless otherwise listed in the	3.1.1.1.7 states “Federal and provincial income taxes, excess profit taxes or

		<p>contract, including but not limited to those related to the following."</p> <p>3.1.1.1.7 states "federal and provincial taxes, excess profit taxes or surtaxes and/or special expenses in connection with those taxes."</p> <p>Does this clause apply to all taxes related to project delivery that will be included in the authorized Statement of Work for PJM deliverables? If so, would the PJM % Fee be applied to the aggregate of total costs?</p>	<p>surtaxes and/or special expenses in connection with those taxes".</p> <p>The Fee base is Allowable Costs, which doesn't include taxes except where they are a part of a subcontract, equipment, material etc. cost.</p>
20	Terms of Payment 5.3.2	<p>Item 5.3.2: Please clarify the definition of a "portfolio" or "portfolios," in the context of this paragraph. Does a portfolio equal a region, a service line, or some other delineated group of work?</p>	<p>In 5.3.2, portfolios refer to a sub-grouping of buildings, leases, or other assets that have been organized to ensure effective performance management.</p> <p>The associated portfolio for each asset will be provided in the RFP.</p>
21	SRE 1.4.c.	<p>SRE 1.4.c: "The total page count limitation for the Bidder's entire response is 450 pages..."</p> <p>Please confirm that the page count excludes Section III, Financial Bid Form and Certifications.</p>	<p>After careful review of the bid submission requirements and consideration of industry's input, the page count for the entire response has been increased to 475 pages. The page count excludes certain pages, which will be described further in the RFP</p>
22	SRE 1.4.c	<p>Does the "not smaller than" limitation of Arial 12 apply to text in tables and graphics, or can that text be smaller?</p>	<p>Arial 11 applies to the whole bid proposal package.</p>
23	SRE 1.4.d and e	<p>Are the title page and table of contents pages</p>	<p>The page count excludes certain pages,</p>

		included in the page limit of 450?	which will be described further in the RFP.
24	SRE 2.3	<p>SRE 2.3: "Responses are to be structured and numbered in the same manner as the Evaluation Criteria with separate tabs for each section of the Evaluation Criteria as well as each criterion."</p> <p>Please clarify that the reference to "Evaluation Criteria" is to "SRE 5 Rated Technical Evaluation Criteria: and NOT to Column E of that table.</p> <p>For greater clarity, please confirm that tabs are to be provided to separate Mandatory from Rated Requirements and, within each of these, to separate Evaluation Areas (specified in Column B).</p>	<p>Yes this is to confirm that tabs are to be provided to separate Mandatory from Rated Requirements and, within each of these, to separate Evaluation Areas (specified in Column B).</p>
25	SRE 1.4.c, SRE 2.5 etc.	<p>We understand that one response is required under the current bid structure. We respectfully suggest that a page limitation that does not vary with the number of Regions being bid, unintentionally gives an advantage to those bidding on fewer Regions; in the extreme case, this would provide maximum advantage to those bidding on only one Region. We further suggest that the submission instructions and page limitations be modified as follows to distinguish between information that will necessarily and legitimately vary by Region and information that will not:</p> <ul style="list-style-type: none"> • Setting a page limitation for the responses to the Mandatory Requirements (SRE 4) and requiring only one response, independent of the number of Regions being bid • Setting a page limitation for the responses to Section III (SRE 3) and requiring only one response, independent of the number of Regions being bid • Setting a page limitation for the Rated 	<p>After careful review of the bid submission requirements and consideration of industry's input, the page count for the entire response has been increased to 475 pages. The page count excludes certain pages, which will be described further in the RFP</p> <p>PWGSC will not be providing page limitations on specific sections of the response. PWGSC believes that bidders are best positioned to determine how they wish to allocate pages amongst the required responses.</p> <p>To clarify the submission requirements:</p> <ul style="list-style-type: none"> • It is intended that bidders only submit one response to the SRE 4 Mandatory Technical Evaluation Criteria, independent of the

		<p>Technical Evaluation Criteria (SRE 5), and requiring separate, complete responses for each Region being bid, the page limitation to apply to the submission for each Region.</p> <ul style="list-style-type: none"> Setting a page limitation for the Technical Scenario (SRE 6) and requiring only one response, independent of the number of Regions being bid <p>We believe that these changes would level the playing field for bidders and simplify the response process, as well as facilitate independent Region-by-Region evaluation, ensuring best value for Canada.</p>	<p>number of Regions being bid.</p> <ul style="list-style-type: none"> The Financial Bid Forms referenced in SRE 3 are excluded from the page count limitation. It is intended that bidders only submit one response to SRE Technical Scenarios, independent of the number of Regions being bid.
26	M-1	<p>Note requirement in M-1 and M-2 to report total square metres of “office space”. Given that the RP-1 Contract includes many other types of space, we request that these response requirements be changed to “floor space” or “asset space”, along with the associated evaluation criteria in Column D for all three mandatory requirements.</p>	<p>The suggestion has been considered. However, since the majority of the space under RP-1 will be office space, there will be no change to this requirement for M-1, M-2, or M-3.</p>
27	SRE 5 Rated Technical Criteria, R-1 SRE 4 Mandatory Technical Criteria, M1	<p>R-1 and M-1 both refer to “Management Services”. Please clarify:</p> <ul style="list-style-type: none"> Whether the scope of “Management Services” defined in M-1 also applies to R-1; or Whether the scope of “Management Services” for R-1 should be all of SOW 3; or Whether the scope of “Management Services” for R-1 should be “Property Management, Lease Administration, and Project Delivery Services.” 	<p>The scope of the Management Services defined in M-1 also applies to R-1.</p>
28	GI03 Definition of bidder:	<p>The current definition of bidder limits the amount of relevant experience the bidder can draw upon to demonstrate the bidder’s full spectrum of capabilities. We request that bidder’s relevant experience gained</p>	<p>A subsidiary is a separate legal entity and unless included as part of the bidder as a joint venture, its experience has no application to the experience of the bidder</p>

		through wholly owned subsidiaries be considered. It should be up to the bidder to demonstrate the relevance of the experience.	and cannot be considered as that of the bidder.
29	SRE 1 Bid Preparation Instructions, section 2:	The requirement to submit the electronic copy in Word format significantly limits the bidders ability to provide a high quality response. Word is not the industry standard for creating documents of this size. We request that only Adobe format be required.	As per SRE 1.2 the Bidder should provide all soft copies on USB key in both Microsoft® Office 2003 compatible format AND searchable Adobe Acrobat® compatible PDF format.
30	SRE 1 Bid Preparation Instructions, section 4c:	The limit of 450 pages will not allow the Bidder to respond to all the questions in the evaluation criteria. We request a maximum of 900 pages for the response.	After careful review of the bid submission requirements and consideration of industry's input, the page count for the entire response has been increased to 475 pages. The page count excludes certain pages, which will be described further in the RFP.
31	SI 11 Real Property 1 – Technical Information:	Is the technical information available now or only after the RFP is released? If it is available now, we request a copy of the USB containing the technical information.	The technical information will be available once the RFP has been issued.
32	SC03 – Authorities, section 1:	The section states "Canada shall designate a Technical Authority and shall notify the Contractor of the name, address and telephone number of the Technical Authority... The Technical Authority shall act as the principal point of contact with the Contractor for all matters relating to the Contract, including daily operations, reporting and administration." The SOW section 3.1.5.2.2. requires the bidder to "Designate a single point of contact to manage the relationship with the TA, referred to as the Relationship Manager, with the required authority to commit the contractor, following due process."	The Technical Authority as described in the Solicitation is a function that may be fulfilled by one or more individuals. PWGSC will adjust its organization considering the successful bidders' organizational strategy.

33	SOW 3.1.13.2.1 -	<p>Can PWGSC clarify how many Technical Authorities will be assigned to each Region?</p> <p>SOW 3.1.13.2.1 - Ensure that the health and safety of persons granted access to the workplace is protected...</p> <p>In buildings where the Bidder's staff is onsite and the Bidder has full control over security, this requirement is reasonable and feasible. In remote and unmanned buildings, as well as where the tenant controls building security, it is not feasible to expect that the Bidder can exercise responsibility for Custodian or Tenant contractors and subcontractors. Any process of granting site access will be dependent on the willingness of the tenant or custodian to follow the Bidder's process and this cannot be controlled. We request that the wording be revised as follows:</p> <p>3.1.13.1.1 Assume control and exercise responsibility for the workplace regarding OHS matters in relation to work being carried out for Custodian assets where the Contractor has control of site access, except as specifically excluded in writing by the TA. Where the Contractor does not have control of site access, work with the tenant to implement access protocols and coordinate work in the building. This applies for all work whether carried out by:</p> <ul style="list-style-type: none"> a) the contractor and its subcontractors; b) Custodians and their contractors and subcontractors; or c) Tenants and their contractors and subcontractors. <p>3.1.13.2.1 In assets where the Contractor controls site access, ensure that the health and safety of persons granted access to the workplace is protected,</p>	<p>PWGSC is aware that there are challenges to meeting the requirement to ensure Health and Safety of persons where the Contractor does not have control of site access. PWGSC is expecting that the Contractor will establish reasonable mitigating governance and operational mechanisms to meet due diligence requirements, subject to the Acceptance Review process.</p>
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		including federal government employees, resources under the contractor's authority, Custodians' contractors' and subcontractors' employees and the public. In assets where the Contractor does not have control over site access, work with the Tenant to implement access protocols and coordinate the work in the building.	
34		As per SRE Bid Preparation Instructions, in item 4.c, the text must not be smaller than Arial font size 12. Are organizational charts included in this requirement? Or, can they be illustrated in a smaller font? Can graphics be illustrated in a smaller font?	The SRE section has been amended to allow bidders to use an Arial font size 11pt. The SRE section has been updated to allow bidders to submit an organizational chart. The RFP will elaborate on restrictions.
35		Can 11 x 17 paper be used to illustrate organizational charts?	The SRE section has been amended to allow bidders to submit an organizational chart. The RFP will elaborate on restrictions.
36		Are the front covers of the amendments, the title page and table of contents included in the page count restriction?	The page count excludes certain pages, which will be described further in the RFP.
37		The definition of 'dispute' contained in Section 1a. of SC09 appears to be limited to issues identified by the Contractor. Why are issues identified by Canada not also disputes for the purposes of SC09? Note that Section 3a states that 'any dispute between the parties to the Contract of any nature arising out of...the Contract which could result in a claim by either party...must be resolved in the first instance by Canada'. This suggests that disputes may, in fact, be identified by either party. How will disagreements identified by Canada under the Contract be resolved if	Directions from Canada are not considered disputes. They become disputes if the contractor does not agree and commences dispute resolution. The text will be amended to replace "a claim by either party" to "a claim by the Contractor"

		they are not eligible for determination under the disputes resolution procedure? As currently drafted, Canada has the ability to unilaterally make determinations without identifying matters as disputes for further negotiation under the disputes resolution procedures. Kindly revise definition of 'dispute' to also include matters identified by Canada.	
38		<p>In relation to Section 1a. of SC09, we request that property damage claims as well as all other insured claims (including the third party claims referenced in SC08 in relation to which Contractor has indemnity and save harmless obligations towards Canada) be excluded from the dispute resolution procedures. Insured claims should be handled in accordance with an industry-standard claims management process. Insurers are not governed by the Contract between the Contractor and Canada and would therefore not be obligated to participate in any negotiation or mediation process. The exercise of setoff rights in respect of an insurable event (i.e., in respect of a loss directly caused by the Contractor's sub-contractors that is insured by the sub-contractors insurers) may irrevocably prejudice the Contractor's ability to claim against the applicable sub-contractor(s)' insurers, as any exercise of setoff by Canada would not likely be considered an insurable loss. Please revise the General Conditions to make clear that Canada may not exercise set-off rights in relation to insurable claims and also include an industry standard-process for resolving insured claims (including those related to property damage).</p>	<p>Text of CS09.1.a. will be amended to exclude claims for property damage and insured losses. Canada will not change its position on right of set-off</p>
39 (i)		Under Section 1b. of SC09, 'any claim of setoff regarding any amount due to Canada' has been specifically excluded from the dispute resolution	SC09.1.b. will be amended to allow Contractor to dispute Canada's right of set-off. However, the exercise of set-off

		<p>procedures. In the event that the Contractor disagrees with any exercise of setoff rights by Canada, how is it proposed that such disagreement will be resolved under the Contract? As currently drafted, there is no process by which the Contractor may dispute any wrongful exercise of setoff rights by Canada. Kindly revise the disputes resolution process to permit the Contractor to dispute potential claims of set-off by Canada and to allow for suspension of the set-off right during the pendency of the dispute until liability for the amount owing is determined and the quantification of the loss has been crystallized.</p>	<p>will not be suspended during the resolution process.</p>
39 (ii)		<p>As a matter of principle, we question why Canada should be permitted to unilaterally exercise setoff rights in respect of matters under dispute or in respect of any matters in which Canada has decided to make a final and binding direction. Set-off is typically only exercised in respect of crystallized amounts that are legally owing. The Contractor, as a matter of equity and fundamental fairness, should be permitted to bring any claim in respect of which Canada wishes to claim set-off rights through dispute resolution before Canada exercises such rights. The present provisions may cause the Contractor to bear unrecoverable losses (particularly in respect to insured claims) in respect of amounts unfairly setoff by Canada.</p>	<p>Canada will not consider amending its right of set-off.</p>
40		<p>Under Section 3a. of SC09, Canada has the ability to issue 'final and binding' written directions or decisions subject only to the remaining provisions of the DRP. What immediate recourse does the Contractor have in the event that it disagrees with Canada's decisions/directions? Such directions/decisions could be of significant cost impact to the Contractor, and as currently drafted, there is no immediate mechanism to</p>	<p>In the event that the Contractor disagrees with Canada's decision, the Contractor can escalate to next level of resolution process.</p> <p>Canada will not consider the inclusion of a short-form adjudicative process.</p>

		appeal or otherwise dispute Canada's unilateral determinations. Consider inclusion of a short-form adjudicative process to permit an efficient, fair and binding determination to be made in respect of urgent or low-value disputes and consider inclusion of an arbitral process of less urgent but high-value matters.	
41	SC07 2. Proof of Insurance	Pursuant to 2b., the Contractor should only need to provide originals or certified true copies of contracts of insurance maintained by the Contractor pursuant to the requirements SC07 4 and 5 and not those policies which at its discretion, Contractor may want to obtain pursuant to 1.e. Please clarify if this is Canada's intention.	The Contractor should only need to provide originals or certified true copies of contracts of insurance maintained by the Contractor pursuant to the requirements SC07 4 and 5.
42	SC07 4. Wrap-Up Liability	<p>Pursuant to section 4.a, the wrap –up insurance policy must provide coverage for all services provided under the contract.</p> <p>Wrap up coverage is a construction liability policy which protects contractors and subcontractor on construction projects. Therefore except for project delivery services, all other services to be rendered under the contract would not qualify for wrap up coverage but instead would be covered by the CGL required under SC07 5).</p> <p>In addition, wrap up is usually obtain on a project by project basis once scope and contractors (as applicable) are identified. The wrap- up is then project specific and the costs thereof are included in project costs.</p> <p>Due to the number of locations and number of subcontractors, a single policy to cover all services, including all project delivery and all contractors is not</p>	<p>The Wrap-up insurance requirement cannot be met by a common construction Wrap-up policy. This Wrap-up must provide coverage for all services to be provided under the contract.</p>

43	SC07 4. Wrap-Up Liability	to our knowledge, commercially available in the commercial insurance market.	Section 4b. states that the wrap up insurance coverage provided must be primary to all other insurance policies and must not be substantially less than that provided by the latest edition of IBC Form 2100, except for liability arising from damage to the Work during construction, which must be limited to the completed operations period. Damage to Work during construction is typically a risk covered by a Course of Construction Policy (also known as a “all-risk”or builders risk) and is obtained on a project by project basis. Based on IBC 2100 policy form to which section 4b makes reference , damage to property under our care, custody and control would be an exclusion under this policy form, except for damages that would happen during the completed operations phase. Therefore property damage risk occurring during construction is not covered by wrap-up. We therefore suggest that Canada include in the Contract a requirement that a Course of Construction policy be obtained on a project by project basis, the costs of which would be Project Costs.	In accordance with SC07.1e., Canada will not dictate how the Contractor is to cover its risks outside of the mandatory insurance requirement of the contract. However, Course of Construction (Builder’s Risk) insurance that is deemed necessary and usual for construction projects by subcontractors will be considered as Direct Subcontract Costs.
44	SC07 4. Wrap-Up Liability	Pursuant to section 4.e. , the Contractor must be responsible to provide and maintain policies for the duration of the contract and for any option or extension of the contract term. The first policy issued must provide coverage for the initial contract term. As stated above, Wrap-up should be on a project by project basis. Market availability is a concern. In addition if this section 4.e. also apply to the CGL , CGL policies in the existing commercial market do not exceed 5 years whereas the initial term of the Contract is 7 years.	The required Wrap-up is not limited to construction activities. It needs to provide coverage for all ongoing activities of the Contractor. The insurance requirement will be amended to allow the required Wrap-up coverage to be provided by consecutive or multiple Wrap-up policies.	

45	SC07 4. Wrap-Up Liability	Section 4.h. states that the policy must be issued with a deductible amount of not more than \$25,000 per occurrence applying to property damage claims. We submit that bodily injury claims needs to be included in addition to property damage in this sentence. This requirement should also be subject to market availability.	Bodily injury coverage is mandatory. PWGSC will not consider applying a deductible for bodily injury.
46	5. Commercial General Liability	Section 5.b. states that the Contractor must be responsible to provide and maintain CGL coverage for Products/Completed Operations hazards for a period of four years, beyond the two (2) years coverage provided by the Wrap-Up Liability policy. We are unclear as to what the intention is. Is the intent to carry a 6 year CGL policy for completed operations? Typically the coverage period ends 36 months from the completion of the Contract.	PWGSC is requiring 6 years coverage for Products/Completed Operations hazards, the first two years being provided under the Wrap-up policy and the last four under the CGL policy.
47	5. Commercial General Liability	In summary, Contractor has concerns about the Insurance provisions and would suggest either a industry consultation on the matter or a review of the section by Canada in light of these comments. We would welcome the opportunity to discuss these during the RFP Phase.	<p>PWGSC has consulted the insurance industry via the Insurance Bureau of Canada (IBC). The results of the consultation confirmed that the RP-1 insurance requirement is reasonable and that the coverages are available. The IBC can assist bidders in finding underwriters that offer insurance policies meeting the insurance requirement. Bidders can contact any IBC Consumer Information Centre: http://www.ibc.ca/en/contact_us.asp</p> <p>PWGSC recognizes that setting such coverage is quite an undertaking for brokers that are not familiar with this type</p>

			of exposure. It is imperative that Bidders allow their broker sufficient time to secure the proper coverages. Bidders can look to the Insurance Brokers Association of Canada: http://ibac.ca/ or their provincial Brokers association for assistance in finding a competent broker.
48	SC08 LIMITATION OF LIABILITY	<p>Section 2. a. states that the Contractor's obligation to indemnify Canada for losses related to first party liability is limited in respect to each insured loss for which insurance is to be provided pursuant to the insurance requirements of the Contract, the Wrap-Up Liability insurance limit for one occurrence as referred to in SC08 (should read SC07) Insurance Terms.</p> <p>There are 2 policies required under this contract and both have different limits. As drafted the Wrap-up limit (\$50 million) is the limit for CGL losses where the required coverage is only \$5 million.</p> <p>Typically, the service provider should not be responsible for more than the insurance limits or the actual insurance proceeds paid. Limitations of liability and insurance limits should be aligned to protect all parties.</p>	<p>The wording of SC08.2.a. will be adjusted to limit the Contractor's responsibility of insured losses to the respective limits of each liability policy.</p>
49	SC08 LIMITATION OF LIABILITY	Section 2. b. states that in respect to each loss for which insurance is not required to be provided in accordance with the insurance requirements of the Contract, the liability is limited to the amount of \$20,000,000. We understand that policy exclusions would fall under this section. Is this Canada's understanding?	<p>Yes, the policy exclusions would fall under Section 2. b.</p>

50	<p>SC08 LIMITATION OF LIABILITY</p>	<p>Section 4 states that the Contractor's obligation to indemnify Canada for losses related to third party liability must have no limitation and must include the complete costs of defending any legal action by a third party. If requested by Canada, the Contractor must defend Canada against any third party claims.</p> <p>In light of the nature of the Contract as well as SC08 section 1 we understand that Contractor's obligation to defend relates not to any third party claim but specifically to third party claims in regards to the indemnity obligations set out SC08 1. We suggest that the last sentence should be clarified as follows: " If requested by Canada, the Contractor must defend Canada against any third party claims in connection with its indemnity and save harmless obligations set out in SC08 section 1 above. "</p> <p>This clarification is material in understanding the risk exposure and the required insurance.</p>	<p>The requirement to defend against third party claims is not predicated on the indemnity and save harmless provisions but is more general and applies regardless of the Contractor's liability.</p>
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