

**RETURN BIDS TO:
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**Bid Receiving - PWGSC / Réception des
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Gatineau
Québec
K1A 0S5
Bid Fax: (819) 997-9776

**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

This document contains a security requirement

Title - Sujet ENERGY PERFORMANCE - FBI PROGRAM	
Solicitation No. - N° de l'invitation EN438-150500/A	Date 2015-01-27
Client Reference No. - N° de référence du client 20150500	
GETS Reference No. - N° de référence de SEAG PW-\$\$FK-289-66637	
File No. - N° de dossier fk289.EN438-150500	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2015-03-09	Time Zone Fuseau horaire Eastern Standard Time EST
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: Maquiling(fk div), Amalia M.	Buyer Id - Id de l'acheteur fk289
Telephone No. - N° de téléphone (819) 956-5978 ()	FAX No. - N° de FAX (819) 956-3600
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction: DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA 380 HUNT CLUB RD ENVIRONMENTAL SERVICES DIRECTORATE OTTAWA Ontario K1A0S5 Canada	

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

Maintenance & Professional Consulting Services Division
(FK)

11 Laurier St./ 11, rue Laurier
3C2, Place du Portage, Phase III
Gatineau
Québec
K1A 0S5

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

Solicitation No. - N° de l'invitation

EN438-150500/A

Amd. No. - N° de la modif.

File No. - N° du dossier

fk289EN438-150500

Buyer ID - Id de l'acheteur

fk289

CCC No./N° CCC - FMS No/ N° VME

20150500

See attached document.

GENERAL STATEMENT OF WORK

The ESCo must be responsible for implementing an energy savings program at The CBSA Training Centre located in Sainte - Madeleine de Rigaud.

History:

The CBSA Training Centre is located in Sainte - Madeleine de Rigaud, at 475 Chemin de la Grande Ligne. It is a complex of nine buildings built between 1931 and 1965. Building block N began in 1931. Block L was added in 1962-1963. The construction of the other blocks took place between the years 1962 and 1965. The CBSA Training Centre has been completely renovated between the years 1984 to 1989, including the expansion of the blocks A, B, C and F. The pumping station was added in 2012, as well as the Rifle Ones and Hangar training block. SNC- Lavalin O&M has custodial responsibility of the site and provides property management services on behalf of PWGSC until 2015.

Overview of Electrical Mechanical Systems:

Heating the complex is provided by three hot water boilers feeding a network of power / hot water loop formed and serving air handler coils, fan coil heaters and some return air systems. The network is divided into nine heating zones, with each zone activated by a pump. Many blocks also supply preheating tube exchangers, three additional areas to serve the needs for domestic hot water, a pool and preheating ventilation air. The original boilers were converted to natural gas in 2005, with diesel fuel as a supplementary energy booster. A new hot water boiler is installed in Block B, and serves the complex through a heat exchanger to each of the three heating coils of the three main groups of HVAC air handlers, with another exchanger loop for radiant heating floors of the DRC.

The boiler also heats the coil devices and heaters in other areas of the complex. Two heat pumps (25Tons each) directly heat coils for two other groups of the same HVAC. Heating for the shed formation is provided by two-piece units roof top units, equipped with natural gas coils serving the office and the gym. The pumping station south of land near the pond water is heated by electricity and the inner station pumps are driven by diesel engine. The new complex has its own generator running on diesel oil.

Ventilation and Air Conditioning:

Mechanical ventilation of the old complex is decentralized and is distributed in forty mechanical rooms, located mainly in basements or roof level in mechanical shed. Some groups of combined treatment of cooling air to the ventilation is provided by either by free cooling or mechanical cooling.

The residential blocks A, D, F and J receive a breakdown by treatment group of conventional H type air-handler with heat recovery. Mechanical cooling from a new pre-cooler (2005) combined with a condenser is installed on the roof of block F and supplies a chilled water network of fan coil air-conditioning units in 304 rooms .

Blocks and academic administration A, B, I / C, N and L are ventilated and cooled by groups of conventional H-type air handlers. Block N is equipped with a roof-top, with separate direct expansion units (split DX unit) incorporating into its modular section 2 coils in direct expansion refrigerant gas and an electric coil unit, providing the 4th level of the block N classrooms, air conditioning and a heated air as needed. Connected directly adjacent to this group, there is an air cooled unit, incorporating the compressor and condenser cooling circuit, of the same condenser. The pool is served by a comprehensive system of specialized dehumidification, designed for this application.

In Block M, the roof of the gym is equipped with a new group of the integral air direct expansion units, incorporating within the same enclosure a compressor, evaporator and condenser, serving the gymnasium with air conditioning and needed heated air by electric heating coils. The air from several local electrical rooms and sanitary facilities is discharged to the roof or walls by exhaust ventilation. The complex's older air ducts and were probably completely cleaned between 2006 and 2010.

The breakdown of the new field complex shooting range is served by three main groups of air handlers, (101 to 103) their enclosures contain heating coils with hot water from a part of the new boiler. Air conditioning is provided by chilled water coils from the two new chillers, (250T each) of the new addition to the Complex (one of them is back-up) joined the two new standalone units in the former complex, all connected in a continuous loop redundancy in case of failure of one of the coolers. Optional water and glycol coils providing heat recovery are included in the three groups on the distribution and recovery system. The breakdown of the group is: 103 specialty units serving the classrooms, ventilation and air conditioning hangar training areas are supplied by two-piece units on the roof, described above, each incorporating its associated fan, air supply and return ducts. The air is cooled by coils distributed gas direct expansion (DX coils) integrated with rooftop units.

Associated groups of the air handlers in the complex, including steam humidifiers, are supplied with osmosis treated water, which is heated by electric elements, transformed into steam which in turn is then gravity fed to a vessel of treatment groups with the air lances of vapour dispersion generally located upstream of the fan casing in the air distribution system.

Cooling:

The complex's mechanical cooling is provided by two centrifugal chillers, replaced in 2010, provided with circulation pumps to circulate chilled water to coils integrated with the various devices of ventilation. Two circuits of return water are used to provide cooling to the water-cooled A/C units. About seven other small additional direct expansion units serve separate devices (split unit DX) used for spot cooling small spaces at various strategic locations. Eight additional cooling compressors are connected as evaporators in five refrigerators and cold rooms of the central kitchen. Two new chillers, (250T each) of the new complex provide chilled water to three groups 101-103. As mentioned, one of these two new chillers is being replaced in case of failure. These cooling are supplied by a new double cell type cooling tower, connected with indoor pools for four season operation.

Energy Sources:

The site is supplied natural gas, which its connected to the existing natural gas meter serving the old complex, and recently extended to the new complex. This supply is then served by its own meter and thence to a group of sheds associated with its own meter.

Building Controls:

The building has a centralized Direct Digital Control (DDC) system that allows electronic control of all the systems of the complex. A recent generation PLC (VCI Control) system controls the operation of heating, ventilation, air conditioning and fans distribution. The new hangar complex and training areas have been equipped with an updated version of the same VCI Controls technology to maintain the uniformity of DDC systems. Three control air compressors provide compressed air to the former complex equipment still modulated by the pneumatic force (actuators, valves, and thermostats). Two other air compressors for general use are associated with the needs of workshops. There is dehumidification apparatus for the air which are associated with each of the compressors.

Plumbing:

The complex is connected to a source of municipal water. The domestic cold water system includes two large storage tanks to fill the volume of water required by residential users and distributed by four circulating pumps. Two large water softeners treat all water before distribution. The domestic hot water system includes three tanks and water is distributed by four recirculation pumps. A system for water treatment of the pool includes a circulation pump, a sand filtration system, a chlorine dispenser and a heat exchanger.

The following is a statement of the general scope and conditions of work that are required from the successful ESCo for this project, but it is not an all-inclusive list.

1. The ESCo must undertake engineering and project management and related responsibilities and duties as required to implement energy efficiency improvements in the facility.
2. The ESCo must guarantee the performance in terms of a fixed payback period not exceeding 96 months. This must be worked out using financing cost at an interest rate as shown in [Appendix "I", page 5](#).
3. This requirement is for all buildings at the CBSA Training Centre, located in Sainte – Madeline de Rigaud.
4. The ESCo must conduct an assessment, which must examine the existing facility, physical plant, systems and equipment, operating and maintenance procedures and existing space conditions, and assess the potential for reduction in energy consumption and energy demand. The ESCo must develop the concept of the energy efficiency improvements related to but not restricted to: lighting, motors, heating, ventilation and air conditioning, envelope improvements, control systems, fuel conversion, load sharing and load shedding, and water consumption improvements.
5. Changes to the tenant's equipment or its operations must not be included in the proposal.
6. The existing environmental conditions and systems operating hours are based on the client department's program requirements and system capabilities and must be maintained. Any changes to these will have to be approved by PWGSC and the client departments.

ADDITIONAL PROVISIONS

- 1** Canada reserves the right to review and reject any of the retrofit measure proposed by the ESCo in the Energy Audit Report, for inclusion in the Contract.
- 2** **Client Requirements**
 - 2.1 Clients, with sensitive programs occupy the building. Any disruption during operating hours must be minimal. The operating hours vary from area to area. In computer and laboratory rooms, the work affecting the operations can be implemented during a period coordinated with the occupants.
 - 2.2 In occupied areas, the implementation of Measures must not disrupt the operation of the facility. On site modifications to equipment are to be coordinated through the Departmental Representative, and, if need be, most of the Work must be performed during "off" hours and no premium must be charged for this.
 - 2.3 Working Hours in occupied areas must be established before implementation of the Work in any area. The ESCo must give the Departmental Representative adequate advance notice before start of the Work in any area.

- 2.4 The existing comfort level in terms of thermal conditions, humidity levels, air circulation and indoor air quality must not be lowered. If the codes allow levels below the existing levels, then approval must be obtained from the Departmental Representative before making changes to present levels. The Department may require a change in baseline.

3 Applicable Codes, Standards & Guidelines

- 3.1 The design and implementation of all Improvements and systems and subsystems and modification and up-grading of all existing equipment, systems, and sub-systems must conform to ASHRAE 90.1, Canada Occupational Safety & Health Regulations pursuant to the Canada Labour Code Part II, Treasury Board Personnel Management Manual Occupational Safety & Health, Health & Safety Guidelines for Energy Management Projects under the Federal Buildings Initiative, the Department Environmental Standard for office accommodation - MD 15000, and all applicable building codes.

4 Energy Audit Report

- 4.1 The first phase of this Contract will be the preparation of an Energy Audit Report consistent with the ESCo's Proposal within (12) twelve weeks after signing of the Contract to confirm the findings of the Proposal Brief. The Energy Audit Report must meet the requirements covered under Appendix "A", Definitions.
 - 4.1.1 Preparation of the Energy Audit Report can be completed in stages. The last stage must be completed within the above referenced sixty (60) Working Days.
- 4.2 The ESCo must supplement the Energy Audit Report with any additional Measures, as approved by Canada, before preparing Design Documents for that Measure.
- 4.3 If the Savings found in the Energy Audit Report do not total to at least 90% of the savings projected in the Proposal, there must be no payments from the Department should it exercise its right to Terminate the Contract.
- 4.4 The ESCo must define the equipment, systems and sub-systems that are affected by the Improvements in the Energy Audit Report.
- 4.5 The Departmental Representative must review and accept for implementation several or all of the Measures identified in the Energy Audit Report. PWGSC reserves the right to reject any of the retrofit measures proposed by the ESCo in the Energy Audit Report, for inclusion in the Contract. The approved Measures must become part of the Contract.

5 Monthly Reporting By The ESCo

- 5.1 Monthly reporting must begin the month following signing of the Contract. Each monthly report must provide the Departmental Representative with sufficient details as required under [Appendix "F"](#) and [Annex "A" Section 13.1.8.5](#) to permit a thorough and accurate assessment of the report.

6 Related Work

- 6.1 The ESCo must select and implement an energy monitoring system, including all hardware and software required to quantify and qualify projected and actual Energy Savings. The ESCo must provide comprehensive training to Canada's staff in the use of the system.
- 6.2 The ESCo must review and update existing operating manuals or prepare new operating manuals to reflect changes resulting from the Measures. The ESCo must provide all required troubleshooting manuals, operating manuals, as-built drawings and other written instructions for new and affected equipment and systems, and must incorporate this documentation into the existing manual inventory.
- 6.3 The ESCo must provide support to, and must participate with the Department in its task of providing information to the occupants regarding the benefits of energy efficiency improvements and their effects on the workplace. Support must include, but not be limited to, all labour and material required for provision of such information kits, information seminars, videos and monitoring as may be required in complete coordination with the tenants as defined in the Energy Audit Report.
- 6.4 Additional work may be requested by PWGSC in addition to the requirements of this Contract, and the need for which is determined not to have resulted from the Implementation of the Measures. PWGSC may pay the ESCo directly for such work or may request that the ESCo extend the Guaranteed Payback Period in accordance with [GC 32](#) of this document.

7 Construction Schedule

- 7.1 Upon approval of the Measures contained within the Energy Audit Report, the ESCo must submit for approval to Canada a proposed critical path schedule. This schedule must define, at a minimum, each phase of each Measure described in the Energy Audit Report, for the performance of the Work, and Commissioning, which must include a date for Completion of each Measure and a Commencement Date.
- 7.2 The ESCo must submit to Canada, on a monthly basis from the signing of the Contract, a report which must reasonably describe the status of the Work in accordance with [Annex "A" Section 10](#).
- 7.3 The ESCo must complete and commission the last Measure of the Improvements within the time period specified in the ESCo's Proposal Brief, beginning from the signing of the Contract.
- 7.4 Upon written approval by Canada, the ESCo may be authorized to modify the construction schedule, which can exceed the time period stated in [Annex "A" Section 7.3](#).

8 Design And Working Documents

- 8.1 The ESCo must execute the following work for the accepted Measures following the Energy Audit Report:
 - 8.1.1 Prepare, complete and furnish for review by Canada, as per agreed schedule, the Design Documents for each approved Measure, in accordance with the general design direction and philosophy expressed in the Energy Audit Report.
 - 8.1.2 Upon acceptance of the Design Documents, prepare, complete and furnish for the approval of Canada, the Working Documents for the installation of the Improvements in accordance with the approved Design Documents and performance specifications;
 - 8.1.2.1 A professional engineer, registered in the Province where the Work is located, must certify the Working Documents and Shop Drawings.
- 8.2 The ESCo must be responsible to ensure accuracy of all plans, specifications and any other documentation used to plan or design the Improvements. The ESCo must be liable for any damages arising from inaccuracy or incorrectness of any plans, drawings, specifications or other design documentation prepared by the ESCo and/or its Subcontractors.
- 8.3 No acceptance or review by Canada, whether expressed or implied, must be deemed to relieve the ESCo of any professional or technical responsibility for the plans, drawings, calculations or other material prepared or assembled by or on behalf of the ESCo. The review by Canada must be for the sole purpose of ascertaining general design concept and maintainability of systems, and must not mean approval of the design detail inherent in the documents.
- 8.4 Without restricting the provisions of GC 6, the ESCo must comply with all statutes, regulations, by-laws and codes applicable to the Improvements, and must obtain the required permits, consents and/or approvals for the Work, as required by local, Provincial, and Federal jurisdictions.

8.5 For a new Direct Digital Control (DDC) system, the ESCo must meet the following PWGSC requirements:

8.5.1 In preparing project specifications, the ESCo must use the current edition of the National Master Specification, (NMS) Division 25, Section 250111-259001, in accordance with the "NMS User's Guide". The ESCo retains overriding responsibility for content and must edit, amend and supplement the NMS as deemed necessary to produce an appropriate project specification free from conflict and ambiguity. Project specifications will be subject to review by Canada.

8.5.2 The system must meet Canada's bilingual requirements.

9 Changes In Design And Working Documents

9.1 Notwithstanding any approvals previously given, the ESCo must make changes in the Design Documents when requested in writing by Canada. Prior to implementing such changes, the ESCo must advise and obtain approval from Canada in writing of the effect if any, of the said changes on the Improvements in terms of time to complete, the Total Cost of Project, the Guaranteed Payback Period, Energy use and any other implications that may arise.

10 Duties Of The Parties During The Construction Period

10.1 During the period of construction of the Improvements, the ESCo must be responsible for:

- 10.1.1 The preparation, issuance and administration of all tender calls, in accordance with generally accepted tendering practices.
- 10.1.2 Ensuring that subcontractors follow the instructions or protocols as established by Canada in conjunction with the occupant, to ensure that the functioning of any computer facility must not be interrupted.
- 10.1.3 Ensuring that the ESCo personnel or the ESCo's subcontractors' personnel working on the systems for any computer facility and related areas have experience in working on facilities of a similar nature.
- 10.1.4 The preparation, issuance and administration of purchase orders and subcontracts.
- 10.1.5 The verification and approval of shop and manufacturers' drawings.
- 10.1.6 The correspondence relating to the completion of the Improvements.
- 10.1.7 The approval of substitutions of methods and materials after consultation with Canada.
- 10.1.8 Submitting to Canada a copy of all subcontracts, with a summary of the scope of Work.
- 10.1.9 Developing an implementation schedule, consistent with the project schedule described in [Annex "A" Section 7](#), showing the detail and extent of occupant spaces to be disturbed during the Work and a plan to minimize the disturbances.

- 10.1.10 Providing appropriate site supervision to ensure that the progress of the Work and the quality of materials and workmanship are in conformity with the requirements of the design and the subcontracts entered into between the ESCo and the Subcontractors to complete the Improvements.
 - 10.1.11 The preparation and provision to Canada of two (2) copies of project manuals, and of "as-built" architectural, structural, mechanical and electrical drawings of systems and areas only as they relate to the scope of Work required for the Measures. Canada must supply to the ESCo the original drawings, if available, of such systems and areas on reproducible paper or AutoCAD if available. The ESCo must execute its "as-built" drawings on AutoCAD (or most recent version), following Canada's standard practice, and proper computer drafting practice.
 - 10.1.12 The final inspection of the installation of each of the Improvements and issuance of Measure completion certificates from the ESCo's design engineers, identifying the approval from the local inspection authority.
 - 10.1.13 Ensuring that all federal, provincial and local regulations relating to occupational health and safety are respected throughout the construction period.
 - 10.1.14 The supervision of the Work by the ESCo and its Subcontractors to ensure that the Work is completed in accordance with local bylaws and regulations and the applicable directives as referred to in [Annex "A" Section 4](#) and any other applicable codes and standards.
 - 10.1.15 The acceptance of the Work of the Subcontractors.
 - 10.1.16 The start-up and Commissioning of the Improvements and affected systems.
 - 10.1.17 Training of the personnel in accordance with [Annex "A" Section 14](#), in order to ensure the proper operation and maintenance of the building equipment and systems affected by the Improvements.
 - 10.1.18 Notifying Canada of any previously unknown or unexposed health hazards including, but not limited to, PCBs and asbestos that may be discovered through the course of the construction of the Work.
 - 10.1.19 Assisting Canada in carrying out his or her duties as they relate to the Contract.
 - 10.1.20 Permitting Canada access to the Work and its site at all times during the performance of the Contract.
 - 10.1.21 Providing Canada with all necessary documents and information necessary to carry out the monitoring of the design and implementation of each Improvement.
 - 10.1.22 Providing Material Safety Data Sheets (MSDS) for all WHMIS controlled materials used by the ESCo or its Subcontractors.
- 10.2 During the period of construction of the Improvements, Canada agrees:

- 10.2.1 To permit the implementation of the Improvements.
- 10.2.2 When repairs or replacements of existing equipment or systems are required for the implementation of the Improvements, and when such repairs or replacements are not the result of improper actions of the ESCo, and the ESCo has notified Canada that such repairs or replacements are necessary, if these repairs or replacements are economically feasible, then Canada must immediately proceed to effect such repairs or replacements. Where such repairs or replacements are beneficial to the energy performance of the Facility, the Baseline Data and/or Guaranteed Payback Period must be adjusted accordingly.
- 10.2.3 To provide the ESCo with a storage room of approximately twelve square metres (12 m²).
- 10.2.4 To provide power and water on site at no cost to the ESCo for the execution of the Work, which is to be used in a cost effective manner by the ESCo.
- 10.2.5 To perform monitoring of the design and implementation of the Improvements.
- 10.2.6 To participate in the Commissioning of the Improvements.
- 10.2.7 To make existing WHMIS information available to the ESCo.
- 10.2.8 To provide to the ESCo Energy use data within ten (10) Working Days of its receipt, and this provision must continue until the end of the Contract period or until the Contract is terminated.

11 The ESCo's Site Representative

- 11.1 The ESCo must, upon the award of the Contract, designate a project manager who must be in full charge of the operations, and who is authorized to accept any notice, consent, order, direction, decision or other communication on behalf of the ESCo.
- 11.2 The ESCo must, until the Work has been completed, provide qualified supervision at the work site during the Working Hours.
- 11.3 The ESCo must have a representative available on a 24-hour basis, during the construction period, to respond to trouble calls and emergencies. During Working Hours, the ESCo's response time for trouble calls during construction of the Improvements must be no more than four (4) hours.
- 11.4 The ESCo's response time for trouble calls after the Completion of Measures to the end of the Contract must not be more than 24 hours.

12 Cleaning Of The Work

- 12.1 The ESCo must, during the execution and upon completion of the Improvements, clear and clean the Work and its site, and dispose of all hazardous materials, to the satisfaction of Canada, and in accordance with relevant codes and standards.

- 12.2 If removed materials contain PCBs, these must be stored in approved containers provided by Canada, be labelled and marked as directed by Canada, and delivered to Canada for storage.
- 12.3 Removed fluorescent lamps must be recycled and not discarded into garbage or sold, and the cost of the recycling must be borne by the responsibility of Canada.

13 Duties Of The Parties After The Construction Of The Improvements

- 13.1 After the construction of the Improvements, the ESCo must provide all of the following services and documentation in connection with the Improvements, as agreed between the ESCo and Canada:
 - 13.1.1 Except for the lighting systems, all material and labour to effect proper and recommended maintenance of the Improvements, during the warranty period defined in GC 18.
 - 13.1.2 Training of the person(s) designated by Canada to receive instruction and training as is necessary to ensure the proper operation and maintenance of the Improvements.
 - 13.1.3 A minimum of once every two (2) months, visits to the Facility to ensure that the ESCo's instructions have been followed and, if not, notification to Canada of any irregularities.
 - 13.1.4 If the performance of the Improvements falls short of projections, investigate the cause, and issue a notice of irregularity indicating to Canada specifying what action must be taken to rectify the situation and improve performance.
 - 13.1.5 Provide Canada with a detailed list of the various counters, meters (i.e. primary and secondary meters, and computer printout readings) to substantiate savings, and describe in detail the calibration procedures and protocols for all such equipment.
 - 13.1.6 Review the Operating and Maintenance protocol to ensure the protocols are implemented and to ensure energy savings are achieved.
 - 13.1.7 Maintain, fine tune, and revise the Direct Digital Control software used to maintain energy savings.
 - 13.1.8 Complete and submit to Canada a regular written report of Energy performance addressing each utility. This report must be on a monthly basis. The report must show at least the following information for the period since the last report:
 - 13.1.8.1 Actual consumption as per existing utility metering reported by Canada, and the ESCo's submeters.
 - 13.1.8.2 Value of weather and any other independent variables, as relevant, for the associated metering period.
 - 13.1.8.3 Baseline Data for the corresponding period, adjusted for independent variables, as relevant.

- 13.1.8.4 Energy Savings.
- 13.1.8.5 The reports must show expected savings for the period, based on the Energy Audit Report, adjusted for current weather and other independent variables as relevant.
- 13.1.9 Administer warranties on Canada's behalf for materials or equipment installed as part of the Improvements, for a period of twelve (12) months from the acceptance of [Measure \(see GC 18\)](#).
- 13.1.10 Provide to Canada the manufacturers' warranties on all items installed by the ESCo. Warranties must be provided in a binder.
- 13.2 After the construction of the Improvements, Canada undertakes:
 - 13.2.1 To operate the Improvements and maintain the equipment installed by the ESCo, in the manner prescribed by the ESCo; the equipment to be so maintained by Canada is all systems including those installed by the ESCo as part of this Contract, except as mentioned in [Annex "A" Section 13.1.1](#).
 - 13.2.2 Where the recorded Energy use is greater than projected, and the ESCo has made all necessary investigations, and has advised Canada of any deficiencies with equipment owned and operated by Canada, and Canada has accepted the ESCo's recommendations, to rectify such deficiencies within agreed time frames.
 - 13.2.3 To reasonably cooperate with the ESCo in order to optimize the performance of the Improvements including, if necessary, in an information campaign directed at the Tenants of the Facility.
 - 13.2.4 To provide the ESCo with the information the ESCo requires if available, concerning results of preventive maintenance, irregularities in Energy consumption, the results of inspections or tests, or other information pertinent to the Improvements that may be requested by the ESCo.
 - 13.2.5 To accept and ensure that the Improvements are operated as intended by and agreed with the ESCo.

14 Training

- 14.1 The ESCo must provide and arrange for all necessary training of facility managers and operating staff to ensure the proper operation of the Measures, to impart the necessary skills identified in the Energy Audit Report, to enable them to operate the systems efficiently.

15 Environmental Conditions

- 15.1 Any changes to the mechanical systems must be designed to comply with Part II of the Canada Labour Code, Canada Occupational Safety & Health Regulations, the National Building Code of Canada, Treasury Board Directives on the use and occupancy of buildings, ASHRAE 55-92, ASHRAE 62-2001 and Comfort Conditions as defined in [Appendix "A"](#).
- 15.2 The existing environmental conditions and system operating hours are based on the Client Department's program requirements and system capabilities and must be maintained. Any changes to the existing environmental conditions and system operating hours must be submitted to Canada for approval.
- 15.3 Due to the terms of the current collective agreement, occupants may be relocated or sent home due to environmental conditions beyond the range deemed acceptable. Should this occurrence result from the ESCo's work or actions, Canada must notify the ESCo of the costs associated with this occurrence and may charge such costs to the ESCo. These costs must not be charged to the Project Balance.

16 Electrical Power Quality

- 16.1 The electrical power quality (i.e. total harmonic distortion & power factor) of the building must not deteriorate during the implementation of the Improvements. The ESCo must measure power quality conditions in the presence of Canada, at locations identified by Canada, and must provide a written report, prior to commencement of the Work and at completion of the Work. The ESCo must take measures as required to correct power quality to initial conditions if deviations are noted.
- 16.2 Any costs incurred by Canada through a power factor penalty by the utility as a direct result of the Implementation of the Improvements must be paid for by the ESCo until such time as remedies to correct the power factor back to initial conditions is completed. The ESCo must pay for the costs of such remedies and these costs are eligible to be included in the Project Balance.

DEFINITIONS

In this Contract, unless the context otherwise requires,

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

"Approval Period" means ten (10) Working Days from receipt of materials supplied by the ESCo, except for the Energy Audit Report which must be 30 Working Days.

"Assignee" means the entity to whom the ESCo assigns the payments which are payable to the ESCo by the Department pursuant to this Contract.

"Baseline Data" means the total monthly energy consumption for each utility at the Facility, calculated over a twelve (12) consecutive month period prior to the installation and commencement of operation of the Improvements.

"Comfort Conditions" means that the space temperature must be maintained between 21°C and 24°C. The relative humidity must be maintained between 25% in winter and 60% in summer. The amount of outside air must be as set out in the latest ASHRAE Standard, unless design compliance is impractical due to the pre-existing design limit of the building. The impact of outside air quantity and other operational parameters must not raise the carbon dioxide (CO₂) concentration by more than 450 ppm above the concentration outdoors and not over 850 ppm at anytime when the workstations are occupied.

"Commencement Date" means the first day of the calendar month immediately following:

- a. Approval of the Notice of Completion of Measures; or
- b. The date determined pursuant to [Annex "A", section 7.3](#).

whichever occurs first.

"Commissioning" means the testing and verification of equipment and systems for their actual performance relative to their design requirements and the documentation of the tests and results. For testing requirements reference must be made to PWGSC's Commissioning Manual.

"Completion of Measure" means the completion of ninety-five percent (95%) or more of a Measure in terms of its cost and installation.

"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 term.

"Contract" means the written agreement between the Parties including the supplementary conditions, the general conditions, the annexes, and the appendices 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 from time to time

Contracting Authority means the party identified on the front cover page, responsible for the establishment of the Contract, its amendments, administration, and any contractual issues relating to the contract.

Contractor means an Energy Service Company (ESCO) with whom *Canada* enters, or intends to enter, into a *Construction Contract*;

Days means continuous calendar days, including weekends and statutory public holidays;

"Demand" means the highest rate of energy consumption recorded during a utility meter-reading period.

"Department" means the federal Department of Public Works and Government Services.

"Departmental Balance" means the sum of the funds provided by Canada as early paydown payments plus interest charges on such payments. This balance must be reduced in accordance with GC 30.3.2

"Drawings":

"As-Built Drawings" means the drawings prepared by the ESCo to form an accurate record of the Improvements as built.

"Design Drawings" means the drawings prepared by the ESCo, showing the design developed for the approved Measures from the Energy Audit Report.

"Shop Drawings" means the drawings prepared by Subcontractors, manufacturers or others, illustrating their detailed interpretation of the Working Documents, and necessary for the fabrication and installation of the Improvements.

"Working Drawings" or "Working Documents" means the final design plans and specifications, for the approved design of Measures, in sufficient detail to construct the Measure. The Working Documents must include:

- Operating instructions, related to the installation and operation of the Improvements.
- A definition of the key performance parameters to be tested to verify that acceptable space conditions can be met.
- A description of any changes to the design capabilities of the space.
- Key text to be used by Canada in describing the Measure to Tenants.

"Employee" means a person with whom the ESCo has an employer/employee relationship.

"Energy" means a commodity supplied by a utility supplier or by Canada's Utilities Group or from any other source, including electricity, water, steam and chilled water.

"Energy Audit" means a thorough and professional examination and review of the existing energy systems which form part of the overall Work performed by the ESCo as part of this Contract.

"Energy Audit Report" (EAR) means the written report the contents of which are based on the findings of the Energy Audit, prepared and provided by the ESCo, which must include, for each Measure, as a minimum:

- A description of the existing equipment, its condition, operating methods, its capability to provide the required service and any deficiencies.
- A description of the intent of the Measure, with design concept.
- An outline of any impact the Measure may have on space conditions, and any variances from established codes, regulations and standards.
- An outline of any expected change in the capacity of the existing equipment and systems.
- Budget costs for the Measure, showing fees, rebates, incentives, or subsidies expected.

- Expected lifetime of all new equipment and the impact on the lifetime of existing equipment.
- Any special warranty period for new equipment, and special service arrangements proposed.
- An outline of the effort expected of building staff in the process of implementing the Measure.
- Estimated savings by energy type.
- A method of proving the savings if not simply from the submeter readings.
- An estimated impact on non-energy operating costs, whether increasing or decreasing operating or maintenance costs.
- A clear statement of non-energy operating or maintenance costs savings.
- An outline of the implementation process and schedule, identifying locations where Work must be performed and the impact on normal building occupancy, including an estimated date for Completion of the Measure.
- An outline of any new operating or maintenance procedures required.
- An outline of any new skills required of operating and maintenance staff.
- Budget costs and detailed scope of Work to be provided in compliance with [Annex "A", Section 4.4](#), consistent with the scope of Work outlined in the Proposal Brief.

"Energy Costs" means the cost for the energy or water consumption and demand of the Facility for a specified period of time but excludes late payment charges or any other charge that is unrelated to the actual energy consumption or demand.

"Energy Savings" means those savings described in [Appendix "C"](#).

"Energy Service Company (ESCO)" means the person or entity whose name appears on the signature page of the written agreement and who is to supply goods or services to Canada under this Contract.

"Estimated Project Cost": means one of the following, as applicable:

- a. Upon the approval of the Energy Audit Report by Canada and prior to the start of Construction, the revised estimate of the Cost of Design Engineering and Cost of Construction for the acceptable Measures as shown in the ESCo's Energy Audit Report.
- b. During Construction of Accepted Measures, the non-incurred remaining costs [of item](#) above, and Bid prices must be used where available.

"Facility" means the Canadian Border Services Agency complex, located in Rigaud, Quebec, including buildings and their systems.

"Fees" means those set out in [Appendix "B", Section 3](#).

"Financing Charges" means those described in [Appendix "B", Section 4](#).

"Guaranteed Payback Period" means the number of consecutive months specified in the Energy Audit Report and agreed to between the Departmental Representative and the ESCo that are necessary to provide full compensation to the ESCo for the Work performed, in accordance with the terms of the Contract, and beginning at the Commencement Date.

"Guaranteed Performance Premium" means the amount charged by the ESCo to guarantee the measures detailed in the ESCo's approved Energy Audit Report.

"Improvements" means all the proposed energy saving retrofits contained in the approved Energy Audit Report(s), the implementation of which must result in Energy Savings or Net Energy Savings.

"Interest" must mean the following:

- a. "Nominal Interest Rate (NIR)" means applicable annual interest rate compounded annually.
- b. "Effective Interest Rate (EIR)" means an annual rate of interest equal to the monthly compounding of the Nominal Interest Rate.
- c. "Compounding Floating Interest Rate Premium" means the premium applicable during construction and prior to Milestone Securitisation. It must be identified by the ESCo in its Proposal and is added to the Bank Prime interest rate selected by the ESCo as published in the Globe and Mail. The date of publishing from which the specific Bank Prime interest rate is chosen must be within a week of the closing date for submission of the Proposal. The submission of the Energy Audit Report must also identify the Bank Prime interest rate published within the prior week. This rate must apply to funds expended by the ESCo during construction and prior to Milestone securitisation.
- d. "Financier Floating Interest Rate Premium" means the premium applicable after Milestone Securitisation. It must be identified by the ESCo in its proposal and is added to the Bank Prime interest rate selected by the ESCo as published in the Globe and Mail. The date of publishing from which the specific Bank Prime interest rate is chosen must be within a week of the closing date for submission of the Proposal. The submission of the Energy Audit Report must also identify the Bank of Canada interest rate published within the prior week. This rate must apply to funds advanced by a financier or Assignee other than the ESCo or the ESCo's normal source of line of credit for funds approved via Milestone Securitisation.
- e. "Fixed Interest Rate Premium" means the premium applicable if fixed rate financing is implemented. It must be identified by the ESCo in its Proposal and it is added to a 10 year fixed rate benchmark selected by the ESCo. The fixed rate benchmark must be based on average term financing for a 10 year financing term. The fixed rate benchmark must also include rates for terms shorter than 10 years. The ESCos must provide three years of historical data on the selected fixed rate benchmark.. The date from which the fixed rate benchmark is chosen must be within a week of the closing date for submission of the Proposal. The submission of the Energy Audit Report must also identify the 10-year fixed rate benchmark applicable within the prior week.

"Lender" means the entity that provides short-term line of credit monies to the ESCo.

"Measure" means a discrete portion of the Improvements.

"Milestone Certificate" means a certificate as set out in [Appendix "G"](#), prepared by the ESCo, for the approval of Canada, and executed by Canada and the ESCo. The purpose of the certificate is to certify that the Energy Savings claimed by the ESCo are reasonable and justified.

"Milestone Securitisation" means that point in time when the ESCo receives its funds from the Assignee.

"Minister" means the Minister of Public Works & Government Services and includes a person acting for, or if the office is vacant, in the place of the Minister and also their successors in the office, or their lawful deputy.

"Net Energy Savings" means the Energy Savings adjusted by the predetermined sum of all incremental operating and maintenance costs changes incurred as a direct result of the installation of the Improvements.

"Notice of Completion" means a written document from the ESCo to Canada indicating that the Improvements are complete.

"Open Book" means that there must be full disclosure of costs charged by the ESCo, to the Project Balance and these costs must be subject to audit and approval by Canada.

"Outside Costs" means the costs for items shown in [Appendix "B", Sections "1" and "2"](#).

"Party" means Canada or the Contractor or any other signatory to the Contract and "Parties" means all of them.

"Person" includes an individual or 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 Lobbyists Registration Act R.S. 1985 c.44 (4th Supplement) as the same may be amended from time to time.

"Project Balance" means the outstanding balance of the Total Cost of Project less payments for Energy Savings and other payments by Canada which are intended to be applied to the Project Balance. It must comprise two components, one of which must consist of funds expended by the ESCo prior to Milestone Securitisation and the other must consist of those funds provided by the Assignee by means of Milestone Securitisation to the ESCo.

"Project Reserve" means 10% of the projected monthly energy savings not paid to the ESCo as set out in [GC 28.1.1](#). This is paid out to the ESCo based on actual energy savings in accordance with [GC 28.1.1.2](#). Incremental interest is added monthly to the Project Reserve in accordance with [GC 28.1.1.1](#).

"Proposal" or "Proposal Brief" means the written proposal based on the preliminary findings of the ESCo submitted to PWGSC as a requirement of the Request for Proposal.

"The ESCo's Representative" means the employee of the ESCo who is designated by the ESCo as being in full charge of the ESCo's operations for the purpose of this Contract.

"Request for Proposal" (RFP) means the public document issued by Canada to solicit proposals from ESCos.

"Schedule of Energy Savings" means the monthly schedule set out in the most recently approved Milestone Certificate and is a forecast of Energy Savings arising from Measures which have been partially or fully completed. If Canada makes a paydown payment to the ESCo, this Schedule of Energy Savings must set out the allocation of Energy Savings between Canada and the ESCo.

"Subcontract" includes a contract let by any subcontractor at any tier for the performance or supply of a part of the Work and the derivatives of the word must be construed accordingly;

"Subcontractor" means any person or firm to whom the ESCo has subcontracted any part of the Work.

"Supplier" means any person or firm from whom the ESCo purchases in excess of \$1,000 of supplies, materials or goods used in any part of the Work.

"Summer" means the period between the months of April to September.

"Total Cost of Project" means the sum of the charges as outlined in [Appendix "B"](#).

"Tenant" means the occupant of the Facility and may include members of PWGSC and CBSA, other federal Departments and private sector groups.

"Work" means the work required to be done, furnished and performed by the ESCo under this Contract and includes all services, matters and things required to be done, furnished and performed for the full execution and completion of the project.

"Working Days" means Monday to Friday except statutory holidays.

"Working Hours" means the normally occupied hours within the building, for which the referenced environmental conditions must be maintained.

"Winter" means the period between the months of October to March.

LIST OF ACRONYMS

- 1) ASHRAE American Society for Heating, Refrigerating, and Air Conditioning Engineers
- 2) DDC Direct Digital Control
- 3) EAR Energy Audit Report
- 4) EMCS Energy Monitoring Control System
- 5) EPCs Energy Performance Contracts
- 6) ESCo Energy Service Company
- 7) GPP Guaranteed Payback Period
- 8) MD Mechanical Division
- 9) MSDS Material Safety Data Sheets
- 10) PCBs PolyChlorinatedBiphenols
- 11) PPM Parts per Million
- 12) PWGSC Public Works & Government Services Canada
- 13) RFP Request for Proposal
- 14) WHMIS Workplace Hazardous Materials Information System
- 15) MD 15000 Mechanical Environmental Standard for Federal Office Buildings

TOTAL COST OF PROJECT

1. CHARGEABLE OUTSIDE COSTS

The amounts charged to the Project Balance by the ESCo for the implementation of the project must be all-inclusive (GST or HST (as applicable) extra) and must include but not be limited to the following items:

- 1.1. The amounts of all subcontracts as payment for the implementation of the Improvements, and all materials, machinery, equipment and goods related thereto.
- 1.2. Expenditures made in connection with the implementation of the Improvements, including materials, labour and expenses for developing, investigating, testing and approving methods, but not included under item 1.1, above.
- 1.3. Expenditures for preparation, inspection, delivery, installation and removal of materials, plant, tools, and equipment.
- 1.4. The cost of erecting, maintaining and removing temporary offices, sheds and other similar structures required for the performance of this Contract.
- 1.5. Telephone, fax and other general expenses at the job site office.
- 1.6. Travel costs for personnel from the ESCo's Canadian head office are chargeable in accordance with Treasury Board travel regulations, but must not include charges for intercity travel time.
- 1.7. Printing and photocopying of training manuals, plans and drawings only.
- 1.8. Rentals of all equipment APPROVED by Canada prior to use, including the ESCo-owned equipment, in accordance with rental agreements and the ESCo's then current schedule of rental rates, including any applicable insurance premiums therein and expenditures for transportation to and from the site of such equipment, costs of loading, costs of installation, dismantling and removal thereof and repairs and replacements during its use.
- 1.9. The cost of all architectural work.
- 1.10. Premiums on all insurance policies and bonds obtained by the ESCo or the ESCo's subcontractors specifically for the implementation of the Improvements.
- 1.11. Royalties for the use of any patented invention paid to a third party, not exceeding five percent (5%) of the selling price of the patented invention.
- 1.12. Fees for licenses and permits.
- 1.13. All costs incurred by the ESCo with respect to the entering into of financing arrangements for the Project Reserve.
- 1.14. The amount of any interest paid to consultants, engineers, subcontractors or suppliers on holdback amounts where the interest represents a real cost to the ESCo and is not included in the finance charges described in the Contract.

- 1.15. Metering and instrumentation cost.
- 1.16. All Workers' Compensation levies paid in connection with the Improvements but not including Workers' Compensation levies for the ESCo personnel.
- 1.17. Engineering and other services.
- 1.18. Federal, provincial, and municipal taxes, where applicable.
- 1.19. Training materials, manuals, and drawings.
- 1.20. Costs of obtaining manufacturers' and installers' warranties, and of work necessary to meet the requirements of the ESCo's warranty.
- 1.21. Grants, rebates and discounts
- 1.22. Cost of all building permits required to be obtained by the authority having jurisdiction.
- 1.23. Costs for calculation of the adjustment to Baseline Data must be included in the Total Cost of the Project but must not affect the Guaranteed Payback Period.

2. NON CHARGEABLE OUTSIDE COSTS

The following administrative costs are not chargeable:

- 2.1. Local Courier Services.
- 2.2. Local Taxi Services.
- 2.3. Photocopies of monthly reports.
- 2.4. Cellular phone service.
- 2.5. Temporary Help Services for Administrative office staff.

3. THE ESCo's FEES

3.1. Labour

The ESCo must be entitled to include in the Total Cost of Project a fee for the ESCo providing services hereunder, and for services performed by the ESCo for purposes of entering into this Contract, and under any prior agreement between the parties. The fee must be based on the number of hours spent by the employees of the ESCo in providing such services, multiplied by the then-current hourly rates for the employees of the ESCo. The current hourly rates of the employees of the ESCo are set hereinafter but may be periodically amended by the ESCo based on actual and reasonable changes in the salaries of the individuals. The ESCo must provide on request, reasonable detail as to the number of hours spent by each employee in connection with the subject matter of this Contract.

Hourly rates in accordance with the proposal for the following positions:

Project Team Members:	Hourly Rates
Project or Construction Manager	\$
Energy Engineer	\$
Designers	\$
CAD Operators	\$
Fitters	\$
Other Technicians	\$

Specialist and Support Staff:

Consultants (Corporate)	\$
Administration and Support	\$

No charges must be applied for the time spent by the Principals of the ESCo on this project.

The Departmental Representative must approve the above rates.

3.2. Outside Cost Mark-up

To allow for overhead and profit, the ESCo must mark-up the actual costs of external labour and materials by the amount identified in the Proposal. GST and PST are not included in the calculation.

3.3. Guarantee Performance Premium

The ESCo must be entitled to include in the Total Cost of Project a premium (as set out in the Proposal) for its guarantee of the performance of the Contract. [Item 1.18 of Section 1, GST, PST and Section 3, of Appendix "B"](#) are not subject to the premium on this guarantee.

4. FINANCING CHARGES

Financing charges must be calculated and charged to the Project Balance in accordance with [Sections 1 and GC 29](#) of this document.

4.1. Financing Charges For Funding By The Department

- 4.1.1. These charges are included in the Performance Guarantee in accordance with [Section GC 34](#) . The ESCo must have right of payment for these charges.
- 4.1.2. The Total Cost of Project must include the financing charges for the Department's contribution. The applicable annual rate for such charges must be determined by the ESCo from lending rates set out in the table of rates for the Consolidated Revenue Fund of Canada in effect at the time this Contract is executed. The selection of the rate must be accomplished by selecting that rate which is applicable to the number of years that are closest to the time period required to complete the project.

4.2. Financing Charges For Funding By ESCo

- 4.2.1. These charges are included in the Performance Guarantee in accordance with [Section GC 34](#). The ESCo must have right of payment for these charges.
- 4.2.2. The Total Cost of Project must include the financing charges for the ESCo's contribution. The ESCo from the published Globe and Mail newspaper section Money Rates must

determine the base rate for such charges on the date most appropriate to the end of the calendar month. The applicable monthly rate must be that of the base rate being the Canadian Bank Prime, plus a fixed premium of 1.50%. The applicable monthly rate must then be applied against the Project Balance funded by the ESCo as at the start of the month to calculate the monthly interest charge against the Project Balance.

4.2.3. Charges to funding by the ESCo are in accordance with [Section 1](#).

4.2.4. The above calculation does not apply to the Project Reserve in accordance with [Section GC 34.2](#).

5. **GRANTS, REBATES AND DISCOUNTS**

All grants, incentives, refunds, rebates and trade discounts which may be obtained by the ESCo or Her Majesty, and which are directly related to the Improvements, must be credited to the Project Balance. All realizations from the sale of surplus supplies, materials and equipment paid for as part of the Outside Costs must be credited to the Project Balance. All amounts claimed by the ESCo from suppliers or contractors in the form of damages, fines or other penalties that have not previously been included in the Outside Costs must not be deducted from the Project Balance.

DETERMINATION OF INVOICES

The monthly energy savings referred to in the Contract must be determined as described below.

1. The saved Energy units must be determined by comparing the actual energy use and electrical demand for a specified month with that contained in the Baseline Data for the same period of time. The comparison must allow for the impact of differences in heating and cooling degree days on Energy consumption. Canada and the ESCo, by mutual consent, may elect to determine Energy use by calculation rather than by direct comparison with the Baseline Data. In such case, subject to approval by Canada within the Approval Period, the ESCo must perform the necessary calculations in accordance with acceptable engineering principles.
2. The value of Energy Savings must be established by multiplying the calculated Energy Savings by the marginal utility rates established by the Utilities Section of Property Facilities Management in this region for this project, as shown below.
3. The rates at the time of signing of this Contract are:

3.1. Electricity: Rate for Demand and Consumption:

Hydro Quebec Rate M: Medium-Power Rate

\$14.07	per kilowatt of billing demand, plus
\$0.0471	per kilowatt-hour for consumption (First 210,000 kWh)
\$0.0352	per kilowatt-hour for consumption (Remaining consumption)

3.2. City Water:

There is no charge for water supply to this site.

3.3. Natural Gas (Commercial General Service: Gaz Metro D₁ Tariff)

Gas supply charge	\$0.1423782 / m ³
Gas Compression	\$0.0072823 / m ³
Gas Transportation	\$0.0570500 / m ³
Gas Balancing: Winter/Summer	\$0.0592600 / m ³
Inventory Related Adjustments	\$0.0045313 / m ³ (Increase or Decrease)
Distribution Charges	\$1.87666 / day
For first 30 m ³	\$0.27914 / m ³
For next 70 m ³	\$0.19087 / m ³
For next 200 m ³	\$0.16918 / m ³
For next 700 m ³	\$0.12815 / m ³
For next 2,000 m ³	\$0.09490 / m ³
For next 7,000 m ³	\$0.06658 / m ³

Green Fund Contribution	\$0.00686 / m ³
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These rates, in future, must depend on the actual saving in utility costs to the Department. These rates must not be reduced from the above figures.

CERTIFICATE OF INSURANCE

Note to CO; Complete the Description, Contract No, Location and Award Date. You must also delete the insurance types and their instructions that are not required.

(To be completed by Insurer (not broker) and delivered to Public Works and Government Services Canada within 30 days following acceptance of tender)

CONTRACT

Description of Work _____ Contract No. _____ Award Date _____
 Location _____

INSURER

Name _____
 Address _____

BROKER

Name _____
 Address _____

INSURED

Name of ESCo _____
 Address _____
 Region _____
 Address _____

ADDITIONAL NAMED INSURED

Her Majesty the Queen in right of Canada
 as represented by the Minister of Public Work
 and Government Services (PWGSC)

This document certifies that the following policies of insurance are at present in force covering all operations of the Insured, in connection with the Contract made between the named insured and Public Works and Government Services Canada:

Type of Insurance	Insurer Name and Policy Number	Inception Date D/M/Y	Expiry Date D/M/Y	Limits of Liability		
				Per Occurrence	Annual General Aggregate	Completed Operations Aggregate
Commercial General Liability				\$	\$	\$
Umbrella/Excess liability				\$	\$	\$
Builder's Risk/ Installation Floater				\$		
Environmental Impairment Liability Insurance				\$		
Errors and Omissions Liability Insurance				\$		
Automobile Liability Insurance				\$		

I certify that the above policies were issued by insurers in the course of their insurance business in Canada, are currently in force and include the applicable insurance coverage's stated on the next page of this Certificate of Insurance, including advance notice of cancellation/reduction in coverage

 Name of Person authorized to sign on behalf of Insurer(s) (Officer, Agent, Broker) & Telephone Number

 Signature and Date D/M/Y

CERTIFICATE OF INSURANCE

<p>General</p> <p>Insurance policies required on page 1 of the Certificate of Insurance must be in force and must include the insurance coverages listed under the corresponding type of insurance on this page.</p> <p>The policies must insure the Contractor and must include Her Majesty the Queen in Right of Canada as represented by the Minister of Public Works and Government Services as an additional Insured.</p> <p>The insurance policies must be endorsed to provide Canada with not less than thirty (30) days notice in writing in advance of a cancellation of insurance or any reduction in coverage.</p> <p>Without increasing the limit of liability, the policies must protect all insured parties to the full extent of coverage provided. Further, the policies must apply to each Insured in the same manner and to the same extent as if a separate policy had been issued to each.</p>	<p>Commercial General Liability</p> <p>The insurance coverage provided must not be substantially less than that provided by the latest edition of IBC Form 2100.</p> <p>The policy must either include or be endorsed to include coverage for the following exposures or hazards if the Work is subject thereto:</p> <ul style="list-style-type: none"> (a) Blasting. (b) Pile driving and caisson work. (c) Underpinning. (d) Removal or weakening of support of any structure or land whether such support be natural or otherwise if the work is performed by the insured contractor. <p>The policy must have the following minimum limits:</p> <ul style="list-style-type: none"> (a) \$5,000,000 Each Occurrence Limit; (b) \$10,000,000 General Aggregate Limit per policy year if the policy contains a General Aggregate; and (c) \$5,000,000 Products/Completed Operations Aggregate Limit. <p>Umbrella or excess liability insurance may be used to achieve the required limits.</p>	<p>Builder's Risk / Installation Floater</p> <p>The insurance coverage provided must not be less than that provided by the latest edition of IBC Forms 4042 and 4047.</p> <p>The policy must permit use and occupancy of any of the projects, or any part thereof, where such use and occupancy is for the purposes for which a project is intended upon completion.</p> <p>The policy may exclude or be endorsed to exclude coverage for loss or damage caused by asbestos, fungi or spores, cyber and terrorism.</p> <p>The policy must have a limit that is not less than the sum of the contract value plus the declared value (if any) set forth in the contract documents of all material and equipment supplied by Canada at the site of the project to be incorporated into and form part of the finished Work. If the value of the Work is changed, the policy must be changed to reflect the revised contract value.</p> <p>The policy must provide that the proceeds thereof are payable to Canada or as Canada may direct in accordance with GC10.2, "Insurance Proceeds" (https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R/R2900D/2).</p> <p>The policy must provide coverage for testing and commissioning.</p>
<p>Environmental Impairment Liability Insurance</p> <ol style="list-style-type: none"> 1. The Contractor must obtain "Contractors Pollution Liability" insurance, and maintain it in force throughout the duration of the Contract, in an amount usual for a contract of this nature, but for not less than \$1,000,000 per accident or occurrence and in the annual aggregate. 2. If the policy is written on a claims-made basis, coverage must be in place for a period of at least 12 months after the completion or termination of the Contract. 3. The "Contractors Pollution Liability" policy must include the following: <ol style="list-style-type: none"> a. Additional Insured: Canada is added as an additional insured, but only with respect to liability arising out of the Contractor's performance of the Contract. The interest of Canada as additional insured should read as follows: Canada, represented by Public Works and Government Services Canada. b. Notice of Cancellation: The Insurer will endeavour to provide the Contracting Authority thirty (30) days written notice of policy cancellation. c. Separation of Insureds: The policy must apply to each Insured in the same manner and to the same extent as if a separate policy had been issued to each. d. Contractual Liability: The policy must, on a blanket basis or by specific reference to the Contract, extend to assumed 		

liabilities with respect to contractual provisions.

e. Incidental Transit Extension: The policy must extend to losses arising from any waste, products or materials transported, shipped, or delivered via any transportation mode to a location beyond the boundaries of a site at which the Contractor or any entity for which the Contractor is legally liable is performing or has performed the operations described in the contract.

f. Litigation Rights: Pursuant to subsection 5(d) of the [Department of Justice Act](#), S.C. 1993, c. J-2, s.1, if a suit is instituted for or against Canada which the Insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an Additional Named Insured under the insurance policy, the Insurer must promptly contact the Attorney General of Canada to agree on the legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt.

For the province of Quebec, send to:

Director Business Law Directorate,
Quebec Regional Office (Ottawa),
Department of Justice,
284 Wellington Street, Room SAT-6042,
Ottawa, Ontario, K1A 0H8

For other provinces and territories, send to:

*Senior General Counsel,
Civil Litigation Section,
Department of Justice
234 Wellington Street, East Tower
Ottawa, Ontario K1A 0H8*

A copy of the letter must be sent to the Contracting Authority. Canada reserves the right to co-defend any action brought against Canada. All expenses incurred by Canada to co-defend such actions will be at Canada's expense. If Canada decides to co-defend any action brought against it, and Canada does not agree to a proposed settlement agreed to by the Contractor's insurer and the plaintiff(s) that would result in the settlement or dismissal of the action against Canada, then Canada will be responsible to the Contractor's insurer for any difference between the proposed settlement amount and the amount finally awarded or paid to the plaintiffs (inclusive of costs and interest) on behalf of Canada.

Errors and Omissions Liability Insurance

1. The Contractor must obtain Errors and Omissions Liability (a.k.a. Professional Liability) insurance, and maintain it in force throughout the duration of the Contract, in an amount usual for a contract of this nature but for not less than \$1,000,000 per loss and in the annual aggregate, inclusive of defence costs.
2. If the policy is written on a claims-made basis, coverage must be in place for a period of at least 12 months after the completion or termination of the Contract.
3. The following endorsement must be included:

Notice of Cancellation: The Insurer will endeavour to provide the Contracting Authority thirty (30) days written notice of cancellation.

Automobile Liability Insurance

1. The Contractor must obtain Automobile Liability Insurance, and maintain it in force throughout the duration of the Contract, in an amount usual for a contract of this nature, but for not less than \$2,000,000 per accident or occurrence.
2. The policy must include the following:
 - a. Third Party Liability - \$2,000,000 Minimum Limit per Accident or Occurrence
 - b. Accident Benefits - all jurisdictional statutes
 - c. Uninsured Motorist Protection
 - d. Notice of Cancellation: The Insurer will endeavour to provide the Contracting Authority thirty (30) days written notice of cancellation.

DISPUTE RESOLUTION

DR 1 INTERPRETATION

1.1 In these Dispute Resolution, an

"arbitral question of law" means a question of law that:

- 1.1.1 is capable of determination by arbitration under the laws of Canada;
- 1.1.2 does not involve interpretation or application of public law of Canada, including without limitation any matter of constitutional, administrative, criminal or tax law; and
- 1.1.3 concerns:
 - 1.1.3.1 the formation, validity, interpretation, application or enforceability of the Contract;
 - 1.1.3.2 the performance, breach, termination or other discharge of the Contract;
 - 1.1.3.3 the rights, duties, obligations or remedies of parties created by or pursuant to the Contract; or
 - 1.1.3.4 any other issue of private law that may arise between parties relative to performance of the Contract;

"dispute" means any disagreement regarding any issue identified by the ESCo in the notice submitted to Canada in accordance with DR 3.2, "Notice of Dispute", and includes any claim by the ESCo arising from such disagreement and any counterclaim by Canada, but does not include any claim by either party for punitive or exemplary damages, injury to persons, death, or any claim based on an allegation of libel or slander; and

1.2 The alternative dispute resolution procedures set out in the Dispute Resolution do not apply to any claim by Canada against the ESCo except any counterclaim in a dispute as defined in this DR 1 INTERPRETATION, including, but not limited to, any claim of setoff regarding any amount due to Canada.

DR 2 CONSULTATION AND CO-OPERATION

- 2.1 The parties agree to maintain open and honest communication throughout the performance of the Contract.
- 2.2 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.

DR 3 NOTICE OF DISPUTE

- 3.1 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 ESCO against Canada, and which is not settled by consultation and co-operation as envisaged in DR 2 CONSULTATION AND CO-OPERATION, must be resolved in the first instance by Canada, whose written decision or direction must be final and binding subject only to the provisions of the Dispute Resolution . 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.
- 3.2 The ESCo must be deemed to have accepted the decision or direction of Canada referred to in DR 3.1 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 fifteen (15) Working Days after receipt of the decision or direction, the ESCo submits to Canada a written notice of dispute requesting formal negotiation under DR 4 NEGOTIATION. Such notice must refer specifically to DR 4 NEGOTIATION and must specify the issues in contention and the relevant provisions of the Contract.

- 3.3 The giving of a written notice in accordance with DR 3.2 must not relieve the ESCo from complying with the decision or direction that is the subject of the dispute. Such compliance, however, must not be construed as an admission by the ESCo of the correctness of such decision or direction.
- 3.4 If a dispute is not resolved promptly, Canada must give such instructions as, in Canada's opinion, are necessary for the proper performance of the Work and to prevent delays pending a resolution of the matter. Unless Canada terminates the Contract, orders the ESCo to suspend the Work, or takes the work out of the hands of the ESCo, the ESCo must continue to perform the work in accordance with the provisions and requirements of the Contract and the instructions of Canada. Such performance must not prejudice any claim that the ESCo may have.
- 3.5 Nothing in these Dispute Resolution relieves the ESCo from its obligation to provide any other notice required by the Contract within the time specified in the Contract.

DR 4 NEGOTIATION

- 4.1 Within ten (10) Working Days after receipt by Canada of a notice referred to in DR 3.2, or within such other period of time as may be mutually agreed to, the parties must commence formal negotiations in order to resolve the dispute. Negotiations must occur initially between representatives of the ESCo and Canada who play a direct supervisory role in the performance or management of the Contract.
- 4.2 If the representatives referred to in DR 4.1 are unable to resolve some or all of the issues which are the subject of the negotiations within ten (10) Working Days, the parties must refer the remaining issues which are in dispute to a second level of negotiation between a principal or principals of the ESCo and a senior level manager or senior level managers representing Canada.
- 4.3 If negotiations fail to resolve the dispute within thirty (30) Working Days from the date of delivery of the notice referred to in DR 3.2, or within such longer period as may have been agreed to by the parties, the ESCo may, by giving written notice to Canada, in accordance with GC2 of the General Conditions, within ten (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.
- 4.4 If the ESCo does not request mediation within the period permitted by DR 4.3, the ESCo must be deemed to have accepted the decision or direction of Canada under DR 3.1 and to have expressly waived and released Canada from any claim in respect of the particular matter dealt with in that decision or direction.

DR 5 MEDIATION

- 5.1 If the ESCo has requested mediation in accordance with DR 4.3, mediation must be conducted in accordance with "Rules for Mediation of Disputes"
- 5.2 If a Project Mediator has not previously been appointed for the purposes of the Contract, a Project Mediator must be appointed in accordance with Dispute Resolution - Rules for Mediation of Disputes"forthwith after delivery of a notice in accordance with DR 4.3 requesting mediation.
- 5.3 If the dispute has not been resolved within
 - 5.3.1 ten (10) Working Days following the appointment of a Project Mediator in accordance with DR5.2, if a Project Mediator was not previously appointed; or

5.3.2 ten (10) Working Days following receipt by Canada of a written notice in accordance with DR4.3, if a Project Mediator was previously appointed; or

5.3.3 such other longer period as may have been agreed to by the parties.

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

DR 6 BINDING ARBITRATION

6.1 If mediation of the dispute is terminated pursuant to the provisions of DR 5 MEDIATION, and

6.1.1 the termination of mediation occurs prior to the applicable date set out in DR 6.4; and

6.1.2 the disputed issues involve issues of fact or issues of arbitral questions of law or issues of mixed fact and arbitral questions of law;

either party, by giving notice in writing to the other party in accordance with GC 2 of the General Conditions, may require that the dispute be resolved by binding arbitration pursuant to this DR 6 BINDING ARBITRATION.

6.2 A notice referred to in DR 6.1 must be given within ten (10) Working Days of the date of termination of mediation under DR 5 MEDIATION and must be in accordance with GC 2 of the General Conditions.

6.3 If no notice is given within the period set out in DR 6.2, or if the conditions set out in DR 6.1.1 and DR 6.1.2 are not met, the arbitration provisions set out in this DR 6 BINDING ARBITRATION do not apply to the dispute.

6.4 Unless otherwise agreed, the arbitration of the dispute must be held in abeyance until the earlier of

6.4.1 the date of issuance of a Certificate of Substantial Performance under GC 15 of the General Conditions;

6.4.2 the date the work is taken out of the ESCo's hands; or

6.4.3 the date of termination of the Contract;

and consolidated with all other such disputes into a single arbitration.

6.5 Arbitral proceedings under this DR 6 BINDING ARBITRATION must be governed by and conducted in accordance with the *Commercial Arbitration Act*, R.S.C. 1985, c. 17 (2nd Supp.) and the provisions of Rules for Arbitration of Disputes.

6.6 For the purposes of calculating time under the Rules for Arbitration referred to in DR 6.5, arbitration proceedings must commence on the applicable date set out in DR 6.4.

6.7 Notwithstanding anything else contained in this DR 6 BINDING ARBITRATION, the arbitration provisions in this DR 6 do not apply if the aggregate amount of all claims by the ESCo required to be arbitrated on the applicable date set out in DR 6.4 is less than \$25,000.

DR 7 DISPUTES NOT SUBJECT TO ARBITRATION

- 7.1 Where the arbitration provisions in DR 6 BINDING ARBITRATION do not apply to a dispute as a result of DR 6.3 or DR 6.7, either party may take such court action or proceedings as it considers appropriate, including, without limiting the foregoing, all suits that would otherwise have been immediately available to it but for the provisions of these Dispute Resolution Conditions. Subject to the provisions of DR 7.2, the ESCo must initiate any such action or proceeding no later than three calendar months after the date that a Certificate of Completion is issued under GC15 of the General Conditions and not afterwards.
- 7.2 Any action or proceeding resulting from a direction under GC18 of the General Conditions must be initiated by the ESCo no later than three calendar months after the expiry of the warranty or guarantee period and not afterwards.

DR 8 CONFIDENTIALITY

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

DR 9 SETTLEMENT

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

RULES FOR MEDIATION OF DISPUTES

RM 1 Interpretation

- 1.1 Terms defined in the Contract and used in these Rules must have the meaning assigned to them in the Contract.

RM 2 Application

- 2.1 These Rules apply to mediation conducted under the Contract. By mutual agreement, the parties may change or make additions to the Rules.

RM 3 Communications

- 3.1 Written communications pursuant to these Rules must be given in the same manner as written notices are to be given pursuant to the Contract.

RM 4 Appointment of Project Mediator

- 4.1 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 Construction Disputes, in regard to any dispute that may arise with regard to the interpretation, application or administration of the Contract. In this case, they must jointly enter into a contract with the appointed Project Mediator, which contract must be in a form drafted by the Coordinator and agreed to by the parties.
- 4.2 If the parties do not appoint a Project Mediator pursuant to RM 4.1, the parties must appoint a Project Mediator within seventeen (17) Working Days following receipt of a written notice from the ESCo, in accordance with GC2, "Notices", requesting that mediated negotiations be undertaken in accordance with these Rules to assist the parties to reach agreement on any outstanding issues which may be in dispute. Any contract entered into with the appointed Project Mediator must meet the requirements as set out for the contract described in RM 4.1 of these rules.
- 4.3 When mediation is requested by the ESCo pursuant to the terms of the Contract, if the parties have previously entered into a contract with a Project Mediator, the parties must within two (2) days send to both the Project Mediator and the Coordinator
- (a) a copy of the written notice of dispute requesting formal negotiation under the terms of the Contract;
 - (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 ESCo's written request for mediation required under the terms of the Contract.
- 4.4 If the parties have not agreed on a Project Mediator, the parties must forthwith provide the Coordinator with the written materials referred to in (a), (b) and (c) of RM 4.3 together with a request that the Coordinator assist in the appointment of a mutually acceptable Project Mediator in accordance with these Rules.
- 4.5 Within five (5) Working Days following receipt of the request and materials referred to in RM 4.4, the Coordinator must 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 must be impartial and independent of the parties, and must be an experienced and skilled commercial mediator, preferably with knowledge of the subject matter of the dispute.
- 4.6 Within ten (10) Working Days of receipt of the list referred to in RM 4.5 each party must comply with the instructions accompanying the list(s) and must deliver the completed listing to the Coordinator.
- 4.7 Within two (2) Working Days following receipt of the completed listings, the Coordinator must select the highest common ranked mediator to act as Project Mediator for the purposes of the Contract.
- 4.8 In the event of a tie, the Coordinator must 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 must forthwith provide the parties with a second list of mediators and the procedure must be repeated.
- 4.9 If the parties have not previously entered into a contract with a mutually acceptable Project Mediator, the Coordinator must use reasonable efforts to negotiate a contract with a mutually acceptable Project Mediator on behalf of the parties, which contract must 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 must repeat the process with the second-highest common ranked mediator.
- 4.10 The parties agree that, upon successful completion of the negotiations referred to in RM 4.9, they must jointly enter into a a contract with the selected Project Mediator, which contract must be in a form drafted by the Coordinator and agreed to by the parties.
- 4.11 Upon execution of the contract with the Project Mediator referred to in RM 4.10, the Coordinator must provide the Project Mediator with copies of the documents referred to in RM 4

RM 5 Confidentiality

- 5.1 Subject to RM 5.2, and unless otherwise agreed in writing by the parties, the Project Mediator, the parties and their counsel or representatives must keep confidential all matters and documents disclosed during mediation proceedings except where the disclosure is necessary for any implementation of any agreement reached or is required by law.
- 5.2 Evidence that is independently admissible or discoverable in any arbitral or judicial proceeding must not be rendered inadmissible or non-discoverable by virtue of its use in mediation proceedings.
- 5.3 Neither party must make transcripts, minutes or other records of a mediation conference.
- 5.4 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 in 5.3 above.
- 5.5 All information exchanged during mediation procedures, by whatever means, must be without prejudice and must be treated as confidential by the parties and their representatives, unless otherwise required by law.

RM 6 Time and Place of Mediation

6.1 The Project Mediator, in consultation with the parties must set the date, time and place of any mediation conference as soon as possible, bearing in mind that, subject to agreement to the contrary between the parties, only ten (10) Working Days are available within which to attempt to settle the dispute.

RM 7 Representation

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

RM 8 Procedure

- 8.1 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 must be completed no later than two (2) Working Days prior to the date set for a mediation conference.
- 8.2 The Project Mediator must be free to meet with the parties individually during a mediation conference if the Project Mediator is of the opinion that this may improve the chances of a mediated settlement, and either party may request such an individual meeting at any time.
- 8.3 The parties may agree to extend the ten (10) Working Days available for settlement of the dispute through mediation, and the Project Mediator must record that agreement in writing.

RM 9 Settlement Agreement

- 9.1 The parties must 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.
- 9.2 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.

RM 10 Termination of Mediation

- 10.1 Either party may withdraw from mediation at any time without reason and, in that event, the Project Mediator must give each party a written notice terminating the mediation and establishing the effective date of termination.
- 10.2 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.

- 10.3 If a dispute has not been resolved within 10 working days or such longer period as may have been agreed to by the parties, the Project Mediator must terminate the mediation by giving written notice to the parties stating the effective date of termination.

RM 11 Costs

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

RM 12 Subsequent Proceedings

- 12.1 The parties must not rely on or introduce as evidence in any arbitral or judicial proceeding, whether or not such proceeding relates to the subject matter of mediation,
- (a) any document of other parties which 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.
- 12.2 The Project Mediator must neither represent nor testify on behalf of either of the parties in any subsequent investigation, action or proceeding relating to the issues in mediation proceedings.
- 12.3 The Project Mediator must 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.

- RULES FOR ARBITRATION OF DISPUTES

RA 1 Interpretation

1.1 Terms defined in the Contract and used in these Rules must have the meaning assigned to them in the Contract.

1.2 In these Rules,

"claimant" means the ESCo;

"Dispute Resolution Coordinator" or "Coordinator" means the Director, Contract Claims Resolution Board, Public Works and Government Services Canada, Place du Portage Phase III, 7A1 11 Laurier Street, Hull, Quebec K1A 0S5; and

"respondent" means Her Majesty.

RA 2 Arbitration Tribunal

2.1 Subject to these Rules, and unless otherwise agreed by the parties, the arbitration tribunal must consist of a single arbitrator ("the Tribunal") who must be appointed in accordance with the provisions of the Rules.

RA 3 Application

3.1 These Rules apply to arbitration conducted under the Contract. By mutual agreement, the parties may change or make additions to the Rules.

3.3 The scope of the arbitral proceedings must be limited to the resolution of the dispute submitted to arbitration.

3.3 The dispute must be subject to resolution pursuant to the provisions of these Rules whether or not such resolution requires determination of a question of law if such question of law is an arbitral question of law as defined in the terms and conditions of the Contract.

3.4 Arbitral proceedings must be governed by and in accordance with the *Commercial Arbitration Act*, R.S.C. 1985, c. 17 (2nd Supp.), the Code referred to therein, and the provisions of these Rules, and, subject only to the provisions of the *Commercial Arbitration Act*, the parties agree that the determination and award of the Tribunal must be final and binding on both parties.

3.5 The Tribunal must not decide the dispute *ex aequo et bono* or as amiable compositeur.

3.6 The Tribunal must decide in accordance with the terms and conditions of the Contract and must take into account the usages of the trade applicable to the transaction.

3.7 The costs of the Tribunal and the arbitration must be shared equally by the parties and each party must bear its own costs.

RA 4 Initiation of Proceedings

- 4.1 Either party may submit a dispute to binding arbitration to the extent permitted under DR 6, "Binding Arbitration", by giving notice in writing to the other party in accordance with GC 2, "Notices".
- 4.2 The notice referred to in RA 4.1 must contain the following:
- (a) a brief description of the Contract;
 - (b) a statement of the issue(s) in dispute;
 - (c) a request that the dispute be referred to binding arbitration; and
- 4.3 A copy of the notice referred to in RA 4.1 must be given to the Coordinator at the same time it is given to the other party.
- 4.4 Unless otherwise agreed, the arbitration of the dispute must be held in abeyance and consolidated with all other such disputes into a single arbitration in accordance with DR 6, "Binding Arbitration"

RA 5 Appointment of Tribunal

- 5.1 No later than ten (10) Working Days following the date of commencement of arbitration proceedings as set out in DR 6.6, the Coordinator must assemble and provide the parties with a list of qualified private sector arbitrators 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 arbitrator in descending order.
- 5.2 Within ten (10) Working Days of receipt of the list referred to in RA 5.1, each party must comply with the instructions accompanying the list(s) and must deliver the completed listing to the Coordinator.
- 5.3 Within two (2) Working Days following receipt of the completed listings, the Coordinator must select the highest common ranked arbitrator to act as the Tribunal for the purposes of the arbitration.
- 5.4 In the event of a tie, the Coordinator must consult both parties to re-evaluate their rankings in order to assist the Coordinator in selecting a single arbitrator acceptable to both parties. If the parties cannot agree upon an arbitrator, the Coordinator must forthwith provide the parties with a second list of arbitrators and the procedure must be repeated.
- 5.5 In the event that, following the repeated procedure, the Coordinator again fails to select a single arbitrator acceptable to both parties, the Tribunal must consist of three (3) arbitrators, one arbitrator appointed by each of the parties and the third arbitrator appointed by these two (2) arbitrators.
- 5.6 The Tribunal must in any event be composed of a person or persons who have experience in the subject matter of the dispute and are independent of either party. Without limiting the generality of the foregoing, the Tribunal must be at arm's length from both parties and must not be composed of members of any company, firm, or agency which advises either party, nor must the Tribunal be composed of a person or persons who are otherwise regularly retained by such parties.
- 5.7 The parties agree that they must jointly enter into an agreement with the selected Tribunal, which agreement must be in a form drafted by the Coordinator and agreed to by the parties.

5.8 The parties agree that they must each bear their own costs. Fees and reasonable expenses of the Tribunal and reasonable expenses associated with the conduct of the arbitration must be borne equally by the parties.

RA 6 Preliminary Meeting

6.1 Unless the parties to the arbitration and the Tribunal otherwise agree, the parties must meet with the Tribunal within ten (10) Working Days of the Tribunal's appointment to:

- (a) settle the location of premises for proceedings and responsibilities for the arrangement;
- (b) verify addresses for the delivery of written communications to each party and to the Tribunal;
- (c) present to the Tribunal the issues to be resolved by means of the arbitration;
- (d) estimate the length of time the hearing might take and the number of witnesses likely to be produced;
- (e) determine if a stenographic record or any other type of recording of proceedings should be kept, or if any particular services, such as interpreters, translations or security measures should be provided; and
- (f) determine any other matters pertinent to conduct of the arbitration.

RA 7 Communications

7.1 Subject to RA 7.2, the Tribunal must not communicate with a party to the dispute except in the presence of the other party.

7.2 Notwithstanding RA 7.1, the Tribunal may communicate with the parties separately for the purpose of establishing procedures to be followed or setting the time of a meeting; other exceptions to the general rule must only be made with the consent in writing of all parties.

7.3 If a communication by the Tribunal to one party is in writing, a copy must be sent to the other party.

7.4 If a party sends any written communication to the Tribunal, a copy must be sent to the other party.

7.5 Any communication that is required or permitted to be given to the Tribunal or either party must be in writing and may be given by delivering the same by facsimile, electronic mail or by mail, postage prepaid, to the address established for the purposes of the Contract in the case of the parties, and to the address provided by the Tribunal in the case of the Tribunal, and such communication must be deemed to have been received in accordance with the provisions of the General Conditions of GC 2, "Notices".

RA 8 Representation

8.1 The parties may be represented or assisted by any person during the arbitral proceedings.

RA 9 Conduct of Proceedings

- 9.1 Subject to the provisions of these Rules, the Tribunal may conduct the arbitration in the manner it considers appropriate. The power conferred upon the Tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

RA 10 Place of Arbitration

- 10.1 The Tribunal may meet at any place it considers appropriate for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property. The Tribunal will conduct on-site inspections at the request of either party. Any on-site inspections must be made in the presence of both parties and their representatives. The proceedings of any on-site inspections must be recorded as part of the hearing itself.

RA 11 Time Limitations

- 11.1 The Tribunal may extend or abridge a period of time required in these Rules or fixed or determined by the Tribunal where the Tribunal considers it to be reasonable and appropriate.
- 11.2 Where any proceeding is terminated pursuant to paragraph 25(a) or 32 (2)(a) of the Code referred to in the *Commercial Arbitration Act*, unless the respondent agrees otherwise in writing, such termination is deemed to be a final award dismissing the claim of the claimant.

RA 12 Statement of Claim and Defence

- 12.1 Within ten (10) Working Days after the Tribunal has been appointed, the claimant must state, in writing, the facts supporting its claim, points at issue and relief or remedy sought, and must submit the statement to the respondent, the Coordinator, and the Tribunal.
- 12.2 Within ten (10) Working Days after receipt of the statement of claim, the respondent must state, in writing, its defence in respect of these particulars and any counterclaim and must submit its statement to the claimant, the Coordinator and the Tribunal.
- 12.3 Within five (5) Working Days after receipt of the statement of defence, the claimant may state, in writing, its response to the defence and to any counterclaim, and must submit its statement to the respondent, the Coordinator and the Tribunal.
- 12.4 A party may amend or supplement its statements during the course of arbitral proceedings unless the Tribunal considers it inappropriate to allow such amendment or supplement having regard to all circumstances including delay in making the amendment or supplement.
- 12.5 A statement may not be amended if the amended statement would fall outside the scope of the arbitration agreement.

RA 13 Further Written Statements

- 13.1 The Tribunal may require or permit the presentation of further written statements by the parties and must fix the periods of time for submitting those statements.

RA 14 Agreed Statement of Facts

- 14.1 Within a time period specified by the Tribunal, the parties must prepare and file with the Tribunal an agreed statement of facts including but not limited to a chronology of the project, schedules, quantities and progress payments. The Tribunal must make itself available, upon reasonable notice, to assist the parties to arrive at agreement on as many facts as possible under the circumstances.
- 14.2 Within a time period specified by the Tribunal, the parties must prepare and file with the Tribunal a common book of documents including all documents referred to in an agreed statement of facts and in statements of claim, defence and response.

RA 15 Evidence

- 15.1 Each party must prove the facts relied upon to support its claim or defence.
- 15.2 Each party must deliver to the Tribunal and to the other party, within such period of time that the Tribunal determines, a copy of the documents and a summary of the other evidence that party intends to present in support of the facts in issue set out in its statement of claim, defence or response.
- 15.3 From time to time, the Tribunal may require the parties to produce documents, exhibits and other evidence within such period of time that the Tribunal may determine.

RA 16 Hearings

- 16.1 All statements, documents or other information supplied to, or applications made to, the Tribunal by one party must be communicated to the other party, and any expert report or evidentiary document on which the Tribunal may rely in making its decision must be communicated to the parties at least eight (8) Working Days prior to its entry in evidence.
- 16.2 The parties must be given reasonably sufficient advance notice of any hearing of the Tribunal and any meeting of the Tribunal for the purpose of inspection of documents, goods or other property.
- 16.3 If a party intends to give evidence through a witness, the party must communicate to the Tribunal and to the other party, within such period that the Tribunal determines
- (a) the names, addresses and *curriculum vitae* of each of the witnesses it intends to present; and
 - (b) the subject upon which those witnesses will give their testimony.
- 16.4 Each party must have the right to examine, cross-examine and re-examine all witnesses as appropriate.
- 16.5 All oral hearings and meetings in arbitral proceedings must be held *in camera*.

RA 17 Default

- 17.1 Where, without showing sufficient cause, the claimant fails to communicate its statement of claim in accordance with these Rules or within such further period of time permitted by the Tribunal under these Rules, the Tribunal must issue an order terminating the arbitral proceedings with respect to that claim.

- 17.2 An order made under RA 17.1 does not affect a counterclaim made in respect of those arbitral proceedings.
- 17.3 Where, without showing sufficient cause, the respondent fails to communicate a statement of defence in accordance with these Rules, or within such further period of time permitted by the Tribunal under these Rules, the Tribunal must continue the arbitral proceedings without treating that failure in itself as an admission of the claimant's allegations.
- 17.4 Where, without showing sufficient cause, a party fails to appear at an oral hearing or produce documentary evidence, the Tribunal may continue the arbitral proceedings and make the arbitral award on the evidence before it.

RA 18 Arbitral Decision

- 18.1 Unless otherwise agreed to by the parties, the Tribunal must make the award no later than thirty (30) days after completion of the arbitration hearings unless that time period is extended for an express period by the Tribunal on written notice to each party, due to illness or other cause beyond the Tribunal's control.

Monthly Reporting Requirements

The monthly report must address as a minimum the following requirements:

1. Project Savings Report - Details the estimate of Energy Savings per Measure.

Identifies Energy Savings per month as set out in the Energy Audit Report, current forecast, and current achievements.

It also compares the Energy Savings achieved or claimed by the ESCo per Measure per month against what was set out in the Energy Audit Report.

Explanation and commentary to address additional efforts and expectations regards increasing energy savings for completed work must be documented.

Documentation of the methodology used in calculating the estimated monthly Energy Savings.

Documentation of any changes to the Baseline Data.

Documentation of adjustments to the Construction Schedule as set out in [Annex "A", Section 7](#). Approved adjustments must be clearly separated from requested adjustments.

2. Project Costs Report - Details the budgeted costs per Measure.

Project costs should identify the separate components as set out in [GC25.4](#).

Committed and expected costs must be documented.

Charges for Guaranteed Performance Premium, overhead and profit must be separately identified.

Charges for financing need not be identified per Measure, but must be documented for the entire project. Incurred charges must be separated from future charges. The calculation of incurred charges must be documented per month.

Labour costs of the ESCo must be summarized per month per Measure and per Employee.

Copies of all outside cost invoices must be provided. A summary to organize and reconcile the invoices to charges per Measure must be prepared and returned by the ESCo.

Cost amounts per Measure that have been claimed for financing in submitted Milestone Certificates must be separately identified.

3. Critical Definitions Update

Documentation of the following is required:

Identification or estimation of the start and end dates of the Guaranteed Payback Period.

Identification of the Guaranteed Payback Period must be reconciled with that of the Energy Audit Report;

Identification of the maximum savings that can be claimed during construction. The relationship to the annual savings, both projected and achieved to date, must be clarified. Also, the relationship of actual payments to the amortization schedule must be documented;

The Company Floating Interest Rate Premium, Financier Floating Interest Rate Premium, and Fixed Rate Premium must be confirmed; and

The base published rate for floating and fixed interest rates must be documented as to source and date.

4. Financing Report

If the Bank of Canada prime interest rate increases to the maximum Nominal Interest Rate set out in [GC29.1](#), then every three (3) months, the ESCo must prepare the following report on financing:

- The date of calculation of interest;
- The prime rate in effect;
- Interest charged to the Project Balance;
- Amount of any payment received by the ESCo;
- Amount of the Project Balance;
- Total of all payments received; and
- Total of all interest charged to the Project Balance.

5. Amortization Report

This must be a revision of the cash flow prepared for the Energy Audit Report.

It must update costs and savings expected per month over the duration of the Contract.

It must be inclusive of the total project using estimates of costs and Energy Savings if necessary for uncompleted Measures of the Improvements.

It must calculate interest charges with floating interest rates until completion of all Measures, then use the 10 year term fixed rate benchmark plus the Fixed Interest Rate Premium as set out in the Proposal for the remainder of the Contract.

Milestone Certificate

The attached documents are prepared by the ESCo for Approval from the Department and Assignee, if any, and

Release of funds associated with the Project Costs and savings to date generated on the Contract dated _____.

The calculation of the funds to be released is based on GC 26.5

1. Statement of progress.
 - Identification of the completed work related to this Milestone Certificate.
 - Certification to the Department and the Assignee by the ESCo that the stated work, costs and savings are complete and accurate.
2. Savings report - Justification.
 - Justifies the Energy Savings achieved to date with respect to the completed work set out in this Milestone Certificate. Justification must be supported by energy meter data or analysis of energy usage using engineering principles, or both.
3. Present value of savings report.
 - This is the present value of Energy Savings being claimed on this Milestone Certificate, using the applicable interest rate over the Guaranteed Payback Period.
4. Claim for release of funds from the assignee of Crown debt to the ESCo.
 - Document the amount of Project Costs to date.
 - Compare and identify the lesser of the Project Costs to date, or the present value of 90% of the estimated Energy Savings achieved to date over the full term of the Contract for all measures.
 - Calculate and identify the net additional request for release of funds from the assignee relative to past approved requests.
5. Revised Schedule of Energy Savings is attached, which corresponds to the above.

Attachments:

- Copies of invoices for all items included in external costs.
- Information on internal costs, including hour for each employee.

Project Team Information

	Professional Designation	Number of Years of EPC Experience	Number of years with present ESCo	Identify Single Building projects above \$1 Million Within last 5 years
Project Manager Name:	_____	_____	_____	_____
Construction Manager:	_____	_____	_____	_____
Mechanical Design Team				
Name:	_____	_____	_____	_____
Name:	_____	_____	_____	_____
Electrical Design Team				
Name:	_____	_____	_____	_____
Name:	_____	_____	_____	_____
Energy Monitoring Control System (EMCS) Design Team				
Name:	_____	_____	_____	_____
Name:	_____	_____	_____	_____

Hourly Rates of all Members of the Project Team:

Project Manager: _____

Construction Manager: _____

Designers: _____

Draftsperson: _____

Other: _____

Detail for Energy Measure

(To be completed by Proponent for **each** energy Improvement)

Energy Improvement:

- 1) Detailed Scope of Work: (See below for details of building automation systems.)
- 2) Substantiation of Energy Savings:
- 3) Impact on Maintenance:
- 4) Impact on Indoor Environment:
- 5) Expected Service Life of Measure:
- 6) Impact on Power Quality:

Note: Each ESCo must provide the following information regarding their choice for a building automation system if applicable:

- Operator Work Station: provide a detailed description of the equipment that will be provided. Include details of the graphics package and its ability to be upgraded from remote workstations;
- System Architecture: Provide a description of the system architecture;
- List the systems that will be controlled by the building automation system; and
- List of points: Each ESCo must complete a points sheet as found in Appendix "J". Page 7.

For a lighting control system, the ESCo must provide details about the following:

- How many zones will be provided for each floor;
- What type of user interface will be provided for override; and
- Provide details regarding the operator workstation and its graphics package.

Units of Energy Savings

Measure	Electrical Consumption		Electrical Demand (kW)	Natural Gas (m ³)	City Water (m ³)
	Peak (kWh)	Off-Peak (kWh)			

Summary Of All Proposed Measures

Item	Name of Measure	Construction Cost*	Total Cost	Cascaded Energy Savings**	Simple Payback Period
Total for all Measures					
	Energy Audit Report				
	Training				
	Grand Total				

Baseline Status

	Start Date	End Date	Energy Units	Energy Cost	Unit Cost
<u>Electrical:</u>					
Base Year:	_____	_____			
Peak			_____	_____	_____
Non-Peak			_____	_____	_____
<u>Natural Gas:</u>					
Base Year:	_____	_____			
Summer			_____	_____	_____
<u>City Water:</u>					
Base Year:	_____	_____	_____	_____	_____
<u>Total Baseline:</u>				_____	_____

Note: Baseline Period **MUST** be a 12-month period. Energy Units are the basis of the Baseline.

TOTAL PROPOSED PROJECT VALUE SUMMARY

(Proponent to complete)
(Cost exclusive of Savings)

Cost

	<u>Internal</u>	<u>External</u>	<u>Mark-up</u>	<u>Total Cost</u>
Energy Audit Report	\$ _____	\$ _____	\$ _____	\$ _____
Design Engineering	\$ _____	\$ _____	\$ _____	\$ _____
Cost of Construction (including materials, labour, and supervision)	\$ _____	\$ _____	\$ _____	\$ _____
Commissioning	\$ _____	\$ _____	\$ _____	\$ _____
Training	\$ _____	\$ _____	\$ _____	\$ _____
Monitoring	\$ _____	\$ _____	\$ _____	\$ _____
Project Management	\$ _____	\$ _____	\$ _____	\$ _____
Guaranteed Performance Premium	\$ _____	\$ _____	\$ _____	\$ _____

Total Project Cost (Current Dollars) \$ _____

Annual Energy Savings at Current Prices \$ _____

Baseline annual energy cost at Current prices \$ _____

The selected 10 year term fixed rate benchmark on _____ was: _____

For GC 29.1.1 ESCo's Floating Interest Rate Premium above the selected Bank Prime Interest Rate

For GC 29.1.2 Financier Floating Interest Rate Premium above the selected Bank Prime Interest Rate

For GC 29.1.3 ESCo's Interest Rate Premium above 10 year bond rate: _____

- Note:**
1. All costs shown are in actual dollars and not present value.
 2. The relative value of each item shown above will not be allowed to change by greater than five percent (5%) without prior approval of the Departmental Representative under the authority of the Minister.

Cash Flow Table

Month No. (1)	Monitoring and Post Construction Charges (2)	External Resource, Mark-up & Overhead (3)	Internal Costs (4)	Interest Cost (5)	Monthly Project Cost (6)=2+3+4+5	Energy Savings (7)	Project Balance (8)

- Calculation Instructions:
1. In column 1, place the month name, year and number.
 2. In column 2, place all charges for monitoring and post construction charges expected to be incurred that month. Monitoring charges before and during construction should be included in columns 3 or 4.
 3. In column 3, place all charges for all external resources, mark-up and overhead expected to be incurred that month. The total for this column should equal the appropriate total of Appendix "J", Page 5.
 4. In column 4, place all charges for internal costs expected to be incurred that month. The total for this column should equal the appropriate total of Appendix "J", Page 5.
 5. In column 5, place the interest charges that have been incurred on the previous month's Project Balance (Column 8 of previous month).
 6. Column 6 is the sum of columns 2 through 5.
 7. In column 7, place the projected energy savings that will be incurred during that month. This level of savings must correspond to sequencing that is shown for that Measure in the accompanying Gantt chart.
 8. Column 8 is equal to Column 8 of the previous month, plus column 6 of the current month, minus the energy savings that have been shown in column 7 of the current month.

- Note:
1. This cash flow simplifies the contracting cash flow for evaluation purposes only.
 2. **Ensure that the cash flow corresponds with the Gantt chart.**
 3. The 96-month guaranteed payback period begins 6 months after approval of the Energy Audit Report.
 4. Month number one begins the month that the Contract is awarded.
 5. Allow 1 month for PWGSC approval of the Energy Audit Report.
 6. The interest rate to be applied in column 5 is calculated as the 10 year published rate + ESCo premium.
 7. Interest cost is calculated against the Project Balance in the previous month.
 8. The Proposal cash flow must be simplified by assuming no set off.

The ESCo's Proposal Brief

Is incorporated as part of this Contract
(Not included here)

DECLARATION/CERTIFICATIONS FORM

Project Title:

Name of Proponent:

Street Address:

Mailing Address:

ESCO's Proposed Site or premises Requiring Safeguard Measures (refer to S14 Security Requirement):

Address:

Street Number / Street Name, Unit / Suite / Apartment Number

City, Province, Territory

Postal Code

Telephone Number:()

Fax Number: ()

E-Mail:

Procurement Business Number:

Type of Organization: ____ Sole Proprietorship ____ Partnership ____ Corporation ____ Joint Venture	Size of Organization: Number of Employees _____ Graduate Architects / Professional Engineers _____ Other Professionals _____ Technical Support _____ Other _____
--	---

Federal Contractors Program for Employment Equity - Certification

I, the ESCo, by submitting the present information to the Contracting Authority, certify that the information provided is true as of the date indicated below. The certifications provided to Canada are subject to verification at all times. I understand that Canada will declare a proposal non-responsive, or will declare an ESCo in default, if a certification is found to be untrue, whether during the proposal evaluation period or during the contract period. Canada will have the right to ask for additional information to verify the ESCo's certifications. Failure to comply with any request or requirement imposed by Canada may render the proposal non-responsive or constitute a default under the contract.

For further information on the Federal Contractors Program for Employment Equity visit Employment and Social Development Canada (ESDC)-Labour's website.

Date: _____(YY/MM/DD) (If left blank, the date will be deemed to be the bid closing date.)

Complete both A and B.

A. Check only one of the following:

- () A1. The ESCo certifies having no work force in Canada.
- () A2. The ESCo certifies being a public sector employer.
- () A3. The ESCo certifies being a federally regulated employer being subject to the *Employment Equity Act*.
- () A4. The ESCo certifies having a combined work force in Canada of less than 100 employees (combined work force includes: permanent full-time, permanent part-time and temporary employees [temporary employees only includes those who have worked 12 weeks or more during a calendar year and who are not full-time students]).
- () A5. The ESCo has a combined work force in Canada of 100 or more employees; and
 - () A5.1. The ESCo certifies already having a valid and current Agreement to Implement Employment Equity (AIEE) in place with ESDC-Labour.

OR

- () A5.2. The ESCo certifies having submitted the Agreement to Implement Employment Equity (LAB1168) to ESDC-Labour. As this is a condition to contract award, proceed to completing the form Agreement to Implement Employment Equity (LAB1168), duly signing it, and transmit it to ESDC-Labour.

B. Check only one of the following:

- () B1. The ESCo is not a Joint Venture.

OR

- () B2. The ESCo is a Joint Venture and each member of the Joint Venture must provide the Contracting Authority with a completed Federal Contractors Program for Employment Equity - Certification. (Refer to the Joint Venture section of the General Instructions)

Former Public Servant (FPS) - Certification

Contracts awarded to former public servants (FPS) in receipt of a pension or of a lump sum payment must bear the closest public scrutiny and reflect fairness in the spending of public funds. In order to comply with Treasury Board policies and directives on contracts awarded to FPS, ESCOs must provide the information required below before the issuance of a contract. If the answer to the questions and, as applicable the information required have not been received by the time the evaluation of proposals is completed, Canada will inform the ESCo of a time frame within which to provide the information. Failure to comply with Canada's request and meet the requirement within the prescribed time frame will render the proposal non-responsive.

Definitions

For the purposes of this clause,

"former public servant" is any former member of a department as defined in the *Financial Administration Act*, R.S., 1985, c. F-11, a former member of the Canadian Armed Forces or a former member of the Royal Canadian Mounted Police. A former public servant may be:

- (a) an individual;
- (b) an individual who has incorporated;
- (c) a partnership made of former public servants; or
- (d) a sole proprietorship or entity where the affected individual has a controlling or major interest in the entity.

"lump sum payment period" means the period measured in weeks of salary, for which payment has been made to facilitate the transition to retirement or to other employment as a result of the implementation of various programs to reduce the size of the Public Service. The lump sum payment period does not include the period of severance pay, which is measured in a like manner.

"pension" means a pension or annual allowance paid under the *Public Service Superannuation Act* (PSSA), R.S., 1985, c. P-36, and any increases paid pursuant to the *Supplementary Retirement Benefits Act*, R.S., 1985, c. S-24 as it affects the PSSA. It does not include pensions payable pursuant to the *Canadian Forces Superannuation Act*, R.S., 1985, c. C-17, the *Defence Services Pension Continuation Act*, 1970, c. D-3, the *Royal Canadian Mounted Police Pension Continuation Act*, 1970, c. R-10, and the *Royal Canadian Mounted Police Superannuation Act*, R.S., 1985, c. R-11, the *Members of Parliament Retiring Allowances Act*, R.S., 1985, c. M-5, and that portion of pension payable to the *Canada Pension Plan Act*, R.S., 1985, c. C-8.

Former Public Servant in Receipt of a Pension

As per the above definitions, is the ESCo a FPS in receipt of a pension? YES () NO ()

If so, the ESCo must provide the following information, for all FPS in receipt of a pension, as applicable:

- (a) name of former public servant;
- (b) date of termination of employment or retirement from the Public Service.

By providing this information, proponents agree that the successful ESCo's status, with respect to being a former public servant in receipt of a pension, will be reported on departmental websites as part of the published proactive disclosure reports in accordance with Contracting Policy Notice: 2012-2 and the Guidelines on the Proactive Disclosure of Contracts.

Work Force Adjustment Directive

Is the Proponent a FPS who received a lump sum payment pursuant to the terms of a Work Force Adjustment Directive? YES () NO ()

If so, the Proponent must provide the following information:

- (a) name of former public servant;
- (b) conditions of the lump sum payment incentive;
- (c) date of termination of employment;
- (d) amount of lump sum payment;
- (e) rate of pay on which lump sum payment is based;
- (f) period of lump sum payment including start date, end date and number of weeks;
- (g) number and amount (professional fees) of other contracts subject to the restrictions of a work force adjustment program.

For all contracts awarded during the lump sum payment period, the total amount of fees that may be paid to a FPS who received a lump sum payment is \$5,000, including the Goods and Services Tax or Harmonized Sales Tax.

DECLARATION/CERTIFICATIONS FORM (CONT'D)

Name of ESCo:

DECLARATION:

I, the undersigned, being a principal of the ESCo, hereby certify that the information given on this form and in the attached proposal is accurate to the best of my knowledge. If any proposal is submitted by a partnership or joint venture, then the following is required from each component entity.

..... Name Signature
..... Title	
I have authority to bind the Corporation / Partnership / Sole Proprietorship / Joint Venture	
..... Name Signature
..... Title	
I have authority to bind the Corporation / Partnership / Sole Proprietorship / Joint Venture	
..... Name Signature
..... Title	
I have authority to bind the Corporation / Partnership / Sole Proprietorship / Joint Venture	

During proposal evaluation period, PWGSC contact will be with the following person: _____.

Telephone Number: () _____ Fax Number: () _____

E-mail: _____

This Appendix "L" should be completed and submitted with the proposal, but may be submitted afterwards as follows: if Appendix "L" is not completed and submitted with the proposal, the Contracting Authority will inform the ESCo of a time frame within which to provide the information. Failure to comply with the request of the Contracting Authority and to provide the certifications within the time frame provided will render the proposal non-responsive.

ANNEX B

Security Requirements Check List (SRCL)

The Security Requirements Check List (SRCL) below is incorporated into this Contract .

RECEIVED
 JAN 08 2015
 CISD



Contract Number / Numéro du contrat EN438-15-0500
Security Classification / Classification de sécurité Unclassified

SECURITY REQUIREMENTS CHECK LIST (SRCL)
LISTE DE VÉRIFICATION DES EXIGENCES RELATIVES À LA SÉCURITÉ (LVERS)

PART A - CONTRACT INFORMATION / PARTIE A - INFORMATION CONTRACTUELLE

1. Originating Government Department or Organization / Ministère ou organisme gouvernemental d'origine Canada Border Services Agency	2. Branch or Directorate / Direction générale ou Direction IEOD – Environment Division
---	--

3. a) Subcontract Number / Numéro du contrat de sous-traitant	3. b) Name and Address of Subcontractor / Nom et adresse du sous-traitant TBD prequalified ESCo bidders by NRCan
---	--

4. Brief Description of Work / Brève description du travail

Federal Buildings initiative Project – Main Campus 475 chemin Grane –Ligne Rigaud, Quebec
Security requirement checklist for the FBI Rigaud Energy Retrofit Contract Requisition

5. a) Will the supplier require access to Controlled Goods? / Le fournisseur aura-t-il accès à des marchandises contrôlées? No / Non Yes / Oui

5. b) Will the supplier require access to unclassified military technical data subject to the provisions of the Technical Data Control Regulations? / Le fournisseur aura-t-il accès à des données techniques militaires non classifiées qui sont assujetties aux dispositions du Règlement sur le contrôle des données techniques? No / Non Yes / Oui

6. Indicate the type of access required / Indiquer le type d'accès

6. a) Will the supplier and its employees require access to PROTECTED and/or CLASSIFIED information or assets? / Le fournisseur ainsi que les employés auront-ils accès à des renseignements ou à des biens PROTÉGÉS et/ou CLASSIFIÉS? (Specify the level of access using the chart in Question 7. c) (Préciser le niveau d'accès en utilisant le tableau qui se trouve à la question 7. c) No / Non Yes / Oui

6. b) Will the supplier and its employees (e.g. cleaners, maintenance personnel) require access to restricted access areas? No access to PROTECTED and/or CLASSIFIED information or assets is permitted. / Le fournisseur et ses employés (p. ex. nettoyeurs, personnel d'entretien) auront-ils accès à des zones d'accès restreintes? L'accès à des renseignements ou à des biens PROTÉGÉS et/ou CLASSIFIÉS n'est pas autorisé. No / Non Yes / Oui

6. c) Is this a commercial courier or delivery requirement with no overnight storage? / S'agit-il d'un contrat de messagerie ou de livraison commerciale sans entreposage de nuit? No / Non Yes / Oui

7. a) Indicate the type of information that the supplier will be required to access / Indiquer le type d'information auquel le fournisseur devra avoir accès

Canada <input type="checkbox"/>	NATO / OTAN <input type="checkbox"/>	Foreign / Étranger <input type="checkbox"/>
---------------------------------	--------------------------------------	---

7. b) Release restrictions / Restrictions relatives à la diffusion

No release restrictions / Aucune restriction relative à la diffusion <input type="checkbox"/> Not releasable / À ne pas diffuser <input type="checkbox"/> Restricted to: / Limité à : Specify country(ies): / Préciser le(s) pays : <input type="checkbox"/>	All NATO countries / Tous les pays de l'OTAN <input type="checkbox"/> Restricted to: / Limité à : Specify country(ies): / Préciser le(s) pays : <input type="checkbox"/>	No release restrictions / Aucune restriction relative à la diffusion <input type="checkbox"/> Restricted to: / Limité à : Specify country(ies): / Préciser le(s) pays : <input type="checkbox"/>
--	---	---

7. c) Level of Information / Niveau d'information

PROTECTED A / PROTÉGÉ A <input type="checkbox"/>	NATO UNCLASSIFIED / NATO NON CLASSIFIÉ <input type="checkbox"/>	PROTECTED A / PROTÉGÉ A <input type="checkbox"/>
PROTECTED B / PROTÉGÉ B <input type="checkbox"/>	NATO RESTRICTED / NATO DIFFUSION RESTREINTE <input type="checkbox"/>	PROTECTED B / PROTÉGÉ B <input type="checkbox"/>
PROTECTED C / PROTÉGÉ C <input type="checkbox"/>	NATO CONFIDENTIAL / NATO CONFIDENTIEL <input type="checkbox"/>	PROTECTED C / PROTÉGÉ C <input type="checkbox"/>
CONFIDENTIAL / CONFIDENTIEL <input type="checkbox"/>	NATO SECRET / NATO SECRET <input type="checkbox"/>	CONFIDENTIAL / CONFIDENTIEL <input type="checkbox"/>
SECRET <input type="checkbox"/>	COSMIC TOP SECRET / COSMIC TRÈS SECRET <input type="checkbox"/>	SECRET <input type="checkbox"/>
TOP SECRET / TRÈS SECRET <input type="checkbox"/>		TOP SECRET / TRÈS SECRET <input type="checkbox"/>
TOP SECRET (SIGINT) / TRÈS SECRET (SIGINT) <input type="checkbox"/>		TOP SECRET (SIGINT) / TRÈS SECRET (SIGINT) <input type="checkbox"/>



Government of Canada / Gouvernement du Canada

Contract Number / Numéro du contrat EN438-15-0500
Security Classification / Classification de sécurité Unclassified

PART A (continued) / PARTIE A (suite)

8. Will the supplier require access to PROTECTED and/or CLASSIFIED COMSEC information or assets?
Le fournisseur aura-t-il accès à des renseignements ou à des biens COMSEC désignés PROTÉGÉS et/ou CLASSIFIÉS? No / Non Yes / Oui
If Yes, indicate the level of sensitivity:
Dans l'affirmative, indiquer le niveau de sensibilité :

9. Will the supplier require access to extremely sensitive INFOSEC information or assets?
Le fournisseur aura-t-il accès à des renseignements ou à des biens INFOSEC de nature extrêmement délicate? No / Non Yes / Oui

Short Title(s) of material / Titre(s) abrégé(s) du matériel :

Document Number / Numéro du document :

PART B - PERSONNEL (SUPPLIER) / PARTIE B - PERSONNEL (FOURNISSEUR)

10. a) Personnel security screening level required / Niveau de contrôle de la sécurité du personnel requis

- | | | | |
|---|---|---|--|
| <input checked="" type="checkbox"/> RELIABILITY STATUS
COTE DE FIABILITÉ | <input type="checkbox"/> CONFIDENTIAL
CONFIDENTIEL | <input type="checkbox"/> SECRET
SECRET | <input type="checkbox"/> TOP SECRET
TRÈS SECRET |
| <input type="checkbox"/> TOP SECRET - SIGINT
TRÈS SECRET - SIGINT | <input type="checkbox"/> NATO CONFIDENTIAL
NATO CONFIDENTIEL | <input type="checkbox"/> NATO SECRET
NATO SECRET | <input type="checkbox"/> COSMIC TOP SECRET
COSMIC TRÈS SECRET |
| <input type="checkbox"/> SITE ACCESS
ACCÈS AUX EMPLACEMENTS | | | |

Special comments:

Commentaires spéciaux : On site super intendent will escort locksmith

NOTE: If multiple levels of screening are identified, a Security Classification Guide must be provided.

REMARQUE : Si plusieurs niveaux de contrôle de sécurité sont requis, un guide de classification de la sécurité doit être fourni.

10. b) May unscreened personnel be used for portions of the work?
Du personnel sans autorisation sécuritaire peut-il se voir confier des parties du travail? No / Non Yes / Oui
If Yes, will unscreened personnel be escorted?
Dans l'affirmative, le personnel en question sera-t-il escorté? No / Non Yes / Oui

PART C - SAFEGUARDS (SUPPLIER) / PARTIE C - MESURES DE PROTECTION (FOURNISSEUR)

INFORMATION / ASSETS / RENSEIGNEMENTS / BIENS

11. a) Will the supplier be required to receive and store PROTECTED and/or CLASSIFIED information or assets on its site or premises?
Le fournisseur sera-t-il tenu de recevoir et d'entreposer sur place des renseignements ou des biens PROTÉGÉS et/ou CLASSIFIÉS? No / Non Yes / Oui

11. b) Will the supplier be required to safeguard COMSEC information or assets?
Le fournisseur sera-t-il tenu de protéger des renseignements ou des biens COMSEC? No / Non Yes / Oui

PRODUCTION

11. c) Will the production (manufacture, and/or repair and/or modification) of PROTECTED and/or CLASSIFIED material or equipment occur at the supplier's site or premises?
Les installations du fournisseur serviront-elles à la production (fabrication et/ou réparation et/ou modification) de matériel PROTÉGÉ et/ou CLASSIFIÉ? No / Non Yes / Oui

INFORMATION TECHNOLOGY (IT) MEDIA / SUPPORT RELATIF À LA TECHNOLOGIE DE L'INFORMATION (TI)

11. d) Will the supplier be required to use its IT systems to electronically process, produce or store PROTECTED and/or CLASSIFIED information or data?
Le fournisseur sera-t-il tenu d'utiliser ses propres systèmes informatiques pour traiter, produire ou stocker électroniquement des renseignements ou des données PROTÉGÉS et/ou CLASSIFIÉS? No / Non Yes / Oui

11. e) Will there be an electronic link between the supplier's IT systems and the government department or agency?
Disposera-t-on d'un lien électronique entre le système informatique du fournisseur et celui du ministère ou de l'agence gouvernementale? No / Non Yes / Oui

Unclassified.



PART C - (continued) / PARTIE C - (suite)

For users completing the form manually use the summary chart below to indicate the category(ies) and level(s) of safeguarding required at the supplier's site(s) or premises.
Les utilisateurs qui remplissent le formulaire manuellement doivent utiliser le tableau récapitulatif ci-dessous pour indiquer, pour chaque catégorie, les niveaux de sauvegarde requis aux installations du fournisseur.

For users completing the form online (via the Internet), the summary chart is automatically populated by your responses to previous questions.
Dans le cas des utilisateurs qui remplissent le formulaire en ligne (par Internet), les réponses aux questions précédentes sont automatiquement saisies dans le tableau récapitulatif.

SUMMARY CHART / TABLEAU RÉCAPITULATIF

Category / Catégorie	PROTECTED / PROTÉGÉ			CLASSIFIED / CLASSIFIÉE			NATO				COMSEC					
	A	B	C	CONFIDENTIAL / CONFIDENTIEL	SECRET	TOP SECRET / TRÈS SECRET	NATO RESTRICTED / NATO DIFFUSION RESTREINTE	NATO CONFIDENTIAL / NATO CONFIDENTIEL	NATO SECRET	COMSEC TOP SECRET / COMSEC TRÈS SECRET	PROTECTED / PROTÉGÉ			CONFIDENTIAL / CONFIDENTIEL	SECRET	TOP SECRET / TRÈS SECRET
											A	B	C			
Information / Assets / Renseignements / Biens																
Production																
IT Mech / Support TI																
IT Lnk / Lien électronique																

12. a) Is the description of the work contained within this SRCL PROTECTED and/or CLASSIFIED?
La description du travail visé par la présente LVERS est-elle de nature PROTÉGÉE et/ou CLASSIFIÉE? No / Non Yes / Oui

If Yes, classify this form by annotating the top and bottom in the area entitled "Security Classification".
Dans l'affirmative, classifiez le présent formulaire en indiquant le niveau de sécurité dans la case intitulée « Classification de sécurité » au haut et au bas du formulaire.

12. b) Will the documentation attached to this SRCL be PROTECTED and/or CLASSIFIED?
La documentation associée à la présente LVERS sera-t-elle PROTÉGÉE et/ou CLASSIFIÉE? No / Non Yes / Oui

If Yes, classify this form by annotating the top and bottom in the area entitled "Security Classification" and indicate with attachments (e.g. SECRET with Attachments).
Dans l'affirmative, classifiez le présent formulaire en indiquant le niveau de sécurité dans la case intitulée « Classification de sécurité » au haut et au bas du formulaire et indiquez qu'il y a des pièces jointes (p. ex. SECRET avec des pièces jointes).

REQUEST FOR PROPOSAL

TABLE OF CONTENTS

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS (SI)

- SI 1 INTEGRITY PROVISIONS – ASSOCIATED INFORMATION**
- SI 2 FEDERAL CONTRACTORS PROGRAM FOR EMPLOYMENT EQUITY - CERTIFICATION**
- SI 3 SECURITY REQUIREMENTS**

General Instructions to Bidders (GI)

Proposal Requirements and Evaluation (PRE)

Terms and Conditions

Supplementary Conditions (SC)

General Conditions (GC)

Annex A

Annex A – General Statement of Work

Annex A - Appendix “A” Definitions

Annex A - Appendix “B” Total Cost of Project

Annex A - Appendix “C” Determination of Invoices

Annex A - Appendix “D” Certificate of Insurance

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Annex B

Annex B – Security Requirements Check list (SRCL)

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS (SI)

SI 1 INTEGRITY PROVISIONS - ASSOCIATED INFORMATION

By submitting a proposal, the Bidder certifies that the Bidder and his Affiliates are in compliance with the provisions as stated in the Integrity Provisions clause of the General Instructions to the Bidders. The associated information required within the Integrity Provisions will assist Canada in confirming that the certifications are true.

SI2 FEDERAL CONTRACTORS PROGRAM FOR EMPLOYMENT EQUITY - CERTIFICATION

By submitting a proposal, the Bidder certifies that the Bidder, and any of the Bidder's members if the Bidder is a Joint Venture, is not named on the Federal Contractors Program (FCP) for employment equity "FCP Limited Eligibility to Bid" list (http://www.labour.gc.ca/eng/standards_equity/eq/emp/fcp/list/inelig.shtml) available from Employment and Social Development Canada (ESDC)-Labour's website.

Canada will have the right to declare a proposal non-responsive, or to set-aside a Contract , if the Bidder , or any member of the Joint Venture, if the Bidder is a Joint Venture, appears on the "FCP Limited Eligibility to Bid" list at the time of issuing of a Contract or during the period of the Contract.

Canada will also have the right to terminate a Contract for default if an ESCo, or any member of the ESCo if the ESCo is a Joint Venture, appears on the "FCP Limited Eligibility to Bid" list during the period of the contract.

The Bidder must provide the Contracting Authority with a completed Federal Contractors Program for Employment Equity - Certification (see Appendix K - Declaration/Certifications Form), before the issuance of a Contract. If the Bidder is a Joint Venture, the Bidder must provide the Contracting Authority with a completed Federal Contractors Program for Employment Equity - Certification, for each member of the Joint Venture.

SI 3 SECURITY REQUIREMENT

1 Before award of a contract, the following conditions must be met:

- (a) the Bidder must hold a valid organization security clearance as indicated in Supplementary Conditions SC 3;
- (b) the Bidder's proposed individuals requiring access to classified or protected information, assets or sensitive work site(s) must meet the security requirement as indicated in Supplementary Conditions SC 3;
- (c) the Bidder must provide the name of all individuals who will require access to classified or protected information, assets or sensitive work sites.;

2. Bidders are reminded to obtain the required security clearance promptly. Any delay in the award of a contract to allow the successful Bidder to obtain the required clearance will be at the entire discretion of the Contracting Authority.

3. For additional information on security requirements, bidders should refer to the Canadian Industrial Security Directorate (CISD), Industrial Security Program of Public Works and Government Services Canada (<http://ssi-iss.tpsgc-pwgsc.gc.ca/index-eng.html>) website.

4. Should the successful bidders not have the level of security indicated above, PWGSC shall sponsor the successful bidders so CISD can initiate procedures for security clearance. CISD, by letter, shall forward documentation to the successful Bidders for completion.

Bidders desiring such sponsorship should so indicate in their covering letter with their proposal.

Employee Information for Security

The Bidder *should* specify the following information regarding employees proposed to provide services against any resulting contract:

LEGAL NAME (First and Last)	DATE OF BIRTH	CURRENT CLEARANCE HELD

GENERAL INSTRUCTIONS TO BIDDERS (GI)

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GC 20 Non Compliance of the ESCo
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GC 24 Claims Against and Obligations of the ESCo or Subcontractors
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GC 36 Precautions Against Damage, Infringement of Rights, Fire and Other Hazards
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GC 40 License to Material Subject to Copyright
GC 41 Security and Protection of Documents
GC 42 Public Ceremonies and Signs
GC 43 Canada's Rights and Obligations
GC 44 Intentionally Left Blank
GC 45 Status of the ESCo
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GC 49 Certification – Contingency Fees
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GENERAL INSTRUCTIONS TO BIDDERS

Integrity Provisions - Proposal

1. Bidders must comply with the [Code of Conduct for Procurement \(http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html\)](http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html). In addition, bidders must respond to Requests for Proposals (RFPs) in an honest, fair and comprehensive manner, accurately reflect their capacity to satisfy the requirements stipulated in the RFP, and any resulting contracts, and submit proposals as well as enter into contracts only if they will fulfill all obligations of the contract.
2. By submitting an offer, bidders confirm that they understand that, to ensure fairness, openness and transparency in the procurement process, the commission of certain acts or offences will render them ineligible to be issued a contract. Canada will declare non-responsive any proposal in respect of which the information requested is missing or inaccurate, or in respect of which the information contained in the certifications is found by Canada to be untrue in any respect, at the time of issuance of the Contract by Canada. If it is determined, after issuance of the Contract, that the Bidder made a false declaration, Canada will, following a notice period, have the right to set aside the Contract and to terminate for default any resulting contracts. The Bidder will be required to diligently maintain up-to-date the information requested. The Bidder and any of the Bidder's Affiliates, will also be required to remain free and clear of any acts or convictions specified in these Integrity Provisions during the period of any Contract arising from this RFP.
3. **Affiliates**
For the purpose of these Integrity Provisions, everyone, including but not limited to organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies and subsidiaries, whether partly or wholly-owned, as well as individuals and directors, are Bidder's Affiliates if:
 - a. directly or indirectly either one controls or has the power to control the other, or
 - b. a third party has the power to control both.

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

4. Bidders who are incorporated, including those submitting proposals as a joint venture, must provide a complete list of names of all individuals who are currently directors of the Bidder. Bidders submitting proposals as sole proprietorship, including those submitting proposals as a joint venture, must provide the name of the owner. Bidders submitting proposals as societies, firms, or partnerships do not need to provide lists of names.

If the required names have not been received by the time the evaluation of proposals is completed, Canada will inform the Bidder of a time frame within which to provide the information. Failure to provide the names within the time frame specified will render the proposal non-responsive. Providing the required names is a mandatory requirement for a Contract to be issued.

Canada may, at any time, request that the Bidder provide properly completed and signed consent forms (Consent to a Criminal Record Verification form - PWGSC-TPSGC 229) for any or all individuals mentioned above within a specified time frame. Failure to provide such consent forms and associated information within the time frame provided, or failure to cooperate to the verification process will result in the proposal being declared non-responsive.

5. The Bidder must diligently inform Canada in writing of any changes affecting the list of names of directors during this procurement process as well as during the period of any Contract arising from this RFP. The Bidder must also, when requested, provide Canada with properly completed and signed consent forms.
6. By submitting a proposal, the Bidder certifies that it is aware, and that its affiliates are aware, that Canada may request additional information, certifications, consent forms and other evidentiary elements proving identity or eligibility. Canada may also verify the information provided by the Bidder, including the information relating to the acts or convictions specified in these Integrity Provisions, through independent research, use of any government resources or by contacting third parties.
7. By submitting a proposal, the Bidder certifies that neither the Bidder nor any of the Bidder's Affiliates have directly or indirectly, paid or agreed to pay, and will not, directly or indirectly, pay a contingency fee to any individual for the solicitation, negotiation or obtaining of the Contract if the payment of the fee would require the individual to file a return under section 5 of the Lobbying Act.

8. Time Period

The Time Period is 10 years and is measured from the date of the conviction or from the date of the conditional or absolute discharge.

In addition, for a conviction under paragraphs a. or b. of subsection 9, following the 10-year period, a pardon or a record suspension must have been obtained, or capacities must have been restored by the Governor in Council. The Bidder must therefore provide with its bid or promptly afterwards a copy of confirming documentation from an official source for its certification to be found true by Canada for the purpose of these Integrity Provisions. If the documentation has not been received by the time the evaluation of bids is completed, Canada will inform the Bidder of a time frame within which to provide the information. Failure to comply within the time frame specified will render the bid non-responsive.

9. By submitting a proposal, the Bidder certifies that neither the Bidder nor any of the Bidder's Affiliates have been convicted of an offence or received a conditional or an absolute discharge under any of the following provisions, unless the time period, as defined in the Time Period subsection, has elapsed:
 - a. paragraph 80(1)(d) (*False entry, certificate or return*), subsection 80(2) (*Fraud against Her Majesty*) or section 154.01 (*Fraud against Her Majesty*) of the *Financial Administration Act*, or
 - b. section 121 (*Frauds on the government and Contractor subscribing to election fund*), section 124 (*Selling or Purchasing Office*), section 380 (*Fraud*) for fraud committed against Her Majesty or section 418 (*Selling defective stores to Her Majesty*) of the *Criminal Code*, or
 - c. section 119 (*Bribery of judicial officers, etc.*), section 120 (*Bribery of officers*), section 346 (*Extortion*), sections 366 to 368 (*Forgery and other offences resembling forgery*), section 382 (*Fraudulent manipulation of stock exchange transactions*), section 382.1 (*Prohibited insider trading*), section 397 (*Falsification of books and documents*), section 422 (*Criminal breach of contract*), section 426 (*Secret commissions*), section 462.31 (*Laundering proceeds of crime*) or sections 467.11 to 467.13 (*Participation in activities of criminal organization*) of the *Criminal Code*, or
 - d. section 45 (*Conspiracies, agreements or arrangements between competitors*), section 46 (*Foreign directives*), section 47 (*Bid rigging*), section 49 (*Agreements or arrangements of federal financial institutions*), section 52 (*False or misleading representation*), section 53 (*Deceptive notice of winning a prize*) of the *Competition Act*, or
 - e. section 239 (*False or deceptive statements*) of the *Income Tax Act*, or
 - f. section 327 (*False or deceptive statements*) of the *Excise Tax Act*, or
 - g. section 3 (*Bribing a foreign public official*), section 4 (*Accounting*), or section 5 (*Offence committed outside Canada*) of the *Corruption of Foreign Public Officials Act*, or

- h. section 5 (*Trafficking in substance*), section 6 (*Importing and exporting*), or section 7 (*Production of substance*) of the *Controlled Drugs and Substance Act*.

The Bidder also certifies that no one convicted under any of the provisions under a. or b. are to receive any benefit under a contract arising from this Request for Proposal, unless a pardon or a record suspension has been obtained or capacities restored by the Governor in Council, as defined in the Time Period subsection.

10. Foreign Offences

The Bidder also certifies that, within a period, as defined in the Time Period subsection, neither the Bidder nor any of the Bidder's Affiliates have been convicted of or have received a conditional or an absolute discharge, under any foreign offence that Canada deems to be of similar constitutive elements to the offences listed in these Integrity Provisions. Canada will also consider foreign measures declared by Canada to be similar in nature to the Canadian pardon, record suspension, or restoration of capacities by the Governor in Council.

11. Sub-contracts

The Bidder must ensure that subcontracts include Integrity Provisions no less favourable to Canada than those imposed in the resulting contract.

12. Preventive Measures associated with the Time Period

In cases where the period (as defined in the Time Period subsection), for a conviction, or a conditional or an absolute discharge of the Bidder or any of the Bidder's Affiliates has elapsed, then the Bidder must also certify for itself and for its Affiliates that measures have been diligently put in place in order to avoid the reoccurrence of such convictions or reprehensible actions.

13. Public Interest Exception

ESCos understand that Canada may issue a contract with an bidder where the Bidder or the Bidder's Affiliates have been convicted of or have received a conditional or an absolute discharge for an offence specified in these Integrity Provisions, when required to do so by law or legal proceedings, or when Canada in its sole discretion considers it necessary to the public interest for reasons which include, but are not limited to:

- o no one else is capable of performing the contract;
- o emergency;
- o national security;
- o health and safety;
- o economic harm.

If all proposals are found non-responsive for reason of a listed relevant conviction or act, then Canada may invoke the public interest exception, as described in the paragraph above. In such cases, only proposals containing a declaration concerning a relevant offence or act will be further considered. Canada may also elect to procure outside of the present process. In all cases, Canada reserves the right to impose additional conditions or measures to ensure the integrity of the procurement process.

14. Non-application

For governments, as well as entities controlled by a government, including Crown corporations, the present Integrity Provisions are reduced to complying with article 750 of the *Criminal Code*, the *Government Contract Regulations* and the *Code of Conduct for Procurement*.

General Instructions

GI 1 INTRODUCTION

- 1) Public Works and Government Services Canada (PWGSC) is inviting Energy Service Companies (ESCOs) to submit proposals for the provision of professional and construction services, financing, training and monitoring associated with the implementation of energy efficiency and water conservation improvements for the CBSA Training Centre located in Sainte – Madeleine de Rigaud Quebec. The proposal shall be in accordance with the terms and conditions set out in this Request for Proposal (including all General Instructions, Supplementary Conditions, General Conditions, and Annexes and Appendixes).
- 2) The ESCo's proposal must respond to the following goals:
 - a) Upgrade the facility and its systems to reduce the consumption of electricity, fossil fuels, water, and electrical demand;
 - b) Improve or maintain the current level of occupant comfort in the facility in terms of amount of ventilation, thermal comfort, and indoor air quality;
 - c) Provide training and new operating guidelines required to maintain the reduced energy consumption; and
 - d) Provide monitoring services to document energy savings.

The purpose of the FBI program is to retrofit the building systems, to reduce energy consumption, and to pay for the total cost of the retrofit from the actual energy savings only, over a maximum period of 8 years. The ESCo shall arrange the funding of this project and payments made by PWGSC shall be in accordance with requirements detailed in this Request for Proposal (RFP). This Request for Proposal (RFP) should be thoroughly understood by the ESCo before submitting a proposal.

- 3) This procurement is covered under the provisions of the Agreement on Internal Trade (AIT).

GI 2 PROCUREMENT BUSINESS NUMBER

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

GI 3 CONTRACTING AUTHORITY

1. The Contracting Authority is:
2. The Contracting Authority is responsible for the management of this Request for Proposal or any resulting Contract. The Contracting Authority must authorize any changes, in writing. The Contractor is not to perform work in excess of or outside the scope of this Request for Proposal/resulting Contract based on verbal or written requests or instructions from any government personnel other than the aforementioned Contracting Authority officer.

GI 4 CANADA'S REPRESENTATIVE

1. A Departmental Representative will be identified at time of contract award.

2. The Departmental Representative will be responsible for all matters concerning the technical content of the work under the contract.

GI 5 RESPONSIVE PROPOSALS

To be considered responsive, a proposal must meet all of the mandatory requirements set out in the Request for Proposal. No further consideration in the selection procedure will be given to a Bidder submitting a non-responsive proposal. Bidders that submitted non-responsive proposals are notified accordingly.

GI 6 COMMUNICATIONS - SOLICITATION PERIOD

1. Questions or requests for clarification during the solicitation period must be submitted in writing to the Contracting Authority named on the Request for Proposal - Page 1 as early as possible. **Enquiries should be received no later than ten (10) working days prior to the closing date identified on the front page of the Request for Proposal** Enquiries received after that time may not be answered.
2. To ensure the integrity of the competitive bid process, enquiries and other communications regarding the RFP must be directed only to the Contracting Authority identified in the RFP. Failure to comply with this requirement may result in the proposal being declared non-responsive.
3. To ensure consistency and quality of information provided to bidders, significant enquiries received and their replies will be posted on the Government Electronic Tendering Service (GETS).

GI 7 SUBMISSION OF PROPOSAL

1. Canada requires that each proposal, at closing date and time or upon request from the Contracting Authority, be signed by the Bidder or by an authorized representative of the Bidder. If a proposal is submitted by a joint venture, it must be in accordance with section G112.
2. It is the Bidder's responsibility to:
 - a. submit a proposal, duly completed, in the format requested, on or before the closing date and time set;
 - b. send its proposal only to Public Works and Government Services Canada (PWGSC) Bid Receiving Unit specified on page 1 of the RFP or to the address specified in the RFP ;
 - c. obtain clarification of the requirements contained in the RFP, if necessary, before submitting a proposal;
 - d. ensure that the Bidder's name, return address, the solicitation number and description, and solicitation closing date and time are clearly visible on the envelope or the parcel(s) containing the proposal; and
 - e. provide a comprehensive and sufficiently detailed proposal that will permit a complete evaluation in accordance with the criteria set out in this RFP.
3. Timely and correct delivery of proposals to the office designated for receipt of proposals is the sole responsibility of the Bidder. PWGSC will not assume or have transferred to it those responsibilities. All risks and consequences of incorrect delivery of proposals are the responsibility of the Bidder.
4. Proposals and supporting information may be submitted in either English or French.
5. Canada will make available Notices of Proposed Procurement (NPP), bid solicitations and related documents for download through the Government Electronic Tendering Service (GETS). Canada is not responsible and will not assume any liabilities whatsoever for the information found on websites

of third parties. In the event an NPP, bid solicitation or related documentation would be amended, Canada will not be sending notifications. Canada will post all amendments using GETS. It is the sole responsibility of the Bidder to regularly consult GETS for the most up-to-date information. Canada will not be liable for any oversight on the Bidder's part nor for notification services offered by a third party.

GI 8 NON-ACCEPTANCES OF ELECTRONICALLY TRANSMITTED PROPOSALS

Due to the nature of this solicitation, a complete technical proposal, as well as the proposal price in accordance with GI 25 submitted under separate cover), with supporting information is required to allow a proper evaluation to be conducted. Electronic transmission of the proposal by such means as electronic mail or facsimile is not considered to be practical, and therefore, will not be accepted.

GI 9 LIMITATION OF SUBMISSIONS

1. A Bidder may not submit more than one proposal. This limitation also applies to the persons or entities in the case of a joint venture. If more than one proposal is received from a Bidder (or, in the case of a joint venture, from the persons or entities), all such proposals shall be rejected and no further consideration shall be given.
2. A joint venture is defined as an association of two or more parties which combine their money, property, knowledge, skills, time or other resources in a joint business enterprise agreeing to share the profits and the losses and each having some degree of control over the enterprise.
3. An arrangement whereby Canada contracts directly with a prime ESCo who may retain sub-contractors or specialist to perform portions of the services is not a joint venture arrangement. A sub-contractor or specialist consultant may, therefore, be proposed as part of the ESCo Team by more than one Bidder. The Bidder warrants that it has written permission from such sub-contractor or specialist to propose their services in relation to the services to be performed.
4. Notwithstanding paragraph 3.above, in order to avoid any conflict of interest, or any perception of conflict of interest, a Bidder shall not include in its submission another Bidder as a member of its ESCo team, as a subcontractor or specialist..
5. Any joint venture entered into for the provision of professional services or other services must be in full compliance with the requirements of any provincial or territorial law pertaining thereto in the Province or Territory in which the project is located.

GI 10 REJECTION OF PROPOSALS

1. Canada may reject a proposal where any of the following circumstances is present:
 - a. the Bidder has been declared ineligible for selection, following unsatisfactory performance in a previous project as determined in accordance with Canada's performance review procedures;
 - b. an employee, subcontractor or specialist included as part of the proposal has been declared ineligible, for selection for work with Canada in accordance with the performance review procedure referred to in paragraph 1.(a), which would render the employee, subcontractor or specialist ineligible to bid on the requirement, or the portion of the requirement the employee, subcontractor or specialist is to perform;
 - c. the Bidder is bankrupt or where, for whatever reason, its activities are rendered inoperable for an extended period;

- d. evidence, satisfactory to Canada, of fraud, bribery, fraudulent misrepresentation or failure to comply with any law protecting individuals against any manner of discrimination, has been received with respect to the Bidder, any of its employees, any sub- ESCo or any specialist ESCo included as part of the proposal;
 - e. evidence satisfactory to Canada that based on past conduct or behavior, the Bidder, a sub-ESCO, a specialist ESCo or a person who is to perform the Services is unsuitable or has conducted himself/herself improperly;
 - f. with respect to current or prior transactions with the Government of Canada,
 - i. Canada has exercised its contractual remedies of taking the services out of the ESCo's hands, suspension or termination for default with respect to a contract with the Bidder, any of its employees, any sub- ESCo or any specialist ESCo included as part of the proposal;
 - ii. Canada determines that the Bidder's performance on other contracts, including the quality of the services provided and the quality and timeliness of the delivery of the project, is sufficiently poor to jeopardize the successful completion of the requirement being bid on.
2. Where Canada intends to reject a proposal pursuant to subsection 1.(f), the Contracting Authority will so inform the Bidder and provide the Bidder ten (10) days within which to make representations, before making a final decision on the proposal rejection.

GI 11 INSURANCE REQUIREMENTS

1. The successful Bidder shall be required to obtain and maintain Professional Liability and Comprehensive General insurance coverage in accordance with the requirements set out in Appendix D of the Request for Proposal.
2. No insurance requirement stipulated in the Request for Proposal documents should be construed as limiting any insurance required by federal, provincial or municipal law. Neither should it limit any coverage which the successful Bidder and other members of the ESCo team may consider to be necessary for their own protection or to fulfill their obligations.
3. By virtue of submission of a proposal, the Bidder certifies that the Bidder and the other members of the ESCo team as may be applicable are capable of obtaining, and will obtain and maintain liability insurance in accordance with the requirements set out in the proposal documents.

GI 12 JOINT VENTURE

1. A joint venture is an association of two or more parties who combine their money, property, knowledge, expertise or other resources in a single joint business enterprise, sometimes referred as a consortium, to bid together on a requirement. Bidders who bid as a joint venture must indicate clearly that it is a joint venture and provide the following information:
 - a. the name of each member of the joint venture;
 - b. the Procurement Business Number of each member of the joint venture;
 - c. the name of the representative of the joint venture, i.e. the member chosen by the other members to act on their behalf, if applicable;
 - d. the name of the joint venture, if applicable.

2. If the information is not clearly provided in the proposal, the Bidder must provide the information on request from the Contracting Authority.
3. The proposal and any resulting contract must be signed by all the members of the joint venture unless one member has been appointed to act on behalf of all members of the joint venture. The Contracting Authority may, at any time, require each member of the joint venture to confirm that the representative has been appointed with full authority to act as its representative for the purposes of the bid solicitation and any resulting contract. If a contract is awarded to a joint venture, all members of the joint venture will be jointly and severally or solidarity liable for the performance of any resulting contract.

GI 13 LATE SUBMISSIONS

Submissions delivered after the stipulated closing date and time will be returned unopened.

GI 14 DEFINITION OF BIDDER AND LEGAL CAPACITY

“Bidder” means the person or entity (or in the case of a joint venture, the persons or entities) which submits a proposal. The Bidder must have the legal capacity to contract. If the Proponent is a sole proprietorship, a partnership or a corporate body, the Bidder must provide, if requested by the Contracting Authority, a statement and any requested supporting documentation indicating the laws under which it is registered or incorporated together with the registered or corporate name and place of business. This also applies to Bidders submitting a proposal as a joint venture.

GI 15 SITE VISITS

15.1 MANDATORY SITE VISIT

It is mandatory that the ESCo or a representative of the ESCo visit the work site and examine all building structures and equipment, review drawings, review utility consumption and demand and/or PWGSC metering information, familiarize themselves with the existing conditions and limitations, existing operations and maintenance protocols, and existing space comfort conditions, and review any additional information made available by Canada.

Arrangements have been made for the site visit to be held on February 9, 2015. The site visit will begin at 1:00 p.m. EST, at the front entrance of the CBSA Training Centre, located in Sainte - Madeleine de Rigaud, at 475 Chemin de la Grande Ligne.

ESCos must communicate with the Contracting Authority no later than February 5, 2015 at 2pm to confirm attendance and provide the name(s) of the person(s) who will attend. ESCos will be required to sign an attendance sheet. ESCos should confirm in their bid that they have attended the site visit. ESCos who do not attend the mandatory site visit or do not send a representative will not be given an alternative appointment and their bid will be declared non-responsive.

It is mandatory that ESCos provide and wear safety boots for the site visit. ESCos who do not comply will not be permitted to attend the site visit.

Any clarifications or changes to the bid solicitation resulting from the site visit will be included as an amendment to the bid solicitation.

15.2 OPTIONAL SITE VISIT

Additional individual site visit may be requested no later than ten (10) working days before the solicitation closing date. ESCos must communicate with the Contracting Authority to arrange an individual site visit appointment. During the individual site visit the requirements outlined in this bid solicitation document will be reviewed and questions from potential ESCos with regard to the particulars set forth in this RFP will be answered as outlined in paragraph below.

Any clarifications or changes to the bid solicitation resulting from the individual site visits will be included as an amendment to the bid solicitation.

GI 16 FINANCIAL CAPABILITY

1. Financial Capability Requirement: The Bidder must have the financial capability to fulfill this requirement. To determine the Bidder's financial capability, the Contracting Authority may, by written notice to the Bidder, require the submission of some or all of the financial information detailed below during the evaluation of proposals. The Bidder must provide the following information to the Contracting Authority within fifteen (15) working days of the request or as specified by the Contracting Authority in the notice:
 - a. Audited financial statements, if available, or the unaudited financial statements (prepared by the Bidder's outside accounting firm, if available, or prepared in-house if no external statements have been prepared) for the Bidder's last three fiscal years, or for the years that the Bidder has been in business if this is less than three years (including, as a minimum, the Balance Sheet, the Statement of Retained Earnings, the Income Statement and any notes to the statements).
 - b. If the date of the financial statements in (a) above is more than five months before the date of the request for information by the Contracting Authority, the Bidder must also provide, unless this is prohibited by legislation for public companies, the last quarterly financial statements (consisting of a Balance Sheet and a year-to-date Income Statement), as of two months before the date on which the Contracting Authority requests this information.
 - c. If the Bidder has not been in business for at least one full fiscal year, the following must be provided:
 - i. the opening Balance Sheet on commencement of business (in the case of a corporation, the date of incorporation); and
 - ii. the last quarterly financial statements (consisting of a Balance Sheet and a year-to-date Income Statement) as of two months before the date on which the Contracting Authority requests this information.
 - d. A certification from the Chief Financial Officer or an authorized signing officer of the Bidder that the financial information provided is complete and accurate.
 - e. A confirmation letter from all of the financial institution(s) that have provided short-term financing to the Bidder outlining the total of lines of credit granted to the Bidder and the amount of credit that remains available and not drawn upon as of one month prior to the date on which the Contracting Authority requests this information.
 - f. A detailed monthly Cash Flow Statement covering all the Bidder's activities (including the requirement) for the first two years of the requirement that is the subject of the bid solicitation, unless this is prohibited by legislation. This statement must detail the Bidder's major sources and amounts of cash and the major items of cash expenditures on a monthly basis, for all the Bidder's activities. All assumptions made should be explained as well as details of how cash shortfalls will be financed.
 - g. A detailed monthly Project Cash Flow Statement covering the first two years of the requirement that is the subject of the bid solicitation, unless this is prohibited by

legislation. This statement must detail the Bidder's major sources and amounts of cash and the major items of cash expenditures, for the requirement, on a monthly basis. All assumptions made should be explained as well as details of how cash shortfalls will be financed.

2. If the Bidder is a joint venture, the financial information required by the Contracting Authority must be provided by each member of the joint venture.
3. If the Bidder is a subsidiary of another company, then any financial information in 1. (a) to (g) above required by the Contracting Authority must be provided by the ultimate parent company. Provision of parent company financial information does not by itself satisfy the requirement for the provision of the financial information of the Bidder, and the financial capability of a parent cannot be substituted for the financial capability of the Bidder itself unless an agreement by the parent company to sign a Parental Guarantee, as drawn up by Public Works and Government Services Canada (PWGSC), is provided with the required information.
4. Financial Information Already Provided to PWGSC: The Bidder is not required to resubmit any financial information requested by the Contracting Authority that is already on file at PWGSC with the Contract Cost Analysis, Audit and Policy Directorate of the Policy, Risk, Integrity and Strategic Management Sector, provided that within the above-noted time frame:
 - a. the Bidder identifies to the Contracting Authority in writing the specific information that is on file and the requirement for which this information was provided; and
 - b. the Bidder authorizes the use of the information for this requirement.

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

5. Other Information: Canada reserves the right to request from the Bidder any other information that Canada requires to conduct a complete financial capability assessment of the Bidder.
6. Confidentiality: If the Bidder provides the information required above to Canada in confidence while indicating that the disclosed information is confidential, then Canada will treat the information in a confidential manner as permitted by the [Access to Information Act](#), R.S., 1985, c. A-1, Section 20(1) (b) and (c).
7. Security: In determining the Bidder's financial capability to fulfill this requirement, Canada may consider any security the Bidder is capable of providing, at the Bidder's sole expense (for example, an irrevocable letter of credit from a registered financial institution drawn in favour of Canada, a performance guarantee from a third party or some other form of security, as determined by Canada).
8. In the event that a proposal is found to be non-compliant on the basis that the Bidder is considered not to be financially capable of performing the subject requirement, official notification shall be provided to the Bidder.

GI 17 REVISION OF PROPOSAL

A proposal submitted may be amended by letter or facsimile provided the revision is received at the office designated for the receipt of proposals, on or before the date and time set for the receipt of proposals. The revision must be on the Bidder's letterhead or bear a signature that identifies the Bidder, and must clearly identify the change(s) to be applied to the original proposal. .

GI 18 PERFORMANCE EVALUATION

Bidders shall take note that the performance of the ESCo during and upon completion of the services shall be evaluated by Canada. The evaluation includes all or some of the following criteria: Design, Quality of Results, Management, Time and Cost. Should the ESCo's performance be considered unsatisfactory, the ESCo may be declared ineligible for future contracts. The form [PWGSC-TPSGC 2913-1](http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/2913-1.pdf), SELECT - Consultant Performance Evaluation Report (<http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/2913-1.pdf>), is used to record the performance.

GI 19 PROPOSAL COSTS

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

GI 20 CONFLICT OF INTEREST – UNFAIR ADVANTAGE

1. In order to protect the integrity of the procurement process, bidders are advised that Canada may reject a proposal 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 proposal 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 proposal, 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.

GI 21 LIMITATION OF LIABILITY

Except as expressly and specifically permitted in this Request for Proposal, no Bidder or potential Bidder shall have any claim for any compensation of any kind whatsoever in relation to this Request for Proposal, or any aspect of the procurement process, and by submitting a proposal each Bidder shall be deemed to have agreed that it has no claim.

GI 22 INTENTIONALLY LEFT BLANK

GI 23 BID VALIDITY PERIOD

- 1) Bids will remain open for acceptance for a period of not less than One Hundred and Eighty (180) days from the closing date of the bid solicitation. Canada reserves the right to seek an extension of the bid validity period from all responsive bidders in writing, within a minimum of 3 days before the end of the bid validity period. If the extension is accepted by all responsive bidders, Canada will continue with the evaluation of the bids. If the extension is not accepted by all responsive bidders, Canada will, at its sole discretion, either continue with the evaluation of the bids of those who have accepted the extension or cancel the solicitation.

GI 24 ACCEPTANCE OF PROPOSAL

1. Canada may accept any proposal, or may reject any or all proposals.
2. In the case of error in the extension or addition of unit prices, the unit price will govern.
3. While Canada may enter into an agreement or contractual arrangement without prior negotiation, Canada reserves the right to negotiate with Bidders on any procurement.
4. Canada reserves the right to cancel or amend the RFP at any time.

GI 25 PRICE PROPOSAL

Unless specified otherwise elsewhere in the proposal documents:

- a. the price proposal shall be in Canadian currency, and
- b. the price proposal shall not include any amount for Applicable Taxes, and
- c. the requirement does not offer exchange rate fluctuation risk mitigation. Requests for exchange rate fluctuation risk mitigation will not be considered. All proposals including such provision will render the proposal non-responsive.

GI 26 DEBRIEFING

Should a Bidder desire a debriefing, the Bidder should contact the person identified on the front page of the Request for Proposal within 15 working days of the notification of the results of the 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.

Proposal Requirements and Evaluation (PRE)

PRE 1 Overview of Selection Process

1. Request for Proposal (RFP) documents are obtained by bidders through the Government Electronic Tendering Services (GETS).
2. Responsive proposals are reviewed, evaluated and rated by a PWGSC Evaluation Board in accordance with the criteria, components and weight factors set out in the RFP.
3. PWGSC normally expects to advise in writing unsuccessful bidders within one week after PWGSC has entered into a contractual arrangement with the successful bidder.

Selection Process

The Selection Process has three (3) phases:

- A) Phase 1 - Mandatory Requirements;
- B) Phase 2 - Rated Proposal; and
- C) Phase 3 - Basis of Selection.

Phase 1 - Mandatory Requirements

Proposals will be examined to determine their compliance with the following MANDATORY requirements:

- (a) Bidders must be pre-qualified by Natural Resources Canada (NRCan) under the Federal Buildings Initiative (FBI) program;
- (b) Bidders must attend the mandatory site visit, and sign the attendance form; and
- (c) Bidders must complete, sign and submit the following: Appendix "K", entitled DECLARATION/CERTIFICATIONS FORM

(d) Integrity Provisions – Associated Information

Bidders, who are incorporated, including those submitting proposals as a joint venture, must provide a complete list of names of all individuals who are currently directors of the bidder. Bidders submitting proposals as sole proprietorship, including those submitting proposals as a joint venture, must provide the name of the owner. Bidders submitting proposals as societies, firms or partnerships do not need to provide list of names. If the required names have not been received by the time the evaluation of proposals is completed, Canada will inform the bidder of a time frame within which to provide the information. Failure to provide the names within the time frame specified will render the proposal non-responsive. Providing the required names is a mandatory requirement for the award of a contract.

FAILURE TO MEET THE MANDATORY REQUIREMENTS WILL RENDER THE PROPOSAL AS NON-RESPONSIVE AND NO FURTHER EVALUATION WILL BE CARRIED OUT.

Phase 2 - Rated Proposal

Phase 2 will evaluate the responsive proposals (i.e. proposals meeting all mandatory requirements listed above), and award points. The points attributed to the Proposal will be based on the relative weighting factor and the evaluation criteria as detailed below. A rating from zero to ten (10) points will be assigned for each of the evaluation criteria

Threshold per Criteria

A proposal receiving less than sixty percent (60%) of the available points in each of the Project Management and Technical Information sections as detailed below will be deemed non-responsive and will be given no further consideration.

Phase 3 - Basis of Selection

The Basis of Selection for contract award for this requirement is the highest total scoring responsive proposal in accordance with the rated criteria detailed below.

The Total Score will be established as follows:

Project Management Rating	x 30%	=	Project Management Score (Points)
Technical Information Rating	x 40%	=	Technical Information Score (Points)
Financial Information Rating	x 30%	=	Financial Information Score (Points)
			Total Score (maximum 100 Points)

BIDDERS WILL NOT BE REIMBURSED FOR THE COST OF RESPONDING TO THIS REQUEST FOR PROPOSAL.

PRE 2 Proposal Format

The following proposal format information should be implemented when preparing the proposal.

- Submit one (1) bound original plus five (5) bound copies of the proposal
- Paper size should be - 216mm x 279mm (8.5" x 11")
- Minimum font size - 11 point Times or equal
- Minimum margins - 12 mm left, right, top, and bottom
- Double-sided submissions are preferred
- One (1) 'page' means one side of a 216mm x 279mm (8.5" x 11") sheet of paper
279mm x 432 mm (11" x 17") foldout sheets for spreadsheets, organization charts etc. will be counted as two pages.
- The order of the proposals should follow the order established in the Request for Proposal PRE section.

PRE 3 Specific Requirements for Proposal Format

The maximum number of pages (including text and graphics) to be submitted for the Project Management, Technical and Financial sections is Seventy (70) pages. The number of pages dedicated to resumes and other supporting material must not exceed an additional Fifty (50) pages.

The following are not part of the page limitations mentioned above:

- Covering letter
- Declaration/Certifications Form (Appendix K)
- Front page of the RFP
- Front page of revision(s) to the RFP

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

PRE 4 Rated Requirements

The proposal should demonstrate the capabilities of the ESCo in terms of thoroughness, creativity, and innovation in terms of the energy saving measures, competence in terms of managing this project and stability to provide the services over the long term of the Contract.

4.1 PROJECT MANAGEMENT

4.1.1 ESCo's Capabilities and Experience

The ESCo should demonstrate their capability to manage energy performance contracts, their engineering capabilities in building retrofits, the ESCo's capabilities in managing financial aspects of an open book project, and the ESCo's past performance in energy performance contracts.

Submissions should address the following requirements:

- Discussion of company's capabilities to manage energy efficiency projects.
- Understanding of FBI savings financing mechanism.
- Listing of up to five (5) past commercial/office projects. A description of each of the projects should include:
 - A brief description (including name and address of the building).
 - Its project value.
 - How project is comparable to this requirement.
 - Listing of key project members/firms.
 - Guaranteed payback period.
 - Savings achieved.
 - Completion year.
 - Name and phone number of client contacts.
- Approach to controlling costs and use of an auditable approach to spending and procurements of materials.

4.1.2 Description of Project Team

The ESCo should include in their proposal the capability of the Project Team in terms of its qualifications, experience, hourly rates, and location of key players from the site and cohesiveness of the team. In the case of a Joint Venture, the ESCo must detail the roles and responsibilities of all members and their written commitment to maintain the Joint Venture over eight (8) years.

Submissions should address the following requirements:

- ESCo's must submit an organizational chart that defines the project team. The project team must contain as a minimum the personnel specified in [Appendix "H"](#); and
- The ESCo should provide a description of the engineering experience and capabilities of the members of the Project Team, describing the roles and responsibilities for this project, including the qualifications and areas of expertise for each member. The resume of each member proposed must be submitted. A project team member must be specified for each of the roles defined by the ESCo. ESCo's should also provide information on the experience as found at [Appendix "H"](#). For team members that will be involved in Project Management, the

ESCo must demonstrate the experience of members in managing and supervision of construction projects.

4.1.3 Scheduling and Gantt Chart

The ESCo must develop a detailed implementation plan outlining the ESCo's plan for achieving key milestones. It must include a Gantt chart detailing the project time lines including the level of PWGSC involvement. Consideration should be given to minimize the disruption to the building occupants. The information will be assessed for the thoroughness of the plan and the attainability of the milestones provided within acceptable time frames.

4.1.4 Training

The ESCo must explain its approach to training of building operators and informing property managers and occupants for the successful implementation, operation and acceptance of each Measure outlined within the proposal document. This information must include expected milestones for each phase of implementation as well as outlining the allocation of budgets for operator training and occupant awareness.

4.1.5 Implementation

The ESCo must describe in detail the approach to implementation addressing in particular:

- Approach to Design: Briefly describe how a Measure will be finalized from investigation to design;
- Approach to Cost Control: Describe in detail what steps will be taken during various phases of the project to control costs;
- Occupant Disruption: Describe in detail what approach will be taken in the design and implementation of the proposed Measures or activities to minimize the disruption to the Facility's occupants;
- Construction Supervision: Explain the approach to supervision that the ESCo must take to ensure the delivery of each Measure;
- Project Reporting: Detail what administrative and financial reports will be generated during each phase of the project. A sample of each type of report should be provided;
- Trouble Calls: Detail its approach for responding to trouble calls during the construction and post-construction periods. The ESCo must indicate if they are able to respond to calls at all times during working and off-hours. Describe what level of reporting to PWGSC can be expected during construction and provide specimens of sample reports;
- Commissioning: Briefly describe the approach to the Commissioning of each Measure and management of guarantees; and
- PWGSC Involvement: Detail the level of work that will be required from PWGSC for the successful implementation of each Measure.

4.1.6 Monitoring

The ESCo must detail its approach to monitoring energy consumption and substantiating energy savings. Based on the approach for each Measure, detail the use of temporary and long term submeters that will be installed, and how these submeters will be monitored.

4.1.7 Presentation of Proposal

The presentation of the Proposal document must be evaluated for its clarity and brevity. The number of pages dedicated to Project Management, Technical and Financial sections must not exceed 70 pages. The number of pages dedicated to resumes and other supporting material must not exceed an additional 50 pages as specified in PRE 3.

4.2 TECHNICAL INFORMATION

4.2.1 Quality of Measures

Provide details on each Measure proposed, explaining the scope of work, impact on maintenance, impact on indoor air quality and service life of the Measure. Use the format shown in [Appendix "I", Page 1](#). Savings for each Measure should be calculated using Energy Rates provided in [Appendix C](#) and presented in the format shown in [Appendix "I", Page 2](#). The ESCo must complete [Appendix "I", Page 3](#), showing the breakdown of costs and savings for each Measure. The ESCo must complete the [Appendix "I", Page 4](#) clarifying the baseline for this building used in the proposal from which energy savings are estimated.

The above information will be assessed for:

- The extent of the work in the Proposal;
- The quality of each Measure;
- Engineering input required;
- The innovativeness of measure;
- Impact on maintenance costs;
- Impact on indoor air quality;
- Simple payback period;
- Service life of equipment; and
- Impact on power quality.

For each Measure, the ESCo must detail their approach for establishing base conditions for indoor air quality and power quality and establish what steps will be necessary to mitigate any deterioration from present conditions.

4.2.2 Quality of Proposal

The complete package of Measures will be assessed for its comprehensiveness and its quality in terms of all the energy-consuming areas addressed and the relative acceptability. The ESCo should also fully detail what Measures were investigated and found to be economically unfeasible. Provide a breakdown of the projected costs and savings associated with these Measures as well as projected simple paybacks.

If possible, the ESCo must explain what Measures and activities could be reduced in scope or eliminated due to reduced savings as a result of findings in a detailed Energy Audit Report.

4.3 FINANCIAL INFORMATION

4.3.1 Soft Costs

Canada will assess the allocation of soft costs, costs for mark-up and overhead and costs for the Guarantee Performance Premium. The successful ESCo must not be allowed to change the ratio of Soft Costs to the cost of the improvements without the prior approval of Canada's Representative.

4.3.1.1 Soft Cost

The allocation of soft costs, namely the cost of the Energy Audit Report, design engineering, project management, monitoring, training and commissioning, relative to the Total cost of the Project will be assessed. Values that are provided as part of [Appendix "I", Page 5](#) must be used for this assessment.

4.3.1.2 Mark-Up and Overhead

Canada will assess the ESCo's overhead and mark-up on outside costs. The ESCo should provide separate information if the values for mark-up and overhead vary from measure to measure or are not applicable for certain items. The ESCo must also provide the rates for mark-up and overhead for work in addition to the work described in the proposal. The ESCo must detail the services that are provided under Mark-Up and Overhead.

4.3.1.3 Guaranteed Performance Premium

Canada will assess the amount charged by the ESCo for guaranteeing the performance of the Contract. This must be assessed for the benefits it provides. The Guarantee Performance Premium must be shown as separate from any other cost shown in the Proposal.

4.3.2 Buydown Penalty

An evaluation of additional financial charges for early buydown will be made by Canada as follows:

The ESCo will identify separately for each of the two scenarios which follow herein:

- i) The value of the amount of early buydown, and
- ii) The additional penalties and financing charges incurred.

Note: The value of the remaining Project Balance occurring 36 months after Commencement Date is the basis for calculating payment.

1) Floating Rate Financing Scenario

In this scenario there will be a lump sum buydown payment equal to 50% of the remaining Project Balance (as per the note above) paid to the ESCo. Assume that the Financier Floating Interest Rate noted in Appendix I, page 5 of the Proposal has increased by 1.5% since bid closing.

2) Fixed Rate Financing Scenario

In this scenario there will be a lump sum payment equal to 50% of the remaining Project Balance (as per the note above) paid to the ESCo. Assume that on the Commencement Date, the Project Balance was transferred to fixed rate financing at the rate noted in Appendix I, page 5 of the Proposal. The ESCo must also assume that at the time of the early buydown payment noted above, the fixed rate benchmark term that best reflects the remaining term of the Contract has increased by 1.5%. For scenario 2 only, the ESCo must submit as part of their response to this Request for Proposal an electronic copy of the spreadsheet used to perform the calculations required to identify the additional financing charges and penalties.

4.3.3 Interest Rate

Canada will assess the ESCo's interest rate as it is defined in Annex A, Appendix A, "Interest". The reference rate shall be the rate applicable within one week of the closing date of the RFP.

4.3.4 Simple Payback

Canada will assess the simple payback of the Measures identified by the ESCo.

PRE 5 Additional Requirements

5.1 Cash Flow

Provide a monthly cash flow chart for the duration of the Contract showing all costs and charges including cost of implementing the improvements, financing charges, rebates, discounts, monitoring fees and any other pertinent information using the table provided in Appendix "I". The ESCo shall show the energy cost savings to Canada. The interest rate to be applied in the Proposal cash flow is in accordance with [Appendix "I", Page 5](#). Price all elements at current values, excluding inflation.

5.2 Project Cost

Provide all project costs in terms of labour, material, ESCo's fees, mark-up and any other relevant project costs, for total and individual elements, and guaranteed energy performance premium, in an Open Book format, in [Appendix "I", Page 5](#). The costs for all pre-engineering during preparation of this Proposal must be included as part of the Energy Audit Report costs. All costs shown shall be in actual dollars and not in present value. All costs shown must be exclusive of savings.

5.3 Additional Information

The ESCo must complete the forms:

- Appendix I, Page 3: "Summary of All Proposed Measures."
- Appendix I, Page 4: "Energy Baseline Information"

PRE 6 Evaluation and Rating

Proposals which are responsive will be reviewed, evaluated and rated by a PWGSC Evaluation Board in accordance with the following:

Criterion	Weight Factor	Rating	Weighted Rating
PRE 4.1 - Project Management			
4.1.1 - ESCo's Capabilities and Experience	2.5	0 - 10	0 - 25
4.1.2 – Description of Project Team	2.5	0 - 10	0 - 25
4.1.3 - Scheduling and Gantt Chart	0.5	0 - 10	0 - 5
4.1.4 – Training	1.0	0 - 10	0 - 10
4.1.5 - Implementation	2.0	0 - 10	0 - 20
4.1.6 – Monitoring	1.0	0 - 10	0 - 10
4.1.7 – Presentation of proposal	0.5	0 - 10	0 - 5
Project Management Weighted Rating	10.0		0 - 100

Criterion PRE 4.2 - Technical Information	Weight Factor	Rating	Weighted Rating
4.2.1 - Quality of Measures	5.0	0 - 10	0 - 50
4.2.2 - Quality of Proposal	5.0	0 - 10	0 - 50
Technical Information Weighted Rating	10.0		0 - 100

Criterion PRE 4.3 - Financial Information	Weight Factor	Rating	Weighted Rating
4.3.1 - Soft Cost	6.0	0 - 10	0 - 60
4.3.2 – Buy-down Penalty	1.0	0 - 10	0 - 10
4.3.3 - Interest Rate	2.5	0 - 10	0 – 25
4.3.4 – Simple Payback	0.5	0 - 10	0 – 5
Financial Information Weighted Rating	10.0		0 – 100

PRE 7 Total Score

Total Scores will be established in accordance with the following:

Combined Rating	Possible Range	% of Total Score	Score (Points)
Project Management Weighted Rating	0 - 100	30	0 - 30
Technical Information Weighted Rating	0 - 100	40	0 - 40
Financial Information Weighted Rating	0 - 100	30	0 - 30
Total Score		100	0 - 100

PRE 8 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 submissions requirements

Please follow detailed instructions in “Submission of Proposals”, General Instructions to Bidders (GI 7).

- Declaration/Certifications Form – completed and signed form provided in Appendix “K”
- Integrity Provisions – Associated Information – list of directors/owners
- Proposal – 1 original + (5) copies
- Front page of Request for Proposal
- Front page of Revision(s) to a Request for Proposal

Supplementary Conditions

The verb “Must” describe action that is “Mandatory”. Also, the verb “Should” describes action that is “Preferred” but not mandatory. The verb “May” describes action that is “Discretionary”.

SC 1 Preamble

- 1) The ESCo has agreed to complete all the Work and supply all the materials and services necessary for the proper installation of the Improvements in accordance with this Contract (including all Supplementary Conditions, General Conditions, and Annexes and Appendixes).
- 2) The ESCO has agreed to provide to Canada:
 - a) an Energy Audit Report detailing the Improvements proposed for the Facility; and
 - b) the final Working Documents for the Improvements in accordance with the terms and conditions of this Contract.
- 3) The ESCo has agreed to provide to Canada’s employees the prescribed training as set out herein.
- 4) The ESCo guarantees:
 - a) the performance of the retrofit, and that the savings must retire the Total Cost of project in a maximum period of 96 months;
 - b) to pay for all net Energy increases resulting from the Improvements during the Guaranteed Payback Period; and
 - c) that there must not be any negative impact on the indoor environment due to the Improvements.

SC 2 Priority of Documents

- 1) The documents listed below form part of and are incorporated into this Request for Proposal (RFP) and any resulting contract:
 - a) The articles of this Request for Proposal and any resulting contract;
 - b) The Annexes of this Request for Proposal and any resulting contract;
 - c) The Appendices A to K to Annex A of this Request for Proposal and any resulting contract;
 - d) The Appendix J to Annex A -ESCO’s Proposal Brief upon contract award; and
 - e) The approved Energy Audit Report after contract award.
- 2) If there is a discrepancy between the wordings of one document from the wording of any other document that appears on the above list, the wording of the document that first appears on the list must prevail over the wording of any document that subsequently appears on the list.

SC 3 Security Requirement

The following security requirement (SRCL at Annex B and related clauses) applies and form part of the Contract.

1. The Contractor/Offeror must, at all times during the performance of the Contract/Standing Offer, hold a valid Designated Organization Screening (DOS), issued by the Canadian Industrial Security Directorate (CISD), Public Works and Government Services Canada (PWGSC).
2. The Contractor/Offeror personnel requiring access to sensitive work site(s) must **EACH** hold a valid **RELIABILITY STATUS**, granted or approved by CISD/PWGSC.
3. Subcontracts, which contain security requirements, are **NOT** to be awarded without the prior written permission of CISD / PWGSC.
4. The Contractor/Offeror must comply with the provisions of the:
 - a) *Security Requirements Check List* and Security Guide (if applicable), attached at Annex B;
 - b) *Industrial Security Manual* (Latest Edition).

SC 4 International Sanctions

1. Persons 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](http://www.international.gc.ca/sanctions/index.aspx?lang=eng) (<http://www.international.gc.ca/sanctions/index.aspx?lang=eng>).
2. The ESCo must not supply to the Government of Canada any goods or services which are subject to economic sanctions.
3. The ESCo must comply with changes to the regulations imposed during the period of the Contract. The ESCo must immediately advise Canada if it is unable to perform the Services as a result of the imposition of economic sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services. If the parties cannot agree on a work around plan, the Contract will be terminated for the convenience of Canada in accordance with terms and conditions of the Contract.

General Conditions

GC 1 Definitions

1.1 Appendix "A" of Annex "A" contains the various definitions used in this Contract.

GC 2 Notices

2.1 Subject to paragraph GC2.3, any notice, order or other communication may be given in any manner, and if required to be in writing, must 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.

2.2 Any notice, order or other communication given in writing in accordance with paragraph 1 of GC2.3 must 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.

2.3 A notice given under GC 21, "Taking the Work out of the ESCo's Hands", GC23, "Suspension of Work" and GC 50,, "Termination of Contract", must be given in writing and, if delivered personally, must be delivered, if the ESCo is a sole proprietor, to the ESCo or, if the ESCo is a partnership or corporation, to an officer thereof.

GC 3 Interpretation

GC 3.1.1 Headings and References

1. The headings in the contract documents, other than those in the drawings and specifications, 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, letter or combination thereof is, unless specifically stated otherwise, a reference to the paragraph or subparagraph that forms part of the clause within which the reference is made.

GC4 Time of Essence

4.1 Time is of the essence in this Contract.

GC 5 Succession

5.1 The Contract must inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and permitted assigns.

GC6 Laws, Permits and Taxes

1. The ESCo must 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 the protection of the environment, and must 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 ESCo must 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 ESCO must 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 ESCo must 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 an owner other than Canada.
4. Within 10 days of making a tender pursuant to paragraph 3) of GC 6, the ESCO must 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 ESCo must pay that amount to Canada within 6 days after the time stipulated in paragraph 4) of GC 6
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 ESCo, the ESCO must pay any applicable tax arising from or related to the performance of the Work under the Contract.
8. In accordance with the Statutory Declaration, an ESCo who has neither residence nor place of business in the province or territory in which work under the Contract is being performed must 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 Taxes or the furnishing of security for the payment of any Applicable Taxes arising from or related to the performance of the Work, and notwithstanding the provision that all Material, Plant and interest of the ESCo in all real property, licences, powers and privileges, become the property of Canada after the time of purchase, the ESCo must be liable, as a user or consumer, for the payment or for the furnishing of security for the payment of any Applicable Taxes payable, at the time of the use or consumption of that Material, Plant or interest of the ESCo in accordance with the relevant legislation.
10. Federal government departments and agencies are required to pay Applicable Taxes.
11. Applicable Taxes will be paid by Canada as provided in the request for payment. It is the sole responsibility of the ESCo to charge Applicable Taxes at the correct rate in accordance with applicable legislation. The ESCo agrees to remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.
12. The ESCo is not entitled to use Canada's exemptions from any tax, such as provincial sales taxes, unless otherwise specified by law. The ESCo must pay applicable provincial sales tax,

ancillary taxes, and any commodity tax, on taxable goods or services used or consumed in the performance of the Contract (in accordance with applicable legislation), including for material incorporated into real property.

13. In those cases where Applicable Taxes, customs duties, and excise taxes are included in the Contract Amount, the Contract Amount will be adjusted to reflect any increase, or decrease, of Applicable Taxes, customs duties, and excise taxes that will have occurred between bid submission and contract award. However, there will be no adjustment for any change to increase the Contract Amount if public notice of the change was given before bid submission date in sufficient detail to have permitted the ESCo to calculate the effect of the change.
14. Tax Withholding of 15 Percent – Canada Revenue Agency
Pursuant to the [Income Tax Act](#), 1985, c. 1 (5th Supp.) and the [Income Tax Regulations](#), Canada must withhold 15 percent of the amount to be paid to the ESCo in respect of services provided in Canada if the ESCo is not a resident of Canada, unless the ESCo obtains a valid waiver from the Canada Revenue Agency. The amount withheld will be held on account for the ESCo in respect to any tax liability which may be owed to Canada.

GC7 Baseline Data

- 7.1 The Baseline Data must be determined by metering, and must be defined as part of the Energy Audit Report.
- 7.2 The Baseline Data must be correlated to a mathematical model defined for each meter. The derivation of this model must be supported by engineering analysis, presented by the ESCo for review to Canada's Representative.

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GC9 Subcontracting

- 9.1 Subject to the provisions of this clause, the ESCo may subcontract any part of the Work but not the whole of the Work
- 9.2 The ESCo must notify Canada in writing of the ESCo's intention to subcontract.
- 9.3 A notification referred to in paragraph 2) of GC 9 must identify the part of the Work and the Subcontractor with whom the ESCo intends to subcontract.
- 9.4 Canada may for reasonable cause, object to the intended subcontracting by notifying the ESCo in writing within six(6) days of receipt by Canada of a notification referred to in paragraph 2) of GC 9.
- 9.5 If Canada objects to a subcontracting, the ESCo must not enter into the intended subcontract.
- 9.6 The ESCo must not change, nor permit to be changed, a Subcontractor engaged by the ESCo, in accordance with this clause, without the written consent of Canada.
- 9.7 The ESCo must ensure that all the terms and conditions of the Contract that are of general application must 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.
- 9.8 Neither a subcontracting nor Canada's consent to a subcontracting must be construed to relieve the ESCo from any obligation under the Contract or to impose any liability upon Canada.

GC10 Non-Discrimination In Hiring And Employment of Labour

- 10.1 For the purposes of this clause, "persons" include the ESCo, 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.

- 10.2 The ESCo must not refuse to employ and must not discriminate in any manner against any person because,
- 10.2.1 Of that person's race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, disability, conviction for which a pardon has been granted, or family status;
- 10.2.2 Of the race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, disability, conviction for which a pardon has been granted, or family status of any person having a relationship or association with that person or
- 10.2.3 A complaint has been made or information has been given in respect of that person relating to an alleged failure by the ESCo to comply with [GC10.2.1](#) and [GC10.2.2](#) above.
- 10.3 Within two (2) Working Days immediately following receipt of a written complaint pursuant to [GC10.2](#) above, the ESCo must,
- 10.3.1 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; and
- 10.3.2 Forward a copy of the complaint to Canada by registered mail Or courier service.
- 10.4 Within twenty-four (24) hours immediately following receipt of a direction from Canada to do so, the ESCo must cause to have removed from the ESCo's team any person or person's whom Canada believes to be in breach of the provisions of [GC10.2](#) above.
- 10.5 No later than thirty (30) days after receipt of the direction referred to in [GC10.4](#) above, the ESCo must cause the necessary action to be commenced to remedy the breach described in the direction.
- 10.6 If a direction is issued pursuant to [GC10.4](#) above, Canada may withhold from monies that are due and payable to the ESCo an amount representing the sum of the costs and payment referred to in [GC10.8](#)..
- 10.7 If the ESCo fails to proceed in accordance with [GC10.65](#) above, the Canada must determine all supplementary costs incurred by Canada as a result.
- 10.8 Canada may make a payment directly to the complainant from monies that are due and payable to the ESCo upon receipt from the complainant of:
- 10.8.1 A written award issued pursuant to the federal Commercial Arbitration Act, R.S., 1985, c. 17 (2nd Supp);
- 10.8.2 A written award issued pursuant to the Canadian Human Rights Act, R.S., 1985, c. H-6;
- 10.8.3 A written award issued pursuant to provincial or territorial human rights legislation; or
- 10.8.4 A judgement issued by a court of competent jurisdiction.
- 10.9 If Canada is of the opinion that the ESCo has breached any of the provisions of this clause, Canada may take the Work out of the ESCo's hands pursuant to GC 2, "Taking the Work out of the ESCo's Hands".
- 10.10 Subject to paragraph 7) of GC 9, "Subcontracting", the ESCo must ensure that the provisions of this clause are included in all agreements and contracts entered into as a consequence of the Work.

GC11 Unsuitable Workers

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

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GC13 Construction by Other Workers

13.1 Canada reserves the right to send other workers, with or without Plant and Material, onto the site of the Work.

13.2 When other workers are sent on to the site of the Work, Canada will

- a. enter into separate contracts, to the extent it is possible, with the other workers under conditions of contract that are compatible with the conditions of the Contract;
- b. ensure that the insurance coverage provided by the other workers is co-ordinated with the insurance coverage of the ESCo 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 workers.

13.3 When other workers are sent on to the site of the Work, the ESCo must

- 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 workers;
- c. participate with other workers in reviewing their construction schedules when directed to do so;
- d. where part of the Work is affected by or depends upon the work of other workers for its proper execution, 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 ESCo to so report must invalidate any claims against Canada by reason of the deficiencies in the work of other workers except those deficiencies that are not then reasonably discoverable; and
- e. when designated as being responsible for construction safety at the place of work in accordance with the applicable provincial or territorial laws, carry out its duties in that role and in accordance with those laws.

13.4 If, when entering into the Contract, the ESCo could not have reasonably foreseen nor anticipated the sending of other workers on to the site of the Work and provided the ESCo

- a. incurs extra expense in complying with the requirements of paragraph 13.3; 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 Work or its site;

GC14 Extension Of Time

- 14.1 Where Canada requires additional time beyond the Approval Period, the time required for the completion of the Improvements will be extended by the number of days as were required by Canada.
- 14.2 The ESCo may apply to Canada for an extension of the time for completion of the Improvements. Such application must be made before the date fixed for the completion of the Improvements in the most recently approved project schedule.
- 14.3 If the proposed extension of the time to complete the Improvements is not acceptable to Canada , then Canada will advise the ESCo in writing, within the Approval Period, of the reasons for not approving the same.
- 14.4 If the request for extension of the time for the completion of the Improvements is not resolved within sixty (60) days, then either party may request the use of dispute resolution options identified in this Contract under [GC54](#).

GC15 Completion Of Measure And Notice Of Completion

- 15.1 Upon completion of the implementation of each Measure, the ESCo must deliver notice of Completion of Measure to Canada. Canada will deliver written notice of any objection thereto within the Approval Period, or issue a letter accepting the Measure.
- 15.2 Upon completion of each Measure, the ESCo must submit the following to Canada:
 - 15.2.1 A copy of all sub-contracts, not previously submitted; together with a summary of the scope of work.
 - 15.2.2 A summary count of all units of equipment installed.
- 15.3 Immediately upon completion of the implementation and Commissioning of all of the Measures, which together comprise the Improvements, the ESCo must deliver to Canada a Notice of Completion. Canada will issue an Interim Certificate of Completion or will deliver a written notice of any objection thereto within the Approval Period.
- 15.4 Where appropriate under [GC 15](#) the Notice of Completion of Measure must identify the start date of the 12-month warranty, in accordance with [GC 18](#).
- 15.5 The Notice of Completion must include certification by the ESCo that all financial charges to the end of construction are documented and complete.
- 15.6 The ESCo must return or account for all keys and identification badges that were provided by the Department for the undertaking of this Contract. In the event of loss, the ESCo must be responsible for all costs of re-keying the areas affected and replacing lost badges.

GC16 Upgrading Or Altering The Improvements

- 16.1 The ESCo must at all times have the right to replace, delete or substantially alter any part of the Improvements, add additional Improvements or take any other actions to increase the Energy Savings, subject to Canada's prior written approval.

- 16.2 The ESCo must review all renovations and alterations prior to their implementation. The review thereof must outline the total net cumulative effects on the Energy use of the Facility. Should adjustments to Baseline Data and Guaranteed Payback Period be required, they must be executed in accordance with the terms and conditions of the Contract defined herein. Any renovation and alteration must not be subjected to the ESCo's approval prior to implementation. At the discretion of Canada the cost of this review may be added to the Project Balance or paid by Department. The Guaranteed Payback Period must be adjusted accordingly.

GC17 Canada's Certificates

- 17.1 Canada will issue the Interim Certificate of Completion on the day that the Work under the construction phase of the Contract has been completed, as determined by a Commissioning inspection conducted by Canada, provided the ESCo has complied with the Contract and all the orders and directions issued pursuant thereto to the satisfaction of Canada.
- 17.2 Upon completion of the Guaranteed Payback Period and provided the ESCo has complied with all the terms, orders and directions issued pursuant to the Contract, to the satisfaction of Canada, Canada will issue to the ESCo the final certificate of completion.

GC18 Warranty and Rectification of Defects in Work

1. Without restricting any warranty or guarantee implied or imposed by law or contained in the Contract, the ESCo must, at the ESCo'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; and
 - 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 must not extend the 12-month period whereby the ESCo 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) of GC 18 or covered by any other expressed or implied warranty or guarantee and the Contractor must rectify and make good such defect within the time stipulated in the direction.
3. A direction referred to in paragraph 2) GC18 must be in writing and must be given to the Contractor in accordance with GC2 "Notices".

GC19 Accounts and Audits

- 19.1 The ESCo must 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 must 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.
- 19.2 The ESCo must allow any of the persons referred to in paragraph 19.1 to make copies of and take extracts from any of the records and material, and must 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
- 19.3 The ESCo must maintain and keep the records intact until the expiration of six (6) 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.
- 19.4 The ESCo must cause all subcontractors at any tier and all other persons directly or indirectly controlled by or affiliated with the ESCo and all persons directly or indirectly having control of the ESCo to comply with the requirements of this clause as if they were the ESCo.

GC20 Non Compliance Of The ESCo

- 20.1 **Failure on** behalf of the ESCo to comply with a direction of Canada issued in accordance with this Contract, or default in any other manner under this Contract, will permit Canada to do such things as deemed necessary to remedy the ESCo's default. Payments to the ESCo must be reduced by an amount equal to all costs, expenses and damages incurred or sustained by Canada by reason of the ESCo's default.
- 20.2 This agreement for the payment will not prejudice any right Canada may have arising out of any breach of the Contract.

GC21 Taking The Work Out Of The ESCo's Hands

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

- 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 ESCo 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 Canada's consent

f. otherwise fails to observe or perform any of the provisions of the Contract.

21.2 If the whole or any part of the Work is taken out of the ESCo's hands, the ESCo's right to any further payment that is due or accruing due under the Contract is, subject only to paragraph 21.3, extinguished, and the ESCo 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 ESCo's failure to complete the Work.

21.3 If the whole or any part of the Work that is taken out of the ESCo's hands is completed by Canada, Canada may pay the ESCo 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 ESCo'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 ESCo's default.

21.4 The taking of the Work or any part thereof out of the ESCo's hands does not relieve the ESCo 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 ESCo's hands.

21.5 If the Work or any part thereof is taken out of the ESCo's hands, all Plant and Material and the interest of the , or its suppliers or subcontractors at any tier, in all real property, licences, powers and privileges acquired, used or provided by the ESCo, or its suppliers or subcontractors at any tier, under the Contract must continue to be the property of Canada without compensation.

21.6 When Canada certifies that any Plant, Material, or any interest of the ESCo 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 must revert to the ESCo.

21.7 If the ESCo 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 ESCo must immediately forward a copy of the proposal or the notice of intention to Canada.

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GC23 Suspension Of Work

- 23.1 When, in Canada's opinion, it is in the public interest to do so, Canada may require the ESCo to suspend performance of the Work either for a specified or an unspecified period, by giving a notice of suspension in writing to the ESCo.
- 23.2 When a notice of suspension is received by the ESCo, the ESCo must 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.
- 23.3 During a period of suspension, the ESCo must not remove any part of the Work, Plant or Material from its site without the consent of Canada.
- 23.4 If a period of suspension is 60 days or less, the ESCo must resume the performance of the Work on the expiration of that period, and the ESCo is entitled to be paid the extra costs necessarily incurred by the ESCo as a result of the suspension.
- 23.5 If a period of suspension is more than 60 days, Canada and the ESCo may agree that the performance of the Work must be continued by the ESCo, and the ESCo must resume performance of the Work subject to any terms and conditions agreed upon by Canada and the ESCo. If Canada and the ESCo do not agree that performance of the Work must be continued by the ESCo, or upon the terms and conditions under which the ESCo must continue the Work, the

notice of suspension must be deemed to be a notice of termination pursuant to GC50, "Termination of Contract".

GC24 Claims and Obligations

24.1 The ESCo must discharge all the ESCo's lawful obligations and must 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 ESCo.

24.2 Whenever requested to do so by Canada, the ESCo must make a statutory declaration declaring to the existence and condition of any obligations and claims against the ESCo arising out of the performance of the Work.

24.3 In order to discharge lawful obligations of and satisfy lawful claims against the ESCo or its Subcontractors arising out of the performance of the Contract, Canada may pay an amount that is due and payable to the ESCo directly to the claimant. Such payment is, to the extent of the payment, a discharge of Canada's liability to the ESCo under the Contract and may be deducted from any amount payable to the ESCo under the Contract.

24.4 For the purposes of paragraph 24.3, and subject to paragraph 24.6, a claim or obligation must be considered lawful when it is so determined by

- a. a court of legal jurisdiction;
- b. an arbitrator duly appointed to arbitrate the claim; or
- c. the written consent of the Contractor authorizing payment of the claim or obligation.

24.5 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 ESCo been performing the Work for an entity other than Canada

- a. such amount as may be paid by Canada pursuant to paragraphs 24.3 and 24.4 must not exceed the amount that the ESCo 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 24.8 must be deemed to replace the registration or provision of notice after the performance of work as required by any applicable legislation and no claim must 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.

24.6 The ESCo must, at the request of any claimant, submit to binding arbitration those questions that need to be answered to establish the entitlement of the claimant to payment. The arbitration must have as parties to it any Subcontractor or Supplier to whom the claimant supplied Material, performed work or rented equipment should such Subcontractor or Supplier wish to be adjoined, and Canada must not be a party to such arbitration. Subject to any agreement between the ESCo and the claimant, the arbitration must be conducted in accordance with the governing Provincial or Territorial legislation applicable to the site of the Work.

24.7 Paragraph 24.3 must apply only to claims and obligations

- a. the notification of which has set forth the amount claimed to be owing and the person who by contract is primarily liable and has been received by Canada in writing before final payment is made , 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 ESCo, its 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 or labour, or furnished the last of the Material pursuant to the claimant's contract with the ESCo or its 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 24.5 , must have commenced within one year from the date that the notification required by subparagraph 24.7)(a) was received by Canada.

24.8 Upon receipt of a notice of claim, Canada may withhold, from any amount that is due and payable to the ESCo pursuant to the Contract, the full amount of the claim or any portion thereof.

24.9 Canada must notify the ESCo 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 ESCo 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 must release to the ESCo any funds that would be otherwise payable to the ESCo, that were withheld pursuant to the provisions of this clause in respect of the claim of any claimant for whom the security stands.

GC25 Total Cost Of Project And Schedule Of Energy Savings

- 25.1 The Total Cost of the Project, must be all inclusive, which must include but not be limited to the outside costs, the ESCo's fees, the mark-up, the guaranteed performance premium, the financing charges (on the respective contribution of Canada and the ESCo) and grants, rebates and discounts, all as listed in [Appendix "B" entitled Total Cost of Project](#).
- 25.2 An estimate of the Total Cost of the Project must be established by the ESCo, upon acceptance by Canada of several or all of the Measures identified in the Energy Audit Report.
- 25.3 For the accepted Improvements or Measures, the estimate of costs, excluding monitoring, for Outside Costs and for ESCo's in-house labour costs as shown in the Energy Audit Report must individually become an upset limit.
 - 25.3.1 The estimated costs of monitoring must become a separate upset limit and must be expended by the ESCo only at the monthly rate as shown in the cash flow of the Energy Audit Report. Any revision must be subject to approval by Canada.
- 25.4 The costing of the project must be of Open Book format. The ESCo must be prudent in incurring costs to the project. All costs, with justification, must be submitted to Canada for approval before being charged to the Project Balance. Invoices for Outside Costs must be included with each monthly report. These costs may be audited by Canada for justification, and accuracy.
- 25.5 The costs incurred due to errors and omissions made by the ESCo in design and construction must not be charged to the Project Balance.

- 25.6 Canada has the right to reject unjustified or inaccurate costs and in case of dispute these must be referred to Dispute Resolution in accordance with [GC54](#).
- 25.7 Penalties incurred by the ESCo for late payments to its suppliers must not be charged to the Project Balance.
- 25.8 Overhead and profit percentage charges as set out in [Appendix "B"](#), must not apply to time charges for staff of:
 - 25.8.1 Companies which are owned, controlled by or affiliated with the ESCo and;
 - 25.8.2 Consortiums established for this project.
- 25.9 Charges for the following components of project expenditures must be added to the Project Balance as set out below:
 - 25.9.1 The mark-up and overhead must be added to the Project Balance as at the approval date of the appropriate Milestone Certificate.
 - 25.9.2 The Guaranteed Performance Premium must be added to the Project Balance as at the approval date of the Milestone Certificate.
 - 25.9.3 Supplier and subcontractor invoices must be added to the Project Balance upon the due date of their invoice to the ESCo.
 - 25.9.4 Internal ESCo labour charges must be added to the Project Balance on the first (1st) of the month following identification of the labour charge to the project.
- 25.10 Paydown payments made pursuant to [GC30](#) must be credited to the Project Balance at the end of the month in which they are received by the ESCo or its assignee, if any.

GC26 Milestone Certificates

- 26.1 Canada may approve, disapprove, or require changes to a Milestone Certificate. It is the responsibility of the ESCo to satisfy Canada that the Milestone Certificate is valid.
- 26.2 The first Milestone Certificate may be submitted by the ESCo when the following condition has been fulfilled:
 - 26.2.1 The completion of one Measure or a substantial part of a Measure as defined in the Energy Audit Report;
- 26.3 Concurrent with the first Milestone Certificate, the ESCo must provide the Schedule of Energy Savings.
- 26.4 The ESCo may submit further Milestone Certificates, in accordance with [GC 26.1](#), as substantial additional parts of the Improvements are completed. All such Milestone Certificates must include an update to the Schedule of Energy Savings.
- 26.5 The value of a Milestone Certificate must be the lesser of:
 - 26.5.1 The approved cost for the Measures in accordance with [GC 26.2](#); or

- 26.5.2 The present value of the forecasted Energy Savings for the period of the Contract, for the Measures included in the Milestone Certificate. The interest rate used to calculate the present value must be as set out in [GC 29.1](#).
- 26.6 Canada may require an independent audit of Milestone Certificates and the Schedule of Energy Savings at any time. The ESCo must cooperate fully with such independent audits, and any costs incurred in conducting such independent audits must be borne by Canada.
- 26.7 Canada when satisfied with completion of the described Work and documentation of the Milestone Certificate must approve the Milestone Certificate.

GC27 Schedule Of Energy Savings

- 27.1 The Schedule of Energy Savings must commence on the month during which the monthly Energy Savings equal or exceed the greater of:
- 27.1.1 \$500.00; or
- 27.1.2 Five percent (5%) of the forecasted monthly Energy Savings on completion of all Measures in the Energy Audit Report.
- 27.2 The final month of the Schedule of Energy Savings must be as defined in [GC34](#).
- 27.3 The total value of any and all payments for Energy Savings during construction must be limited to a maximum of an estimated one year of Energy Savings arising from all approved completed Measures as identified in the Energy Audit Report.
- 27.4 The payment of Energy Savings achieved during construction must be made to the ESCo from Canada on the completion of construction of all Measures. Partial payment during construction upon receipt of a request from the ESCo may be approved at the sole discretion of Canada.
- 27.5 If the value of the metered Energy Savings available to Canada indicates the Energy Savings to be less than ninety percent (90%) of the estimated Energy Savings, Canada must have the right to revise the Schedule of Energy Savings upon thirty (30) days written notice to the ESCo.

GC28 Payment

- 28.1 Canada agrees to make monthly payments equal to 90% of the Energy Savings as set out in the Schedule of Energy Savings to the ESCo or its assignee, if any, notwithstanding that such amounts may be more or less than the Energy Savings as determined in accordance with Appendix D. Any discrepancies between the payments made by Canada and the actual Energy Savings must be adjusted in accordance with [GC28.6](#) and [GC28.8](#) hereof.
- 28.1.1 The remaining ten percent (10%) of monthly Energy Savings must be retained by Canada as a Project Reserve.
- 28.1.1.1 The Project Reserve must earn interest at the fixed ten (10) year published Canadian Bond interest rate plus a premium set out in the Proposal for the duration of the Contract. The interest rate must be established on the date the Contract is signed.
- 28.1.1.2 The Project Reserve must be paid to the ESCo by Canada in accordance with [GC28.6](#).
- 28.2 Notwithstanding [GC28.1](#), invoices for Energy Savings must be submitted by the ESCo to Canada.

- 28.3 Payments for each month must be paid within thirty (30) Working Days following the end of that month.
- 28.4 At the request of Canada, on the Commencement Date, and at least once every twelve (12) months after the Commencement Date until the end of the Guaranteed Payback Period, the ESCo must deliver to Canada a written comparison between:
- 28.4.1 The forecast Energy Savings according to the Schedule of Energy Savings paid by Canada in accordance with [GC28.1](#) and,
- 28.4.2 The actual monthly Energy Savings determined in accordance with this Contract.
- 28.5 Within thirty (30) Working Days from the date of delivery of the written comparison described in [GC28.4](#), Canada must deliver written notice to the ESCo of any objection thereto.
- 28.6 If, after a written comparison, the total of the amounts described in [GC28.4.1](#) exceeds the total of the amounts described in [GC28.4.2](#), (hereinafter called the "Shortfall"):
- 28.6.1 Upon Canada's request, the ESCo must:
- 28.6.1.1 Subject to [GC28.7](#), refund within thirty (30) calendar days to its Assignee any excess funds advanced by the Assignee to the ESCo.
- 28.6.1.2 Revise downward within thirty (30) Working Days the Schedule of Energy Savings upon which the monthly payments described in Section 28.1, are based.
- 28.6.2 If the Shortfall is less than the Project Reserve, then Canada must pay to the ESCo the difference between the Shortfall and the Project Reserve within thirty (30) calendar days of receipt of the written comparison.
- 28.6.3 If the Shortfall is greater than the Project Reserve, then the ESCo must refund within thirty (30) calendar days to Canada the excess by which the payments from Canada exceed the actual Energy Savings for the time period of the written comparison.
- 28.7 If Canada makes an early paydown payment to the ESCo or its Assignee in accordance with [GC30](#), the refund of the excess funding, to be made by the ESCo pursuant to [GC28.6](#), must be distributed to the Assignee and Canada. The distribution must be in the same proportion as exists for the monies advanced towards the Project Balance by the Assignee and Canada.
- 28.8 If the total of the amounts described in [GC28.4.2](#) exceeds the total of the amounts paid as per [GC28.1](#), the amount of any such excess must be paid to the ESCo or its Assignee, if any, by Canada within thirty (30) calendar days of the delivery to the Department of the written comparison described in [GC28.4](#).
- 28.9 Adjustments to the Schedule of Energy Savings arising from [GC28.6](#) or payments arising from [GC28.8](#) that affect the amount of monthly payments from Canada must not incur any financial penalties.
- 28.10 There must be no liability for Canada or any other Federal Government body towards the ESCo, Lender, or Assignee; if the Energy Savings used to retire the project do not fully retire the sum of the Project Balance plus Canada's Balance within the Guaranteed Payback Period.
- 28.11 All Energy Savings accrue directly to Canada, and one hundred percent (100%) of these savings, subject to [GC27.3](#), must be used to retire the Project Balance. All Energy Savings paid to the ESCo by Canada must be used to reduce the Project Balance.

- 28.12 Canada must be entitled to pay off part or whole of the Project Balance at any time as a paydown payment in accordance with [GC30](#).
- 28.13 If a net Energy increase results from the Improvements for any period, the ESCo must pay Canada an amount equal to the value of that net Energy increase which must be reconciled with future Energy Savings.
- 28.14 The ESCo must assist Canada in the preparation of applications for the purpose of attaining any incentives, including utility incentives, which may become eligible due to the implementation of this project.
- 28.15 Where an interruption occurs in the Energy Savings that is not caused by force majeure, as defined in GC 53 hereof, invoices for the period during which the interruption takes place must be based upon an estimate by the ESCo that is subject to approval by Canada.
- 28.16 Canada must not pay to the ESCo interest charges arising from that part of the Project Balance funded by Canada.
- 28.17 Payments due by Canada to the ESCo under this Contract, may be adjusted only in the event of one or more of the following occurrences:
- 28.17.1 There is a Shortfall in savings as described in [GC 28.4](#);
 - 28.17.2 The ESCo fails to comply with any reasonable direction of Canada or is in default of any other provision of this Contract;
 - 28.17.3 Canada is successful in a dispute with the ESCo under [GC54](#) hereof;
 - 28.17.4 Canada incurs costs, losses or damages pursuant to GC 22 hereof; or
 - 28.17.5 If the payments are prorated in accordance with [GC30](#).
- 28.18 Notwithstanding the provisions in [GC 28.1](#) to [GC 28.17](#), should an early paydown be made by Canada, all further payments made under [GC28](#) must then be prorated in accordance with [GC30](#).

GC29 Financing

- 29.1 The maximum Nominal Interest Rate applied to the Project Balance must be the sum of the number of basis points identified as a Fixed Interest Rate Premium in the Proposal plus the actual ten (10) year Canadian Bond rate as published in the Globe and Mail on the date when the Contract is signed. This rate must be used for the Energy Audit Report and for establishing the Guaranteed Payback Period.
- 29.1.1 During construction and prior to financing of appropriate funds via Milestone Securitisation, the applicable Nominal Interest Rate must be a floating rate based upon the Bank Prime interest rate selected by the ESCo as published in the Globe and Mail newspaper at the end of each month plus the Company Floating Interest Rate Premium identified by the ESCo in its proposal.
- 29.1.2 After financing of appropriate funds via Milestone Securitisation, the applicable floating interest rate for those financed funds must be based upon the Bank Prime interest rate selected by the ESCo as published in the Globe and Mail newspaper at the end of each month plus the Financier Floating Interest Rate Premium identified by the ESCo in its proposal.
- 29.1.3 The Department may request fixed interest rate financing upon completion of the construction of all Measures. The ESCo must then fix the interest rate within five (5) days of such request at the fixed rate benchmark, as defined in Annex A, Appendix A "Interest", for the term that most closely matches the remaining Guaranteed Payback Period at that time plus the Fixed Interest Rate Premium identified in the Proposal. The Schedule of Energy Savings, upon which payments are based, must be adjusted within 30 Working Days.
- 29.1.4 The Company Floating Interest Rate Premium, Financier Floating Interest Rate Premium and Fixed Interest Rate Premium identified in the Proposal must remain fixed notwithstanding any changes to the construction schedule or Guaranteed Payback Period.
- 29.2 The ESCo must finance the Total Cost of Project either directly or by arranging with a third party institution (an "Assignee") to provide the financing. Canada agrees to provide such Assignee its consent to:
- 29.2.1 The entering into by the ESCo with such Assignee of a financing arrangement in connection with the Improvements;
- 29.2.2 The assignment of Crown debt by the ESCo of the amounts payable hereunder by Canada to the ESCo to such Assignee; and
- 29.2.3 Making the payments set out in [GC 28.1](#) hereof directly to such Assignee without set-off or counterclaim with the exception of permitted adjustments described in [GC 28.6](#), [GC 28.7](#), [GC 28.8](#), and [GC30](#).
- 29.3 If the ESCo arranges for an Assignee to finance the Total Cost of Project, the ESCo must provide evidence satisfactory to Canada that such Assignee must only advance funds to the ESCo for completion of the Measures upon receipt by such Assignee of properly authorized Milestone Certificates.
- 29.4 Charges for interest must be calculated at the end of each month and added to the Project Balance, Project Reserve or Canada's Balance, if any.

GC30 Early Paydown Of The ESCo's Funding Of Project Cost

- 30.1 In addition to those payments that Canada must make as set out in [GC 28.1](#), it may once in every year, make a further payment without any penalty provided that such further payment does not exceed ten percent (10%) of the current Project Balance.
- 30.2 Those additional payments that do not conform to [GC 30.1](#) must incur the penalty charges as identified in the Proposal for such payments.
- 30.3 The additional payments must have the effect of dividing the existing Project Balance into two parts. One part must constitute the Project Balance as funded by the ESCo and the new part must constitute Canada's Balance as funded by Canada. The funded Project Balance must be reduced by the amount of the additional payments. The funded Canada Balance must be in the amount of the additional payments made from time to time.
 - 30.3.1 Any subsequent payment made under [GC 28.1](#) must be reduced in proportion to the funds advanced by Canada to reduce the Project Balance. This must result in maintaining the same Guaranteed Payback Period as before the additional payments.
 - 30.3.2 The amount by which the payment to the ESCo is reduced must be used to reduce Canada's Balance.
- 30.4 Canada's Balance is subject to adjustment in accordance with [GC 30.3.2](#). Canada's Balance must be adjusted at the same rate of interest as that of the Project Reserve portion of the funding as set out in [GC 28.1.1](#).

GC31 Adjustment Of Baseline Data

- 31.1 Canada agrees to notify the ESCo of any changes in the use, dimensions, or occupancy schedules of the Facility, which may increase or decrease the Energy use of the Facility. Canada must also notify the ESCo of any significant modifications to the Facility or its systems and any changes in the comfort standards as set by the Treasury Board of Canada.
- 31.2 After the construction of the Improvements, if either the ESCo or Canada can substantiate that the Baseline Data should be modified, such proposed changes must be reported and the Baseline Data may be adjusted accordingly, where there exists:
 - 31.2.1 A change in the use of the Facility or in the use of premises within the Facility; or
 - 31.2.2 An increase or decrease in the amount of equipment consuming Energy in the Facility; or
 - 31.2.3 A change in the occupancy rate of the Facility or the hours of occupancy; or
 - 31.2.4 Any modification to the Facility, including any change in the existing systems, or any enlargement of the Facility; or
 - 31.2.5 Implementation of new standards and regulations governing temperature, humidity and ventilation conditions in the Facility such as might increase or decrease the Energy consumption of the Facility.
- 31.3 The ESCo may, if it deems necessary, propose to adjust the Baseline Data. Such a proposal must be submitted in writing to Canada. It must include:
 - 31.3.1 An explanation of the reason for the adjustment;

- 31.3.2 Complete documentation on all calculations needed to make the adjustment;
- 31.3.3 Complete description of the derivation of the revised mathematical model for any meter with revised Baseline Data.
- 31.4 The costs for calculation of the adjustment to Baseline Data must be included in the Total Cost of the Project but must not affect the Guaranteed Payback Period.
- 31.5 If proposed adjustments to the Baseline Data are not acceptable to Canada, then Canada must advise the ESCo in writing, within the Approval Period, of the reasons therefor.
- 31.6 If the adjustment to the Baseline Data is not resolved in sixty (60) days, then either party may request use of the dispute resolution options, identified in this Contract.

GC32 Guaranteed Payback Period Extension

- 32.1 Any additional costs incurred by the ESCo or arising from events listed in [GC32.2](#), must be added to the Project Balance, and the ESCo may apply to Canada for an extension of the Guaranteed Payback Period for a period of time necessary to compensate for such additional costs or the lost Energy Savings or may apply for a temporary Base Year adjustment in an amount sufficient to compensate for such costs or the loss of the Energy Savings.
- 32.2 [GC 32.1](#) applies only if the additional costs or loss of Energy Savings are as a result of:
 - 32.2.1 A breakdown of any equipment or systems which is not the responsibility of the ESCo;
 - 32.2.2 The existing systems in the Facility prove to be in poor working order, except where they have been reported as such in writing by Canada before the Contract is signed.
- 32.3 The Department must not withhold an extension upon the request of the ESCo due to [GC26.6](#).

GC33 Proposal

- 33.1 The ESCo agrees to perform the Work in accordance with the ESCo's Proposal Brief referred to in [Appendix "J"](#), which forms part of this Contract, and finalized on the basis of the Energy Audit Report.

GC34 Performance Guarantee And Payback Period

- 34.1 The ESCo guarantees that the Energy Savings during the Contract must at a minimum equal the Total Costs of Project.
- 34.2 The ESCo must absorb the sum of any outstanding Project Balance, and must pay Canada all of Canada's Balance (net of any outstanding payments by the Department due to the ESCo under this Contract), that exists at the end of the Guaranteed Payback Period.
- 34.3 The Guaranteed Payback Period must be established after the Energy Audit Report and the approval of Measures, as described in [Annex "A"](#), **Section Error! Reference source not found.**
- 34.4 The Guaranteed Payback Period must be the lesser of the following:
 - 34.4.1 Ninety-six (96) months, or
 - 34.4.2 The time period required in the approved Energy Audit Report to reduce the Project Balance to nil.

- 34.5 The Guaranteed Payback Period must be adjusted in accordance with changes in interest rates from those contained in the approved Energy Audit Report to the actual interest rates applicable during the term of the Contract.
- 34.6 The Guaranteed Payback Period must begin on the Commencement Date.
- 34.6.1 The early paydown provisions of [GC30](#) must not have any effect on the Guaranteed Payback Period. In the event that the Department exercises its option to pay down the Project Balance thereby adding to the Departmental Balance, the ESCo must still be required to demonstrate that the actual Energy Savings are sufficient to have retired the Project Balance and Departmental Balance within the Guaranteed Payback Period. The Reconciliation of Energy Savings must continue in accordance with [GC 28.4](#).
- 34.7 If the Project Balance has been reduced to nil due to the early paydown provisions of [GC30](#), and if the post construction monitoring by the ESCo is cancelled by Canada, then the Performance Guarantee described in [GC 34.1](#) must be cancelled, and the Contract must be deemed to be completed.
- 34.8 The performance guarantee described in [GC34.1](#) must cover the cost of government funds arising from early paydown payments referred to in [GC30](#).

GC35 Contract Security

- 35.1 At the completion of the Design Documents and before start of construction the ESCo must provide and deliver to the Departmental Representative Contract Security as prescribed in (R2890D) (2014-06-26) <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R/R2890D/8>

GC36 Precautions Against Damage, Infringement Of Rights, Fire And Other Hazards

- 36.1 The ESCo must do whatever is necessary to ensure that:
- 36.1.1 no person, property, right, easement nor privilege is injured, damaged or infringed upon by reasons of the ESCo's activities in performing the Work;
- 36.1.2 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;
- 36.1.3 fire hazards in or about the site of the Work are eliminated and any fire is promptly extinguished;
- 36.1.4 the health and safety of all persons employed in the performance of the Work is not endangered by the methods nor means of their performance;
- 36.1.5 adequate medical services are available to all persons employed on the Work or its site at all times during the performance of the Work;
- 36.1.6 adequate sanitation measures are taken in respect of the Work and its site; and
- 36.1.7 all stakes, buoys and marks placed on the Work or its site by Canada are protected and are not removed, defaced, altered nor destroyed.
- 36.2 Canada may direct the ESCo 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 36.1 and the ESCo must comply with the direction of Canada.

GC37 Protection Of Work And Property

- 37.1 The ESCo must protect the Work and its site against loss or damage from any cause and must similarly protect all Material, Plant and real property under the ESCo's care, custody and control whether or not such Material, Plant and real property are supplied by Canada to the ESCo.

- 37.2 The ESCo must provide all facilities necessary for the purpose of maintaining security, and must assist any person authorized by Canada to inspect or to take security measures in respect of the Work and its site.
- 37.3 Canada may direct the ESCo 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 GC 37.1 or 37.2, and the ESCo, must comply with such direction.

GC38 Insurance Contracts

38.1 The ESCo must, at the ESCo's expense, obtain and maintain insurance contracts in accordance with the requirements of the Certificate of Insurance. Coverage must be placed with an Insurer licensed to carry out business in Canada. Compliance with the insurance requirements does not release the ESCo from or reduce its liability under the Contract. The ESCo is responsible for deciding if additional insurance coverage is necessary to fulfill its obligation under the Contract and to ensure compliance with any applicable law. Any additional insurance coverage is at the ESCo's expense, and for its own benefit and protection.

38.2 The policies required in the Certificate of Insurance must be in force from the date of contract award and be maintained throughout the duration of the Contract. The ESCo must be responsible to provide and maintain coverage for Products/Completed Operations hazards on its Commercial General Liability insurance policy, for a period of six (6) years beyond the date of the Certificate of Substantial Performance.

38.3 Before commencement of the Work, and no later than thirty (30) days after acceptance of its bid, the ESCo must deposit with Canada a Certificate of Insurance on the form attached herein. Upon request by Canada, the ESCo must provide originals or certified true copies of all contracts of insurance maintained by the ESCo pursuant to the Certificate of Insurance.

38.4 The payment of monies up to the deductible amount made in satisfaction of a claim must be borne by the ESCo.

GC39 Insurance Proceeds

39.1 In the event of a claim, the ESCo must, without delay, do such things and execute such documents as are necessary to effect payment of the proceeds.

39.2 In the case of a claim payable under a Builders Risk/Installation (All Risks) insurance contract maintained by the ESCo pursuant to GC38 "Insurance Contracts", the proceeds of the claim must be paid directly to Canada, and

39.2.1 The monies so paid must be held by Canada for the purposes of the Contract; or

39.2.2 If Canada elects, must be retained by Canada, in which event they must vest in Canada absolutely.

39.3 In the case of claim payable under a General Liability insurance contract maintained by the ESCo pursuant to GC 38, "Insurance Contracts", the proceeds of the claim must be paid by the insurer directly to the claimant.

39.4 If an election is made pursuant to 39.2 Canada may cause an audit to be made of the accounts of the contractor and of Canada in respect of the part of the work that was lost, damaged or destroyed for the purpose of establishing the difference, if any, between

39.4.1 The aggregate of the amount of the loss or damage suffered or sustained by Canada, including any cost incurred in respect of the clearing and cleaning of the Work and its site and any other amount that is payable by the ESCo to Canada under the Contract, minus any monies retained; pursuant to subparagraph GC39.2.2 and

39.4.2 The aggregate of the amounts payable by Canada to the ESCo pursuant to the Contract up to the date of the loss or damage.

39.5 A difference that is established pursuant to paragraph GC 39.4 must be paid forthwith by the party who is determined by the audit to be the debtor to the party who is determined by the audit to be the creditor.

39.6 When payment of a deficiency has been made pursuant to paragraph GC 39.5, all rights and obligations of Canada and the ESCo under the Contract must, with respect only to the part of the Work that was the subject of the audit referred to in paragraph GC39.4 be deemed to have been expended and discharged.

39.7 If the election is not made pursuant to GC39.2.2, the ESCo must subject to paragraph GC39.8 clear and clean the Work and its site and restore and replace the part of the Work that was lost, damaged or destroyed at the ESCO's expense as if that part of the Work had not yet been performed.

39.8 When the ESCo clears and cleans the Work and its site and restores and replaces the Work referred to in paragraph GC 39.7, Canada must pay the ESCo out of the monies referred to in [GC 39.2](#), so far as they must thereunto extend.

GC40 License to Material Subject to Copyright

40.1 In this section, "Material" means anything that is created or developed by the ESCO as part of the Work under the Contract, and in which copyright subsists.

40.2 The ESCo grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise all rights comprised in the copyright in the Material, for any government purposes. Canada may use independent contractors in the exercise of Canada's license pursuant to this clause.

40.3 Copyright in any translation of the Material made by or for Canada belongs to Canada. Canada agrees to reproduce the ESCo's copyright notice, if any, on all copies of the Material, and to acknowledge the ESCO's title to the copyright in the original Work on all copies of translations of the Material effected by or for Canada

40.4 No restrictions other than those set out in this section must apply to Canada's use of copies of the Material or of translated versions of the Material.

40.5 At the request of Canada the ESCo must provide to Canada, at the completion of the Work or at such other time as Canada may require, a written permanent waiver of moral rights, in a form acceptable to Canada, from every author that contributed to the Material. If the ESCo is an author of the Material, the ESCo permanently waives its moral rights in respect of the Material.

GC41 Security and Protection of Documents and Work

41.1 The ESCo must guard and protect contract documents, drawings, information, models and copies thereof, whether supplied by Canada or the ESCo, against loss or damage from any cause.

41.2 The ESCo must keep confidential all information provided to the ESCo by or on behalf of Canada in connection with the Work, and all information developed by the ESCo as part of the Work, and must not disclose any such information to any person without the written permission of Canada, except that the ESCo 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

41.3 is publicly available from a source other than the ESCo; or

41.4 is or becomes known to the ESCo from a source other than Canada, except any source that is known to the ESCo to be under an obligation to Canada not to disclose the information.

41.5 When the Contract, the Work, or any information referred to in paragraph 41.2 is identified as top secret, secret, confidential, or protected by Canada, the ESCo must, 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.

- 41.6 Without limiting the generality of paragraphs 41.2 and 41.3 of GC41, when the Contract, the Work, or any information referred to in paragraph 41. is identified as top secret, secret, confidential, or protected by Canada, Canada must be entitled to inspect the ESCo'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 ESCo must 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 ESCo 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
- 41.7 The ESCo must safeguard the Work and the Contract, the specifications, drawings and any other information provided by Canada to the ESCo, and must be liable to Canada for any loss or damage from any causes.

GC42 Public Ceremonies and Signs

- 42.1 The ESCo must not permit any public ceremony in connection with the Work without the prior consent of Canada.
- 42.2 The ESCo must not erect nor permit the erection of any sign or advertising on the Work or its site without the prior consent of Canada.

GC43 Canada's Rights And Obligations

- 43.1 The ESCo must provide Canada with access to the Work and its site at all times, and at all times must 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 must be given access to such Work whenever it is in progress.

GC44 Intentionally Left Blank

GC45 Status of the ESCo

- 45.1 The ESCo is engaged under the Contract as an independent contractor.
- 45.2 The ESCo, its subcontractors and suppliers and any other person at any tier and their employees are not engaged by the Contract as employees, servants or agents of Canada.
- 45.3 For the purposes of the contract the Contractor must 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.

GC46 Agreements and Amendments

- 46.1 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.
- 46.2 The failure of either party at any time to require performance by the other party of any provision hereof must not affect the right thereafter to enforce such provision. Nor must 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.
- 46.2.1
- 46.3 The Contract may be amended only as provided for in the Contract.

GC47 Intentionally Left Blank

GC48 Conflict Of Interest

- 48.1 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, must derive a direct benefit from the Contract unless that individual is in compliance with the applicable post-employment provisions.

GC49 Certification – Contingency Fees

- 49.1 In this clause
- 49.1.1 "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;
- 49.1.2 "employee" means a person with whom the ESCo has an employer/employee relationship; and
- 49.1.3 "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.
- 49.2 The ESCo certifies that it has not directly or indirectly paid nor agreed to pay and covenants that it must not directly or indirectly pay nor 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.
- 49.3 All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract must be subject to the accounts and audit provisions of the Contract
- 49.4 If the ESCo certifies falsely under this section or is in default of the obligations contained therein, Canada may either take the Work out of the ESCo's hands in accordance with the provisions of the Contract or recover from the ESCo by way of reduction to the Contract Amount or otherwise, the full amount of the contingency fee.

GC50 Termination Of Contract

- 50.1 Canada may terminate the Contract at any time by giving a notice of termination in writing to the ESCo.
- 50.2 If the ESCo receives a notice of termination, the ESCo must forthwith cease all operations in performance of the Contract, subject to any conditions stipulated in the notice.
- 50.3 In the event Canada terminates this Contract pursuant to [GC 50.1](#), Canada must pay, and the ESCo must accept as full settlement, an amount equal to the Project Balance at the time of termination plus all substantiated costs and commitments as approved by Canada. Upon such payment by Canada, the obligations and rights of the parties hereunder must cease.
- 50.4 If, as at one month prior to termination, the actual Energy Savings generated by the Measures are inadequate to recover the Total Cost of Project, then the Project Balance must be reduced by the amount that will not be recoverable over the Guaranteed Payback Period, due to the Measures. For the purposes of [GC50.4](#), the Energy Savings recoverable during the Guaranteed Payback Period must be calculated using the utility rates defined in [Appendix "C"](#).
- 50.5 The ESCo may, by notice in writing, terminate this Contract in the event that the Improvements are substantially damaged or destroyed.

- 50.6 In the event that the ESCo terminates this Contract pursuant to [GC50.4](#), Canada must pay, and the ESCo must accept as full settlement, an amount equal to the Project Balance at the time of termination, plus all substantiated costs and commitments, and, upon such payment by Canada, the obligations and rights of the parties hereunder must cease.
- 50.7 In the event that this Contract is terminated at the ESCo's request as a result of the ESCo's determination that the savings must not be sufficient to retire the Project Balance within the Guaranteed Payback Period, then the ESCo must:
- 50.7.1 Restore to good working order, or to its original condition, as directed by Canada, any building systems or equipment which have been altered as a result of the Work, and
- 50.7.2 Absorb the full amount of the Project Balance at termination.
- 50.8 If the total Energy Savings in the Energy Audit Report do not total at least ninety percent (90%) of the Energy Savings projected in the Proposal Brief, Canada or the ESCo may terminate this Contract. There must be no payments due from Canada or the ESCo to the other party should either party exercise its right to terminate the Contract under this provision.

GC51 Indemnification by the ESCo

- 51.1 The ESCo must pay all royalties and patent fees required for the performance of the Contract and, at the ESCo's expense, must defend all claims, actions or proceedings against Canada charging or claiming that the Work or any part thereof provided or furnished by the ESCo to Canada infringes any patent, industrial design, copyright trademark, trade secret or other proprietary right enforceable in Canada
- 51.2 The ESCo must indemnify and save Canada harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by any third party, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by, or attributable to the activities of the ESCo, its subcontractors and suppliers and any other person at any tier, in performing the Work.
- 51.3 For the purposes of paragraph 51.2 "activities" means any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

GC52 Assignment

- 52.1 The ESCo must not make any assignment of the Contract, either in whole or in part, without the written consent of Canada.

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GC54 Dispute Resolution

- 54.1 Canada may dispute the amount of any invoice or reimbursement within fifteen (15) Working Days of receipt of such invoice or reimbursement.
- 54.2 Canada and the ESCo must cooperate fully with each other to resolve any dispute as quickly as possible, using arbitration if necessary through the arbitration process as defined in [Appendix " E"](#).
- 54.3 The Department and the ESCo agree to continue to pay invoices and reimbursements during the period of any dispute.

54.4 Any amount payable as a result of the resolution of such dispute must be added to or deducted from the next following invoice(s) or reimbursement(s) and if an amount is added, it must bear interest at the selected Bank Prime Interest Rate plus 1¼ per centum from the day that the amount was first paid or withheld in error.

54.5 Work under this Contract must, as far as is reasonable, continue during any arbitration and no amount payable to the ESCo must be withheld during the period of arbitration.

GC55 Intentionally Left Blank

GC56 Laws, Permits and Taxes

56.1 The ESCo must 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 the protection of the environment, and must 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 ESCo must furnish evidence of compliance with such laws and regulations to Canada at such times as Canada may reasonably request.

56.2 Unless stipulated otherwise in the Contract, the ESCo must obtain and maintain all permits, certificates, licences, registrations and authorizations required for the lawful performance of the Work.

56.3 Prior to the commencement of the Work at the site, the ESCo must 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 an owner other than Canada.

56.4 Within 10 days of making a tender pursuant to paragraph 56.3 of GC 56, the ESCo must notify Canada of the amount properly tendered and whether or not the municipal authority has accepted that amount.

56.5 If the municipal authority has not accepted the amount tendered, the ESCo must pay that amount to Canada within 6 days after the time stipulated in paragraph 56.4 of GC 56.

56.6 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.

56.7 Notwithstanding the residency of the ESCo, the ESCo must pay any applicable tax arising from or related to the performance of the Work under the Contract

56.8 In accordance with the Statutory Declaration, an ESCo who has neither residence nor place of business in the province or territory in which work under the Contract is being performed must provide Canada with proof of registration with the provincial sales tax authorities in the said province.

56.9 For the purpose of the payment of any Applicable Taxes or the furnishing of security for the payment of any Applicable Taxes arising from or related to the performance of the Work, and notwithstanding the provision that all Material, Plant and interest of the ESCo in all real property, licences, powers and privileges, become the property of Canada after the time of purchase, the ESCo must be liable, as a user or consumer, for the payment or for the furnishing of security for the payment of any Applicable Taxes payable, at the time of the use or consumption of that Material, Plant or interest of the ESCo in accordance with the relevant legislation.

56.10 Federal government departments and agencies are required to pay Applicable Taxes.

56.11 Applicable Taxes will be paid by Canada as provided in the request for payment. It is the sole responsibility of the ESCo to charge Applicable Taxes at the correct rate in accordance with applicable

legislation. The ESCo agrees to remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.

56.12 The ESCo is not entitled to use Canada's exemptions from any tax, such as provincial sales taxes, unless otherwise specified by law. The ESCo must pay applicable provincial sales tax, ancillary taxes, and any commodity tax, on taxable goods or services used or consumed in the performance of the Contract (in accordance with applicable legislation), including for material incorporated into real property.

56.13 In those cases where Applicable Taxes, customs duties, and excise taxes are included in the Contract Amount, the Contract Amount will be adjusted to reflect any increase, or decrease, of Applicable Taxes, customs duties, and excise taxes that will have occurred between bid submission and contract award. However, there will be no adjustment for any change to increase the Contract Amount if public notice of the change was given before bid submission date in sufficient detail to have permitted the ESCo to calculate the effect of the change.

56.14 Tax Withholding of 15 Percent – Canada Revenue Agency

Pursuant to the *Income Tax Act*, 1985, c. 1 (5th Supp.) and the *Income Tax Regulations*, Canada must withhold 15 percent of the amount to be paid to the ESCo in respect of services provided in Canada if the ESCo is not a resident of Canada, unless the ESCo obtains a valid waiver from the Canada Revenue Agency. The amount withheld will be held on account for the ESCo in respect to any tax liability which may be owed to Canada.

GC57 Addresses

57.1 **For all purposes of** or incidental to this *Contract*, the ESCo's name and address must be deemed to be:

57.2 For all purposes of or incidental to this Contract the Departmental Representative's name and address must be deemed to be:

GC58 Changes in the ESCo Team

58.1 Should an entity or person named in the ESCo's proposal as an entity or person who is to perform the *Services* or part of the *Services* be unable to perform or complete the *Services*, the ESCo must obtain the concurrence of the *Departmental Representative* prior to performing or completing the *Services*, or entering into an agreement with another equally qualified entity or person to perform or complete the *Services*, such concurrence not to be unreasonably withheld.

58.2 In seeking to obtain the concurrence of the *Departmental Representative* referred to in paragraph 1, the ESCo must provide notice in writing to the *Departmental Representative* containing:

58.2.1 the reason for the inability of the entity or person to perform the *Services*;

58.2.2 the name, qualifications and experience of the proposed replacement entity or person, and

58.2.3 if applicable, proof that the entity or person has the required security clearance granted by *Canada*.

58.3 The ESCo must not, in any event, allow performance of any part of the *Services* by unauthorized replacement entities or persons, and acceptance of a replacement entity or person by the *Departmental Representative* must not relieve the ESCo from responsibility to perform the *Services*.

- 58.4 The *Departmental Representative*, with the authority of Canada, may order the removal from the ESCo team of any unauthorized replacement entity or person and the ESCo must immediately remove the entity or person from the performance of the *Services* and must, in accordance with paragraphs 1. and 2., secure a further replacement.
- 58.5 The fact that the *Departmental Representative* does not order the removal of a replacement entity or person from the performance of the *Services* must not relieve the ESCo from the ESCo's responsibility to meet all the ESCo's obligations in the performance of the *Services*.

GC 59 Integrity Provisions – Contract

- 59.1 The ESCo agrees to comply with the [Code of Conduct for Procurement](#) and to be bound by its terms. In addition, the ESCo must also comply with the terms set out in these Integrity Provisions.

59.2 The ESCo confirms that it understands that, to ensure fairness, openness and transparency in the procurement process, the commission of certain acts or offences may result in a termination for default under the Contract. If the ESCo made a false declaration in its bid, makes a false declaration under the Contract, fails to diligently maintain up to date the information requested, or if the ESCo or any of the ESCo's Affiliates fail to remain free and clear of any acts or convictions and any conditional or absolute discharges specified in these Integrity Provisions during the contract period, such false declaration or failure to comply may result following a notice period in a termination for default under the Contract. The ESCo understands that a termination for default will not restrict Canada's right to exercise any other remedies that may be available against the ESCo and agrees to immediately return any advance payments.

59.3 Affiliates

For the purpose of these Integrity Provisions, everyone, including but not limited to organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies and subsidiaries, whether partly or wholly-owned, as well as individuals and directors, are Contractor's Affiliates if:

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

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

59.4 The ESCo who is incorporated or who is a sole proprietorship has already provided a list of names of all individuals who are directors of the ESCo or the name of the owner. The ESCo who has submitted a bid as a joint venture has already provided a list of names of all directors, or the name of the owner, for each member of the joint venture. The ESCo must diligently inform Canada in writing of any changes affecting the list of names of directors during the contract period. The ESCo must also, when requested, provide Canada with properly completed and signed consent forms and associated information, and cooperate to the verification process.

59.5 The ESCo certifies that it is aware, and that its Affiliates are aware, that Canada may verify the information provided by the ESCo, including the information relating to the acts or convictions and any conditional or absolute discharges specified in these Integrity Provisions through independent research, use of any government resources or by contacting third parties.

59.6 The ESCo certifies that neither the ESCo nor any of the ESCo's Affiliates have directly or indirectly, paid or agreed to pay, and will not, directly or indirectly, pay a contingency fee to any individual for the solicitation, negotiation or obtaining of the Contract if the payment of the fee would require the individual to file a return under section 5 of the [Lobbying Act](#).

59.7 Time Period

The Time Period is 10 years and is measured from the date of the conviction or from the date of the conditional or absolute discharge. In addition, for a conviction under paragraphs a. or b. of subsection 8, following the 10-year period, a pardon or a record suspension must have been obtained, or capacities must have been restored by the Governor in Council. The ESCo must therefore provide a copy of confirming documentation from an official source for its certification to be found true by Canada for the purpose of these Integrity Provisions.

59.8 The ESCo certifies that neither the ESCo nor any of the ESCo's Affiliates have been convicted of an offence or received a conditional or an absolute discharge under any of the following provisions unless the time period, as defined in the Time Period subsection, has elapsed:

- a. paragraph 80(1)(d) (*False entry, certificate or return*), subsection 80(2) (*Fraud against Her Majesty*) or section 154.01 (*Fraud against Her Majesty*) of the [Financial Administration Act](#), or
- b. section 121 (*Frauds on the government and Contractor subscribing to election fund*), section 124 (*Selling or Purchasing Office*), section 380 (*Fraud*) for fraud committed against Her Majesty or section 418 (*Selling defective stores to Her Majesty*) of the [Criminal Code](#), or
- c. section 119 (*Bribery of judicial officers, etc*), section 120 (*Bribery of officers*), section 346 (*Extortion*), sections 366 to 368 (*Forgery and other offences resembling forgery*), section 382 (*Fraudulent manipulation of stock exchange transactions*), section 382.1 (*Prohibited insider trading*), section 397 (*Falsification of books and documents*), section 422 (*Criminal breach of contract*), section 426 (*Secret commissions*), section 462.31 (*Laundering proceeds of crime*) or sections 467.11 to 467.13 (*Participation in activities of criminal organization*) of the [Criminal Code](#), or
- d. section 45 (*Conspiracies, agreements or arrangements between competitors*), section 46 (*Foreign directives*), section 47 (*Bid rigging*), section 49 (*Agreements or arrangements of federal financial institutions*), section 52 (*False or misleading representation*), section 53 (*Deceptive notice of winning a prize*) of the [Competition Act](#), or
- e. section 239 (*False or deceptive statements*) of the [Income Tax Act](#), or
- f. section 327 (*False or deceptive statements*) of the [Excise Tax Act](#), or
- g. section 3 (*Bribing a foreign public official*), section 4 (*Accounting*), or section 5 (*Offence committed outside Canada*) of the [Corruption of Foreign Public Officials Act](#), or
- h. section 5 (*Trafficking in substance*), section 6 (*Importing and exporting*), or section 7 (*Production of substance*) of the [Controlled Drugs and Substance Act](#).

The ESCo also certifies that no one convicted under any of the provisions under a. or b. are to receive any benefit under the Contract, unless a pardon or a record suspension has been obtained or capacities restored by the Governor in Council, as defined in the Time Period subsection

59.9 Foreign Offences

The ESCo also certifies that, within a period, as defined in the Time Period subsection, neither the ESCo nor any of the ESCo's Affiliates have been convicted of or have received a conditional or an absolute discharged, under any foreign offence that Canada deems to be of similar constitutive elements to the offences listed in these Integrity Provisions. Canada will also consider foreign measures declared by Canada to be similar in nature to the Canadian pardon, record suspension, or restoration of capacities by the Governor in Council.

59.10 Subcontractors

The ESCo must ensure that subcontracts include Integrity Provisions no less favorable to Canada than those imposed in the resulting contract.

59.11 Non-application

For governments, as well as entities controlled by a government, including Crown corporations, the present Integrity Provisions are reduced to complying with article 750 of the [Criminal Code](#), the [Government Contracts Regulations](#) and the [Code of Conduct for Procurement](#).

GC 60 Appendices

60.1 The following Appendices to Annex A are attached to this Contract and form a part thereof:

Appendix "A"	Definitions
Appendix "B"	Total Cost of Project
Appendix "C"	Determination of Invoices
Appendix "D"	Certificate of Insurance
Appendix "E"	Dispute Resolution
Appendix "F"	Monthly Reporting Requirements
Appendix "G"	Milestone Certificate
Appendix "H"	Project Team Information
Appendix "I"	Supporting Information from Proposal
Appendix "J"	The ESCo's Proposal Brief
Appendix "K"	DECLARATION/CERTIFICATIONS FORMS