

**RETURN BIDS TO:**  
**RETOURNER LES SOUMISSIONS À:**  
Regional Manager/Real Property  
Contracting/PWGSC  
Ontario Region, Tendering Office  
12th Floor, 4900 Yonge Street  
Toronto, Ontario  
M2N 6A6  
Ontario

## SOLICITATION AMENDMENT MODIFICATION DE L'INVITATION

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

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

**Comments - Commentaires**  
THIS DOCUMENT CONTAINS A SECURITY  
REQUIREMENT

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

**Issuing Office - Bureau de distribution**  
Regional Manager/Real Property Contracting/PWGSC  
Ontario Region, Tendering Office  
12th Floor, 4900 Yonge Street  
Toronto, Ontario  
M2N 6A6  
Ontario

<b>Title - Sujet</b> Port Granby - Long Term Waste Mgt.	
<b>Solicitation No. - N° de l'invitation</b> EQ986-133623/A	<b>Amendment No. - N° modif.</b> 027
<b>Client Reference No. - N° de référence du client</b> R.023276.217	<b>Date</b> 2015-02-24
<b>GETS Reference No. - N° de référence de SEAG</b> PW-\$PWL-035-1957	
<b>File No. - N° de dossier</b> PWL-4-37020 (035)	<b>CCC No./N° CCC - FMS No./N° VME</b>
<b>Solicitation Closes - L'invitation prend fin</b> <b>at - à 02:00 PM</b> <b>on - le 2015-03-10</b>	<b>Time Zone</b> Fuseau horaire Eastern Daylight Saving Time EDT
<b>F.O.B. - F.A.B.</b> <b>Plant-Usine:</b> <input type="checkbox"/> <b>Destination:</b> <input checked="" type="checkbox"/> <b>Other-Autre:</b> <input type="checkbox"/>	
<b>Address Enquiries to: - Adresser toutes questions à:</b> Woodhall, Lauren	<b>Buyer Id - Id de l'acheteur</b> pwl035
<b>Telephone No. - N° de téléphone</b> (416) 512-5873 ( )	<b>FAX No. - N° de FAX</b> (416) 512-5862
<b>Destination - of Goods, Services, and Construction:</b> <b>Destination - des biens, services et construction:</b> PWGSC Port Hope Area Initiative - PHAI 115 Toronto Road Port Hope, ON L1A 3S4	

**Instructions: See Herein**

**Instructions: Voir aux présentes**

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

Solicitation No. - N° de l'invitation

EQ986-133623/A

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

R.023276.217

Amd. No. - N° de la modif.

027

File No. - N° du dossier

PWL-4-37020

Buyer ID - Id de l'acheteur

pwl035

CCC No./N° CCC - FMS No/ N° VME

Solicitation Amendment No. 27 is raised to:

- 1) respond to questions related to this Request for Proposal.

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## SECTION A - QUESTIONS AND ANSWERS

### **Q411. Financial Capability**

GI 20 requires Bidders that are subsidiaries of another company to provide financial information of their ultimate parent company, which ultimate parent may be required to provide a Parental Guarantee. We are a subsidiary who prepared audited financial statement, and we wish to submit our bid on the basis of our own financial information. Furthermore, we will not be able to obtain a commitment to provide a guarantee without a form of the guarantee agreement.

Please confirm whether we will be entitled to submit a bid on the basis of our own financial information and strength. If not, please provide a form of guarantee agreement for our review.

**A411.** Determination of whether a parent guarantee is required will be based on the results of a review of the financial information of the Bidder and of the Bidder's parent company, where applicable. The form of parental guarantee that is required will be drawn up by the Contracting Authority once the results of the review are known, and the form of parental guarantee, if applicable, will be provided to the Bidder for review at that time.

### **Q412. Financing**

Please confirm and describe the financing structure for the Project, including sources of funds including any committed public funding, applicable financial guarantees, and assurances that sufficient funding will be made available to cover all project costs necessary to complete the Project.

**A412.** AECL's shareholder, the Minister of Natural Resources Canada, entered into an agreement in 2001 with the Municipality of Clarington to remediate the existing waste management facility and to relocate the waste to a new long term waste management facility to be built at the site. AECL, on behalf of Canada, is responsible for implementing the decommissioning and waste management program (DWM). CNL was created as a subsidiary of AECL on October 30, 2014, and since then has assumed full responsibility for management of all AECL operations, including waste management at the Port Granby site. The DWM program is funded by Canada and will continue to be funded through AECL after CNL's shares are transferred to a private contractor (as part of the implementation of the Government-Owned, Contractor-Operated (GoCo) model announced by Canada in 2013).

For details see: <https://buyandsell.gc.ca/procurement-data/tender-notice/PW-14-00614229>

### **Q413. Assignment of Contract**

SI 19 provides that: i) CNL is expected to be the Owner under the Contract; ii) AECL is currently undergoing restructuring; and iii) it is expected that AECL will sell CNL to a private-sector entity, to which the Contract will be assigned.

We are, in effect, being asked to contract with a private-sector entity and to accept default risk of an unknown counterparty with no certain regarding its financial strength or its financing structure of the project.

Please provide comfort that the purchaser of CNL will be able to fund the Project to completion and satisfy all obligations under the Contract. For instance, will the existing financing structure of the Project, including any public funding, be available to the purchaser of CNL?

**A413.** Please see Amendment 20 Question 180 regarding SI19 for a response to the first part of the question. Question 180 clarifies, among other things, that the Contract resulting from this RFP will be entered into by the successful Bidder directly with CNL. Please also see answer 412 above for a response to the portion of the question that relates to funding for the project.

**Q414.** Phased release of holdback

As the Work will be executed in two physically distinct locations (the Long Term Waste Management Facility and the Lakeshore Road Underpass), we believe that it would be sensible and efficient to provide for the release of holdback after each phase, rather than only at the end of the Work.

Please amend the holdback release provisions accordingly.

In order to comply with section 20(2) of the Construction Lien Act (in case it is found to be applicable), the Contract should also include the following provision:

"The Parties acknowledge and agree that Section 20(2) of the Construction Lien Act applies and that all liens shall arise and expire on a lot-by-lot basis. A lot, in the context of this Contract, shall mean the Long Term Waste Management Facility or Lakeshore Road Underpass."

**A414.** The Contract is a single work package that is anticipated to be authorized in full at the time of Contract award. The work site is an integrated site that will be connected at Lakeshore Road by a private road passing beneath the public road. There will be no change to the holdback provisions. Consequently, there will be no change to the contractual holdback provisions.

Regarding the Construction Lien Act, Bidders should consult their own legal counsel on questions dealing with legal issues.

**Q415.** Construction Lien Act Applicability

SC22 seeks the Contractor's acknowledgement that the Construction Lien Act (CLA) does not apply to the Contract or Work. However, SI19 contemplates the sale of the Owner (CNL), or the assignment of the Contract, to a private-sector entity.

Please confirm whether the CLA will apply to the Contract and Work if the Contract is assigned, or CNL is sold, to a private-sector entity. Please also provide your reasoning for determining that the CLA will not apply.

**A415.** See Question 412 and 414 above.

**Q416.** Certification of Substantial Performance and Final Completion

Please include a mechanism permitting Contractor to apply for determinations of Substantial Performance and Final Completion:

Suggested revision:

**"GC5.5.1**

If, at any time before the issuance of a Certificate of Completion, Canada determines that the Work has reached Substantial Performance as described in subparagraph 1) (b) of GC1.1.4, "Substantial Performance", the Contractor may deliver written notice to Canada requiring Canada to issue, within 10

business days, or Canada shall issue a Certificate of Substantial Performance to the Contractor. The Certificate of Substantial Performance shall state or describe, subject to GC8

- a. the date of Substantial Performance;
- b. the parts of the Work not completed to the satisfaction of Canada; and
- c. all things that must be done by the Contractor before a Certificate of Completion is issued and before the 12-month warranty period referred to in GC3.13, "Warranty and Rectification of Defects in Work", commences for the said parts and all the said things.

GC5.6.1

When either the Contractor or Canada is of the opinion that the Contractor has complied with the Contract and all orders and directions made pursuant thereto, and that the Work has been completed as described in GC1.1.5, "Completion", the Contractor may deliver written notice to Canada requesting Canada to issue, within 10 business days, or Canada shall issue a Certificate of Completion to the Contractor and, if the Work or a portion of the Work is subject to a Unit Price Arrangement, Canada shall issue a Certificate of Measurement that shall, subject to GC8, be binding upon and conclusive between Canada and the Contractor as to the quantities referred to therein."

**A416.** We have carefully reviewed this request. The General Conditions will not be changed.

**Q417.** Termination by Contractor for non-payment

GC7.5 permits the Contractor to terminate the Contract upon 10 business days' notice in the case of non-payment of any undisputed amount. However, the payment obligation is only triggered upon certification of a progress claim. It would not be acceptable for the Owner to avoid its payment obligation by failing to certify a progress claim. Therefore, please add the following event of default to GC 7.5:

"If the Owner fails to issue a progress report in accordance with the provisions of GC5.4.2,"

**A417.** No changes to GC 7.5 will be made.

**Q418.** Events of Default

Please add the following typical events of default in GC 7.5. These additional events of default are necessary to protect the Contractor where the Contractor is unable to proceed with the Work:

"If the Owner:

- fails to provide the Contractor with access to the site sufficient for the Contractor to perform the Work
- suspends the Work for a period of more than sixty (60) days
- becomes insolvent or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency, or if a bankruptcy or receiving order is filed or made against the Owner"

**A418.** No changes to GC 7.5 will be made.

**Q419.** Cure period

GC7.1.1(a) permits the Contracting Authority to take the Work out of the Contractor's hands if Contractor does not remedy a default within six days of being provided notice. This is an extremely short period of time given the length of the Contract term.

Please confirm that where a default cannot be remedied within this six day period, the Contractor will be afforded such other time period as is necessary to cure the default.

Suggestion addition underlined:

“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, or such other reasonable period as may be necessary to remedy the delay or default, of Canada giving notice to the Contractor in writing in accordance with GC2.3, "Notices";”

**A419.** No changes to GC 7.1.1(a) will be made.

**Q420. Warranty**

SC18 contemplates a warranty period for such period as may be specified for certain portions of the Work. Please clarify which portions of the Work shall be subject to a longer warranty period and the duration of same.

**A420.** The Bid Documents, including the Drawing and Specifications, specify which portions of the Work are subject to a longer warranty period.

**Q421. Permits**

GC1.8.2 requires the Contractor to obtain all permits, certificates, licences, registrations and authorizations required unless otherwise stated. Please confirm which permits, etc., will be obtained and maintained by the Owner, and when they will be obtained and provided to Contractor. For instance, the Environmental Assessment, Waste Nuclear Substance Licence and certain Permits to Take Water are the responsibility of the Owner.

The Owner should be responsible for the failure to obtain or maintain or a change to the conditions of any permits, etc., for which it is responsible.

Suggested addition to GC 1.8.2:

“The Owner shall obtain and maintain, and be responsible for any change in the conditions of, all permits, certificates, licences, registrations and authorizations that are stipulated in the Contract to be its responsibility, including the following: [list Owner permits].”

**A421.** No changes to GC 1.8.2 will be made.

**Q422. Permits – Assignment**

If the CNL is sold, or the Contract is assigned, to a private entity, we are concerned that this could trigger additional permitting requirements.

Please confirm that the Contractor will be entitled to additional compensation and schedule relief due to additional permitting requirements for the Work that arising due to the assignment of the Contract or sale of the Owner to a private entity.

**A422.** See Amendment 20 Question 180 and Question 414 above. The existing contractual terms and conditions are fully adequate to deal with additional permitting requirements.

**Q423. Municipal fees – Assignment**

GC1.8.3 requires the Contractor, prior to commencement of the Work, to 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 Contracting Authority. However, SI19 contemplates the assignment of the Contract or sale of the Owner to a private-sector entity. Please clarify and confirm the following:

- Will GC 1.8.3 apply if the Contract is assigned to a private-sector entity?

- If such assignment takes place after Contractor has tendered the amount required, will the amount tendered be returned to the Contractor, and if so, when?

**A423.** See Amendment 20 Question 180 and Question 414 above.

**Q424.** Differing site conditions

GC 6.2.1 and GC6.2.7 together entitle the Contractor to compensation for subsurface conditions that are substantially different than those described in or inferable from the disclosed information, provided that the Contractor has strictly complied with the Contractual notice provisions. The standard of "substantial" difference is subjective and unclear.

We request that the word "substantial" be deleted. The Contractor would still be required to prove that it has incurred extra expense, loss, damage, or delay in accordance with the provisions of GC6.2.

**A424.** The word 'substantial' will not be deleted. Bidders should consult their legal counsel if they have questions related to the proper interpretation of the General Conditions. See Amendment 16 Question 151.

**Q425.** Notice obligation GC 6.2.7

We request that the strict notice obligation in GC 6.2.7 be deleted, particularly in circumstances where the extent of changed subsurface conditions can be difficult (or impossible) to assess at the time encountered. If the Owner suffers a loss because of the Contractor's failure to give notice within 10 days, as required by GC 6.2.2, the Owner would have a claim against the Contractor. Therefore, it is overly punitive to wholly deny extra payment to the Contractor.

**A425.** GC 6.2.7 will not be changed. See Amendment 16 Question 151.

**Q426.** Third-party work

As Contractor has no control over or privity of contract with third parties brought to the site by the Owner, we request that the Contractor be compensated for any additional cost or delay incurred due to third party contractors, provided the Contractor has complied with its obligations under GC 3.7.3.

Please revise GC 3.7:

"If, when entering into the Contract, the Contractor could not have reasonably foreseen nor anticipated the sending of other contractors or workers on to the site of the Work or if other contractor or workers cause damage to or interference with the Work despite the Contractor's compliance with paragraph 3) of GC3.7, and provided the Contractor

a. suffers a loss or delay or incurs extra expense in complying with the requirements of paragraph 3) of GC3.7; and

b. gives Canada written notice of a claim for that extra expense within thirty (30) days of the date of Contractor becoming aware of such extra expense that the other contractors or workers were sent onto the Work or its site;

Canada shall pay the Contractor the cost of the extra labour, Plant and Material that was necessarily incurred, calculated in accordance with GC6.4, "Determination of Price".

**A426.** GC 3.7 will not be changed.

**Q427.** Delay

GC6.5.2 requires the Contractor's application to extend the time for completion of the Work to be accompanied by consent of the Contractor's surety, where a bond is provided a performance security. GC 6.5.4 requires the Contractor to give notice of intention to claim no later than 10 working days after the first occurrence of the Owner's delay or neglect. The Contractor has no control over or ability to compel its bonding company to consent to such a request, either in a timely manner or at all. At the end of GC6.5.2, please add "...;provided, however, that such application will not be invalidated or affected by the absence of the bonding company's consent in circumstances where the Contractor is not able to obtain same within 10 working days."

**22. Notice obligation GC 6.5.8**

We requests that GC6.5.8 be deleted, as it is not commercially reasonable that the Owner be shielded from its own acts or omissions by strict notice requirements.

If the Owner suffers a loss because of the Contractor's failure to give notice within 10 days, as required by GC 6.2.2, the Owner would have a claim against the Contractor. Therefore, it is overly punitive to wholly deny extra payment to the Contractor.

**A427.** GC 6.5.2 will not changed. GC6.5.8 will not be deleted. See Amendment 16 Question 151

**Q428.** Consequential damages waiver

SC 14 (GC 1.21.3, 1.21.4) sets out certain exclusions to the mutual waiver of consequential damages set out in GC1.21.4; however, these exclusions only apply to the waiver granted by the Contractor. Please confirm that the exclusions apply to both Contractor and Contracting Authority.

Suggested deletions shown:

"GC 1.21.4 The Limit of Liability and paragraphs 1.21.2 and 1.21.3 shall not apply to the following (which shall not be subject to any limit in respect thereof):

- a. indemnification by the Contractor in connection with third party claims against one or more of the Indemnified Parties;
- b. willful misconduct, bad faith, gross negligence or fraud of the Contractor, Subcontractors or Suppliers;
- c. the obligations of the Contractor, Subcontractors and Suppliers with regard to confidentiality or intellectual property infringement; and
- d. liability of the Contractor satisfied by the proceeds of any insurance;"

**A428.** The exclusions set out in SC 14 are appropriately drafted and they do not apply to both the Contractor and the Contracting Authority. The requested deletions to GC 1.21.4 will not be made.

**Q429.** Limit of Liability, Indemnities, and Set-off

GC 5.10 entitles the Owner to compensation for its inability to use the completed Work resulting from Contractor's delay. This appears to be contrary to the waiver of consequential damages set out in GC1.21.4.

However, the waiver of consequential damages does not explicitly refer to "loss of use". As such waivers are read strictly by the court, "loss of use" should be specifically mentioned.

Please therefore delete GC 5.10.2(b), which refer to compensation for loss of use. Please add, "loss of use" to the and confirm that the waiver of consequential damages applies to loss of use damages.

**A429.** Neither GC 5.10 nor GC 1.21.4 will be amended. The Owner is entitled to compensation for its inability to use the completed Work due to Contractor delay.

**Q430.** Set-off



We object to Owner's right to set-off against amounts owing under separate, unrelated contracts. This is particularly problematic given that the Contract may be assigned to an unknown third party. Please delete "or under current contract" from GC5.9.

**A430.** GC 5.9 will not be deleted.

**Q431.** Third party claims against Contractor

Please revise 5.8.3 as follows such that Canada's right to withhold is restricted to claims where Canada may be found liable:

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

**A431.** GC 5.8.3 will not be amended.

**Q432.** Change Orders – Dispute

Please confirm that where a price cannot be agreed upon for the valuation of a Change, the Contractor may refer the disagreement to Dispute Resolution.

**A432.** The General Conditions set out a process for dealing with disputed change orders. See Amendment 16 Question 151.

**Q433.** Notice Obligation – Disputes

Please delete the additional language added to GC6.5.4 by SC24. The waiver for failure to comply with strict notice obligations is not commercially reasonable and encourages delivery of notices of Claim where the Claim may not be fully understood or may not be legitimate.

Moreover, the detailed information required to be submitted with the notice is unlikely to be available within ten days of the event claimed.

**A433.** The additional language added to GC6.5.4 by SC24 will not be deleted.

**Q434.** Dispute resolution

The uncertainty when the dispute resolution procedure is triggered because, under GC 8.3.1, it is triggered by a decision or direction of the Owner delivered under any provision of the Contract. This uncertainty is unhelpful because it would force the Contractor to issue a formal notice of dispute in response to any correspondence received from the Owner with which it disagrees. It would be preferred for both parties for the Owner to clearly indicate when it intends the formal dispute resolution procedure to commence.

Please revise GC8.3.1 as follows:

"Any difference between the parties to the Contract of any nature arising out of or in connection with the Contract which could result in a claim by the Contractor against Canada, and which is not settled by consultation and co-operation as envisaged in GC8.2, "Consultation and Co-operation", shall be resolved in the first instance by Canada whose written decision or direction shall be final and binding subject only to the provisions of GC8. Such written decision or direction includes, but is not limited to, any written

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decision or direction by Canada under any provision of the General Conditions, and shall clearly state on its face that it is made pursuant to this GC8.3.1 and that it must be contested within 15 working days after receipt.”

**A434.** GC8.3.1 will not be amended.