

**RETURN BIDS TO:**  
**RETOURNER LES SOUMISSIONS À:**  
**Bid Receiving - PWGSC / Réception des soumissions**  
**- TPSGC**  
**11 LaurierSt./ 11, rue Laurier**  
**Place du Portage, Phase III**  
**Core 0B2 / Noyau 0B2**  
**Gatineau**  
**Québec**  
**K1A 0S5**  
**Bid Fax: (819) 997-9776**

## **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**  
**Maintenance & Professional Consulting Services**  
**Division (FK)**  
**11 Laurier St./ 11, rue Laurier**  
**3C2, Place du Portage, Phase III**  
**Gatineau**  
**Québec**  
**K1A 0S5**

<b>Title - Sujet</b> Federal Building Initiative - EC	
<b>Solicitation No. - N° de l'invitation</b> EP076-150596/A	<b>Amendment No. - N° modif.</b> 002
<b>Client Reference No. - N° de référence du client</b> 20150596	<b>Date</b> 2015-07-14
<b>GETS Reference No. - N° de référence de SEAG</b> PW-\$\$FK-289-67504	
<b>File No. - N° de dossier</b> fk289.EP076-150596	<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 2015-08-31</b>	<b>Time Zone</b> <b>Fuseau horaire</b> Eastern Daylight Saving Time EDT
<b>F.O.B. - F.A.B.</b> <b>Plant-Usine:</b> <input type="checkbox"/> <b>Destination:</b> <input type="checkbox"/> <b>Other-Autre:</b> <input type="checkbox"/>	
<b>Address Enquiries to: - Adresser toutes questions à:</b> Maquiling(fk div), Amalia O.	<b>Buyer Id - Id de l'acheteur</b> fk289
<b>Telephone No. - N° de téléphone</b> (819) 956-5978 ( )	<b>FAX No. - N° de FAX</b> (819) 956-3600
<b>Destination - of Goods, Services, and Construction:</b> <b>Destination - des biens, services et construction:</b>	

**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>

This solicitation amendment 002 is raised to reflect changes on the following:

**1) Revise the solicitation closing date from July 27, 2015 to August 31, 2015**

**2) Incorporate new changes to the integrity provisions**

**2.1) Delete in its entirety, SI 1 – INTEGRITY PROVISIONS – ASSOCIATED INFORMATION and replace with the following:**

**SI 1 INTEGRITY PROVISIONS - List of Names**

Bidders who are incorporated, including those bidding as a joint venture must provide a full list of names of all individuals who are currently directors of the bidder.

Bidders bidding as sole proprietorship, as well as those bidding as a joint venture must provide the name of the owner(s).

Bidders bidding as societies, firms or partnerships do not need to provide lists of names.

**2.2) Delete in its entirety, Integrity Provisions – Proposal of the GENERAL INSTRUCTIONS TO BIDDERS and replace with the following:**

**GENERAL INSTRUCTIONS TO BIDDERS**

**Integrity Provisions – Proposal**

**1. Interpretation**

For the purposes of these Integrity Provisions, the following definitions apply:

"Administrative Agreement"

is a negotiated agreement between a supplier/potential supplier and the Minister of PWGS as provided for in the Ineligibility and Suspension Policy.

"Affiliate"

is a person, including, but not limited to, organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies or subsidiaries, whether partly or wholly-owned, as well as individuals, directors, officers and key employees if:

- i. one controls or has the power to control the other, or
- ii. a third party has the power to control both.

"Control"

means

- c. direct control, such as where:

- i. a person controls a body corporate if securities of the body corporate to which are attached more than 50 percent of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
- ii. a person controls a corporation that is organized on a cooperative basis if the person and all of the entities controlled by the person have the right to exercise more than 50 percent of the votes that may be cast at an annual meeting or to elect the majority of the directors of the corporation;
- iii. a person controls an unincorporated entity, other than a limited partnership, if more than 50 percent of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;

- iv. the general partner of a limited partnership controls the limited partnership; and
- v. a person controls an entity if the person has any direct or indirect influence that, if exercised, would result in control in fact of the entity.
- d. deemed control, such as where:
  - a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity
- e. indirect control, such as where:
  - a person is deemed to control, within the meaning of paragraph (a) or (b), an entity where the aggregate of
    - i. any securities of the entity that are beneficially owned by that person, and
    - ii. any securities of the entity that are beneficially owned by any entity controlled by that person
 is such that, if that person and all of the entities referred to in paragraph (c)(ii) that beneficially own securities of the entity were one person, that person would control the entity.

"Ineligibility"

means not eligible for contract award.

"Suspension"

means a determination of temporary ineligibility by the Minister of PWGS.

#### Statement

- . Bidders must comply with the Code of Conduct for Procurement and be eligible for contract award under the Ineligibility and Suspension Policy. In addition, Bidders must respond to bid solicitations in an honest, fair and comprehensive manner, and that accurately reflect their capacity to satisfy the requirements stipulated in the bid solicitations and resulting contracts, and submit bids as well as enter into contracts only if they will fulfill all obligations of the Contract.
- a. By submitting a bid, Bidders confirm that they understand that being convicted of certain offences will render them ineligible to be awarded a contract. Canada will declare non-responsive any bid in respect of which the information requested is incomplete 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 contract award. If it is determined by the Minister of PWGS, after contract award, that the Bidder made a false declaration, Canada will, following a notice period, have the right to terminate the Contract for default.

#### List of Names

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

- b. The Bidder must immediately inform Canada in writing of any changes affecting the list of names of directors during this procurement process.

#### Request for Additional Information

By submitting a bid, the Bidder certifies that it is aware, and that its Affiliates are aware, that Canada may request additional information, certifications, validations from a third party qualified by the Minister of PWGS, and other evidentiary elements proving identity or eligibility to contract with Canada. Canada may also verify the information provided by the Bidder, including the information relating to convictions for certain offences and any conditional or absolute discharges specified in these Integrity Provisions.

#### Lobbying Act

By submitting a bid, the Bidder certifies that neither it nor any of its 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.

#### Canadian Offences Resulting in Legal Incapacity

By submitting a bid, the Bidder certifies that:

- c. it and the Affiliates of the Bidder have not been convicted of or pleaded guilty to an offence under any of the following provisions which would result in a legal incapacity under section 750(3) of the Criminal Code and for which they have not been pardoned or received a record of discharge under the Canadian Pardons subsection:
  - i. 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
  - ii. 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
- d. the Bidder has not been convicted of or pleaded guilty to the offences described in paragraph (a) and certifies that it has not directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render that Affiliate ineligible to be awarded a contract as described in (a).

#### Canadian Offences

By submitting a bid, the Bidder certifies that:

- e. the Bidder and the Affiliates of the Bidder have not, in the last three years, from the bid submission date, been convicted of or pleaded guilty to an offence under any of the following provisions for which they would be ineligible for contract award under these Integrity Provisions and for which they have not been pardoned or received a record of discharge under the Canadian Pardons subsection:
  - i. 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

- ii. 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
  - iii. section 239 (*False or deceptive statements*) of the Income Tax Act, or
  - iv. section 327 (*False or deceptive statements*) of the Excise Tax Act, or
  - v. 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
  - vi. section 5 (*Trafficking in substance*), section 6 (*Importing and exporting*), or section 7 (*Production of substance*) of the Controlled Drugs and Substance Act; or
- f. the Bidder has not been convicted of or pleaded guilty to the offences described in paragraph (a) and it has not directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render that Affiliate ineligible for contract award as described in (a).

#### Foreign Offences

By submitting a bid, the Bidder certifies that:

- g. the Bidder and its Affiliates have not, in the last three years, from the bid submission date, been convicted of or pleaded guilty to an offence in a jurisdiction other than Canada that would, in Canada's opinion, be similar to an offence referenced in the Canadian Offences Resulting in Legal Incapacity and the Canadian Offences subsections, and for which it would be ineligible for contract award under these Integrity Provisions and for which they have not been pardoned under the Foreign Pardons subsection and:
  - i. the court, before which the Bidder or its Affiliate appeared, acted within the court's jurisdiction;
  - ii. the Bidder or its Affiliate appeared during the court's proceedings or submitted to the court's jurisdiction;
  - iii. the court's decision was not obtained by fraud, and
  - iv. the Bidder or its Affiliate was entitled to present to the court every defence that the Bidder or its Affiliate would have been entitled to present had the proceeding been tried in Canada; or
- h. it has not been convicted of or pleaded guilty to the offences described in paragraph (a) and certifies that it has not directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render that Affiliate ineligible to be awarded a contract as described in (a).

#### Ineligibility for Contract Award

- . The Bidder confirms that it understands that where it or any of its Affiliates have been convicted of certain offences or have been held responsible of certain acts, as described under the Canadian Offences Resulting in Legal Incapacity, the Canadian Offences, the Foreign Offences and the Lobbying Act subsections, the Bidder or its Affiliate is ineligible to be awarded a contract, subject to a Public Interest Exception.
- a. The Bidder confirms that it understands that it is ineligible for contract award where it has been so determined by the Minister of PWGS under the Ineligibility and Suspension Policy and that the period of ineligibility or suspension has not expired.

#### Declaration of Convicted Offences

Where a Bidder or its Affiliate is unable to certify that it has not been convicted of any of the offences referenced under the Canadian Offences Resulting in Legal Incapacity, the Canadian Offences and the Foreign Offences subsections, the Bidder must provide with its bid the completed Declaration Form, to be given further consideration in the procurement process.

#### Period of Ineligibility

The following rules determine the period for which a Bidder or its Affiliate that has been convicted of certain offences is, ineligible to be awarded a contract:

- b. for all offences referenced under the Canadian Offences Resulting in Legal Incapacity subsection for which a Bidder or an Affiliate of the Bidder has pleaded guilty to or has been convicted of, the period of ineligibility to be awarded a contract is indefinite, subject to the Canadian Pardons subsection.
- c. subject to an Administrative Agreement, for all offences referenced under the Canadian Offences and Foreign Offences subsections for which a Bidder or an Affiliate of the Bidder has pleaded guilty to or been convicted of, as the case may be, in the last three years, from the bid submission date, the period of ineligibility for contract award is ten years from the date of determination by the Minister of PWGS, subject to the Canadian Pardons and Foreign Pardons subsections.
- d. subject to an Administrative Agreement, for violations of matters referenced in the Lobbying Act subsection for which a Bidder or an Affiliate of the Bidder has been found responsible, as the case may be, in the last three years, from the bid submission date, the period of ineligibility for contract award is ten years from the date of determination by the Minister of PWGS, subject to the Canadian Pardons and Foreign Pardons subsections.

#### Canadian Pardons

A determination of ineligibility for contract award will not be made or maintained by the Minister of PWGS under these Integrity Provisions, in respect of an offence or act that gave rise or that could give rise to a determination of ineligibility, if the Bidder or its Affiliate has:

- e. been granted an absolute discharge in respect of the offence, or has been granted a conditional discharge in respect of the offence and those conditions have been satisfied;
- f. been granted a pardon under Her Majesty's royal prerogative of mercy;
- g. been granted a pardon under section 748 of the Criminal Code;
- h. received a record of suspension ordered under the Criminal Records Act; and
- i. been granted a pardon under the Criminal Records Act, as that Act read immediately before the day section 165 of the Safe Streets and Communities Act comes into force.

### Foreign Pardons

A determination of ineligibility for entering into government contracts will not be made or maintained, as the case may be, by the Minister of PWGS in respect of matters referenced in the Foreign Offences subsection and with respect to an offence or act that gave rise or will give rise to a determination of ineligibility, if the Bidder or its Affiliate, has at any time, benefited from foreign measures that are similar to Canadian pardons, conditional discharges, absolute discharges, record suspensions, or restoration of legal capacities by the Governor in Council.

### Suspension of Period of Ineligibility

The Bidder confirms that it understands that a determination of ineligibility for entering into government contracts made under these Integrity Provisions may be suspended by the Minister of PWGS through an Administrative Agreement, to the extent that it is permissible in law. The period of ineligibility applicable to that Bidder or its Affiliate and the right to participate in a given procurement process are guided by the terms and conditions of the Administrative Agreement. Subject to the Public Interest Exception, an Administrative Agreement may only suspend a period of ineligibility on solicitations issued after it has been concluded.

### Period of Ineligibility for Providing False or Misleading Information

The Bidder confirms that it understands that where it has made a false declaration or provided false or misleading information under these Integrity Provisions, the Minister of PWGS will declare a Bidder to be ineligible to be awarded contracts for a period of ten years. The period of ineligibility is effective from the date of determination by the Minister of PWGS.

### Period of Ineligibility for Breaching Administrative Agreements

The Bidder confirms that it understands that where it has concluded an Administrative Agreement and that it has breached any of its terms and conditions, the Minister of PWGS will lengthen the period of ineligibility for a period to be determined by the Minister of PWGS.

### Suspension of a Bidder

The Bidder confirms that it understands that the Minister of PWGS may suspend a Bidder from being awarded a contract for a period of up to 18 months, subject to renewal, pending completion of the criminal proceeding, if the Bidder has been charged with any of the offences listed in the Canadian Offences Resulting in Legal Incapacity, the Canadian Offences and the Foreign Offences subsections or if the Bidder has admitted to being guilty of any of these offences. The period of suspension is effective from the date of determination by the Minister of PWGS. A period of suspension does not abridge or suspend all other periods of ineligibility that may be imposed on a Bidder by the Minister of PWGS.

### Third Party Validation

The Bidder confirms that it understands that where it or any of the Bidder's Affiliates has been subject to a period of ineligibility to be awarded contracts, for which the Canadian Pardons and the Foreign Pardons subsections do not apply, the Bidder must provide by bid closing date, a confirmation from an independent third party, recognized in advance by the Minister of PWGS, confirming that measures have been put in place in order to avoid the re-occurrence of such wrongdoings that led to the convictions. Failure to provide the said confirmation from an independent third party renders this bid non-responsive.

### Sub-consultants

The Bidder must ensure that contracts with first tier sub-consultants include Integrity Provisions similar to those imposed in the resulting contract.

**Public Interest Exception**

The Bidder confirms that it understands:

- j. that, with the exception of a legal incapacity to contract resulting from section 750(3) of the Criminal Code, Canada may enter in a contract with a Bidder, or any of its Affiliates, which have been convicted of or have pleaded guilty to any of the offences referenced in the Canadian Offences and Foreign Offences subsections, where Canada considers it necessary to the public interest for reasons which include, but are not limited to:
  - i. the need is one of pressing emergency in which delay would be injurious to the public interest;
  - ii. the Bidder is the only person capable of performing the contract;
  - iii. the contract is essential to maintain sufficient emergency stocks in order to safeguard against possible shortages; and;
  - iv. not entering into the contract with the Bidder would have a significant adverse impact on the health, national security, safety, security or economic or financial well-being of the people of Canada or the functioning of any portion of the federal public administration;
- k. Canada may only enter into a contract with a Bidder under this subsection where the ineligible Bidder has concluded an Administrative Agreement with the Minister of PWGS, on such terms and conditions that are necessary to safeguard the integrity of the procurement process and can apply to any procurement. The Administrative Agreement need not be concluded in advance of the solicitation.

**2.3) Delete in its entirety, GC 59 Integrity Provisions – Contract and replace with the following:**

**GC 59 Integrity Provisions – Contract**

**59.1 Statement**

- a. The ESCo must comply with the Code of Conduct for Procurement and must comply with the terms set out in these Integrity Provisions.
- b. The ESCo confirms that it understands that convictions of certain offences, a false declaration in its bid, a false declaration under the Contract or failing to maintain up-to-date information requested may lead to a termination for default. If the ESCo or any of its Affiliates fail to remain free and clear of any convictions and any conditional or absolute discharges specified in these Integrity Provisions during the contract period, Canada may, following a notice period, terminate for default. 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.

**59.2 List of Names**

The ESCo must immediately inform Canada in writing of any changes affecting the list of names of directors and owners during the contract period.

**59.3 Information Verification**

The ESCo certifies that it is aware, and its Affiliates are aware, that Canada may verify at any time during the contract period, 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. Canada may request additional information, validations from a qualified third party,



consent forms and other evidentiary elements proving identity and eligibility to contract with Canada.

#### 59.4 Lobbying Act

The ESCo certifies that neither it nor its 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.

#### 59.5 Canadian Offences Resulting in Legal Incapacity

- c. The ESCo has certified that neither it nor any of its Affiliates have been convicted of or have pleaded guilty to an offence under any of the following provisions, which result in legal incapacity under section 750(3) of the Criminal Code , and for which they have not been pardoned or received a record of discharge under the Canadian Pardons subsection:
  - i. 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
  - ii. section 121 (*Frauds on the government and Consultant 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
- d. the ESCo has not been convicted of or pleaded guilty to the offences described in paragraph (a) and has certified that it has not directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render that Affiliate ineligible to be awarded a contract under (a).

#### 59.6 Canadian Offences

The ESCo has certified that:

- e. it and its Affiliates have not, in the last three years, from the date of contract award, been convicted of or pleaded guilty to an offence under any of the following provisions for which it would be ineligible for contract award under these Integrity Provisions and for which they have not been pardoned or received a record of discharge under the Canadian Pardons subsection:
  - i. 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
  - ii. 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

- iii. section 239 (*False or deceptive statements*) of the Income Tax Act, or
  - iv. section 327 (*False or deceptive statements*) of the Excise Tax Act, or
  - v. 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
  - vi. section 5 (*Trafficking in substance*), section 6 (*Importing and exporting*), or section 7 (*Production of substance*) of the Controlled Drugs and Substance Act or
- f. the ESCo has not been convicted of or pleaded guilty to the offences described in paragraph (a) and has certified that it has not directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would make that Affiliate ineligible for contract award.

#### 59.7 Foreign Offences

The ESCo has certified that:

- g. it and its Affiliates have not, in the last three years, from the date of contract award, been convicted of or pleaded guilty to an offence in a jurisdiction other than Canada of having committed an act or omission that would, in Canada's opinion, be similar to an offence referenced in the Canadian Offences Resulting in Legal Incapacity and the Canadian Offences subsections and for which it would be ineligible for contract award under these Integrity Provisions and for which they have not been pardoned or received a record of discharge under the Foreign Pardons subsection:
  - i. the court before which the ESCo or the Affiliate of the ESCo appeared acted within the court's jurisdiction;
  - ii. the ESCo or the Affiliate of the ESCo appeared during the court's proceedings or submitted to the court's jurisdiction;
  - iii. the court's decision was not obtained by fraud; and
  - iv. the ESCo or the Affiliate of the ESCo was entitled to present to the court every defence that the ESCo or the Affiliate of the ESCo would have been entitled to present had the proceeding been tried in Canada; or
- h. it has not been convicted of or pleaded guilty to the offences described in paragraph (a) and has certified that it has not directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render that Affiliate ineligible to be awarded a contract under (a).

#### 59.8 Ineligibility to Contract with Canada

- i. The ESCo confirms that it understands that if after contract award they have been convicted of certain offences, as described in the Canadian Offences Resulting in Legal Incapacity, the Canadian Offences and the Foreign Offences subsections, they will be ineligible to contract with Canada. If, after contract award, an ESCo becomes ineligible for contract award, Canada may, following a notice period, declare the ESCo to be ineligible and, to the extent that a contract has been awarded:

- i. terminate the contract for default; or
  - ii. require the ESCo to enter into an Administrative Agreement with the Minister of PWGS on such terms and conditions as are necessary to safeguard the integrity of the procurement process.
- j. The ESCo confirms that it understands that where its Affiliate has been convicted of certain offences, as described in the Canadian Offences Resulting in Legal Incapacity, the Canadian Offences and the Foreign Offences subsections, the Affiliate is ineligible to contract with Canada. If, after contract award, an Affiliate of an ESCo becomes ineligible to contract with Canada, Canada may, following a notice period, declare the ESCo to be ineligible and, to the extent that a contract has been concluded:
  - i. terminate the contract for default if, in the opinion of Canada, there is evidence that the ESCo directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of certain acts or offences that make that Affiliate ineligible; or
  - ii. require the ESCo to enter into an Administrative Agreement with the Minister of PWGS on such terms and conditions as are necessary to safeguard the integrity of the procurement process.
- k. The ESCo confirms that it understands that where it has been declared to be ineligible to contract with Canada under the Ineligibility and Suspension Policy, it is also ineligible to contract with Canada under these Integrity Provisions for the duration of the period that has been determined by the Minister of PWGS. Where the ESCo has been declared to be ineligible under the *Ineligibility and Suspension Policy* after contract award, Canada may, following a notice period:
  - i. terminate the contract for default; or
  - ii. require the ESCo to enter into an Administrative Agreement with the Minister of PWGS on such terms and conditions as are necessary to safeguard the integrity of the procurement process.
- l. The ESCo confirms that it understands that where it or its Affiliates have been held responsible for breaches under the Lobbying Act subsection, it is ineligible to contract with Canada under these Integrity Provisions for the duration of the period that has been determined by the Minister of PWGS. Where the Consultant has been declared to be ineligible under the Ineligibility and Suspension Policy after contract award, Canada may, following a notice period:
  - i. terminate the contract for default; or
  - ii. require the ESCo to enter into an Administrative Agreement with the Minister of PWGS on such terms and conditions as are necessary to safeguard the integrity of the procurement process.

#### 59.9 Declaration of Offences Committed

The ESCo understands that it has a continuing obligation to immediately declare all convictions to Canada under the Canadian Offences Resulting in Legal Incapacity, the Canadian Offences and the Foreign Offences subsections.

#### 59.10 Period of Ineligibility

The following rules determine the period for which a ESCo or its Affiliate that has been convicted of certain offences is, ineligible to contract with Canada:

- m. for all offences referenced under the Canadian Offences Resulting in Legal Incapacity subsection for which an ESCo or its Affiliate has pleaded guilty to or has been convicted of, the period of ineligibility to be awarded a contract is indefinite, subject to the Canadian Pardons subsection;
- n. subject to an Administrative Agreement, for all offences referenced under the Canadian Offences and Foreign Offences subsections for which an ESCo or its Affiliate has pleaded guilty to or been convicted of, as the case may be, in the last three years, the period of ineligibility to contract with Canada is ten years from the date of determination by the Minister of PWGS, subject to the Canadian Pardons and Foreign Pardons subsections;
- o. subject to an Administrative Agreement, for all breaches under the Lobbying Act subsection for which an ESCo or its Affiliate has been found responsible, in the last three years, the period of ineligibility to contract with Canada is ten years from the date of determination by the Minister of PWGS.

#### 59.11 Canadian Pardons

A determination of ineligibility to contract with Canada will not be made or maintained by the Minister of PWGS under these Integrity Provisions, in respect of an offence or act that gave rise or that could give rise to a determination of ineligibility, if the ESCo or its Affiliate has:

- p. been granted an absolute discharge in respect of the offence, or has been granted a conditional discharge in respect of the offence and those conditions have been satisfied;
- q. been granted a pardon under Her Majesty's royal prerogative of mercy;
- r. been granted a pardon under section 748 of the Criminal Code;
- s. received a record of suspension ordered under the Criminal Records Act; and
- t. been granted a pardon under the Criminal Records Act, as that Act read immediately before the day section 165 of the Safe Streets and Communities Act comes into force.

#### 59.12 Foreign Pardons

A determination of ineligibility to contract with Canada will not be made or maintained, as the case may be, by the Minister of PWGS in respect of matters referenced in the Foreign Offences subsection and with respect to an offence or act that gave rise or will give rise to a determination of ineligibility, if the ESCo or its Affiliate, has at any time, benefited from foreign measures that are similar to Canadian pardons at the sole discretion of Canada, conditional discharges, absolute discharges, record of suspensions, or restoration of legal capacities by the Governor in Council.

#### 59.13 Period of Ineligibility for Breaching Administrative Agreements

The ESCo confirms that it understands that where it has concluded an Administrative Agreement and that it has breached any of its terms and conditions, the Minister of PWGS will lengthen the period of ineligibility for a period to be determined by the Minister of PWGS.

#### 59.14 Obligations on Sub-consultants

The ESCo confirms that it understands that to the extent that it relies on a sub-consultant(s) to perform the Contract, the ESCo will not enter into a subcontract with a company that has been convicted of or pleaded guilty or an Affiliate of the company has been convicted of or pleaded guilty, as the case may be, to any of the offences referenced in the Canadian Offences Resulting in Legal Incapacity, the Canadian Offences and the Foreign Offences subsections for which no pardon or equivalent has been received under the Canadian Pardons and Foreign Pardons subsections, without the prior written approval of the Minister of PWGS. Where the ESCo has entered into a contract with an ineligible sub-consultant and for which no prior written approval has been received

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by Canada, the Minister of PWGS will declare the ESCo to be ineligible to contract with Canada for a period of five years.

**3) Delete in its entirety, GI 3 CONTRACTING AUTHORITY and replace with the following:  
GI 3 CONTRACTING AUTHORITY**

**1. The Contracting Authority is:**

Amalia Maquiling

Supply Team Leader, Acquisitions Branch

Public Works and Government Services Canada / Government of Canada

[amalia.maquiling@pwgsc-tpsgc.gc.ca](mailto:amalia.maquiling@pwgsc-tpsgc.gc.ca) / Tel: 819-956-5978

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.

**4) Delete in its entirety, Appendix A – Definitions and replace with the attached document.**

**No other changes apply**

## **DEFINITIONS**

In this Contract, unless the context otherwise requires,

"Administrative Agreement"

is a negotiated agreement with the Minister of PWGS as provided for in the [Ineligibility and Suspension Policy](#)

"Affiliate"

is a person, including, but not limited to, organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies or subsidiaries, whether partly or wholly-owned, as well as individuals, directors, officers and key employees if:

- i. one controls or has the power to control the other, or
- ii. a third party has the power to control both.

"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.

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

"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 (CO<sub>2</sub>) 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

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

"Control"  
means:

- a. direct control, such as where:
  - i. a person controls a body corporate if securities of the body corporate to which are attached more than 50 percent of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
  - ii. a person controls a corporation that is organized on a cooperative basis if the person and all of the entities controlled by the person have the right to exercise more than 50 percent of the votes that may be cast at an annual meeting or to elect the majority of the directors of the corporation;
  - iii. a person controls an unincorporated entity, other than a limited partnership, if more than 50 percent of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;
  - iv. the general partner of a limited partnership controls the limited partnership; and
  - v. a person controls an entity if the person has any direct or indirect influence that, if exercised, would result in control in fact of the entity.
- b. deemed control, such as where:  
a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity
- c. indirect control, such as where:  
a person is deemed to control, within the meaning of paragraph (a) or (b), an entity where the aggregate of:
  - i. any securities of the entity that are beneficially owned by that person, and
  - ii. any securities of the entity that are beneficially owned by any entity controlled by that person

is such that, if that person and all of the entities referred to in paragraph (c)(ii) that beneficially own securities of the entity were one person, that person would control the entity.

"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.

"Ineligibility"

means an ESCo not eligible to contract with Canada;

"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 (4<sup>th</sup> 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.

"Suspension"  
means a determination of temporary ineligibility by the Minister of PWGS;

"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) AHU       | Air Handling Unit   |
| 2) ASHRAE    | American Society for Heating, Refrigerating, and Air Conditioning Engineers |
| 3) CHP       | Central Heating Plant   |
| 4) DDC       | Direct Digital Control  |
| 5) EAR       | Energy Audit Report   |
| 6) EMCS      | Energy Monitoring Control System  |
| 7) EPCs      | Energy Performance Contracts  |
| 8) ESCo      | Energy Service Company  |
| 9) GHG       | Greenhouse Gas  |
| 10) GPP      | Guaranteed Payback Period   |
| 11) HVAC     | Heating Ventilation and Air Conditioning                                    |
| 12) MAU      | Make up Air Unit  |
| 13) MD       | Mechanical Division   |
| 14) MD 15000 | Mechanical Environmental Standard for Federal Office Buildings              |
| 15) MSDS     | Material Safety Data Sheets   |
| 16) OPA      | Ontario Power Authority   |
| 17) PCBs     | PolyChlorinatedBiphenols  |
| 18) PPM      | Parts per Million   |
| 19) PWGSC    | Public Works & Government Services Canada                                   |
| 20) RFP      | Request for Proposal  |
| 21) VAV      | Variable Air Volume   |
| 22) WHMIS    | Workplace Hazardous Materials Information System                            |

Add others if applicable