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Public Works and Government Services Canada
ATB Place North Tower
10025 Jasper Ave./10025 ave. Jaspe
5th floor/5e étage
Edmonton
Alberta
T5J 1S6
Bid Fax: (780) 497-3510

**SOLICITATION AMENDMENT
MODIFICATION DE L'INVITATION**

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

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

Comments - Commentaires

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

Issuing Office - Bureau de distribution

Public Works and Government Services Canada
ATB Place North Tower
10025 Jasper Ave./10025 ave Jasper
5th floor/5e étage
Edmonton
Alberta
T5J 1S6

Title - Sujet ICP Mass Spectrometer	
Solicitation No. - N° de l'invitation 23137-160566/A	Amendment No. - N° modif. 002
Client Reference No. - N° de référence du client 23137-160566	Date 2016-02-16
GETS Reference No. - N° de référence de SEAG PW-\$EDM-607-10653	
File No. - N° de dossier EDM-5-38207 (607)	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2016-02-29	
Time Zone Fuseau horaire Mountain Standard Time MST	
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: Jenkinson, Lorraine	Buyer Id - Id de l'acheteur edm607
Telephone No. - N° de téléphone (780) 497-3593 ()	FAX No. - N° de FAX (780) 497-3510
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction:	

Instructions: See Herein

Instructions: Voir aux présentes

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

TITLE: Inductively Coupled Plasma Mass Spectrometer (ICP MS) system

This solicitation amendment is to provide clarifications to the Request for Proposal (RFP).

Q2-1. We have some questions/clarifications with respect to clause 6.3.2 "Supplemental General Conditions":

1. Would Seller's compliance with its normal software and hardware maintenance processes suffice as "reasonable efforts" to provide Canada with a correction of a Software Error within the time frames established in subsections 2 and 3 [of 4003 15 (2008-05-12) Warranty]?
2. The Seller's software and hardware maintenance processes also does not apply to software procured through a Third Party; however, Seller would assign the maintenance and support received from the original software owners to Canada. Could this verbiage be inserted in the final contract as it had been for [a previous solicitation]?

A1-1. Canada will not qualify or further define the term "reasonable efforts". Reasonable efforts is defined in case law.

Q2-2. An error was discovered in the listing of **Supplemental General Conditions**.

DELETE: 6.3.2 Supplemental General Conditions

- (a) 4001 (2015-04-01) Hardware Purchase, Lease and Maintenance
 - (b) 4003 (2010-08-16) Licensed Software
- apply to and form part of the Contract.

INSERT: 6.3.2 Supplemental General Conditions

- (a) 4003 (2010-08-16) Licensed Software
 - (b) 4004 (2013-04-25), Maintenance and Support Services for Licensed Software
- apply to and form part of the Contract.

Q2-3. The following clause is added to **PART 6 - RESULTING CONTRACT CLAUSES**.

6.12 Intellectual Property Infringement and Royalties

6.12.1 The Contractor represents and warrants that, to the best of its knowledge, neither it nor Canada will infringe any third party's intellectual property rights in performing or using the Work, and that Canada will have no obligation to pay royalties of any kind to anyone in connection with the Work.

6.12.2 If anyone makes a claim against Canada or the Contractor concerning intellectual property infringement or royalties related to the Work, that Party agrees to notify the other Party in writing immediately. If anyone brings a claim against Canada, according to [*Department of Justice Act*](#), R.S., 1985, c. J-2, the Attorney General of Canada must have the regulation and conduct of all litigation for or against Canada, but the Attorney General may request that the Contractor defend Canada against the claim. In either case, the Contractor agrees to participate fully in the defence and any settlement negotiations and to pay all costs, damages and legal costs incurred or payable as a result of the claim,

including the amount of any settlement. Both Parties agree not to settle any claim unless the other Party first approves the settlement in writing.

- 6.12.3 The Contractor has no obligation regarding claims that were only made because:
- a. Canada modified the Work or part of the Work without the Contractor's consent or used the Work or part of the Work without following a requirement of the Contract; or
 - b. Canada used the Work or part of the Work with a product that the Contractor did not supply under the Contract (unless that use is described in the Contract or the manufacturer's specifications); or
 - c. the Contractor used equipment, drawings, specifications or other information supplied to the Contractor by Canada (or by someone authorized by Canada); or
 - d. the Contractor used a specific item of equipment or software that it obtained because of specific instructions from the Contracting Authority; however, this exception only applies if the Contractor has included the following language in its own contract with the supplier of that equipment or software: "[Supplier name] acknowledges that the purchased items will be used by the Government of Canada. If a third party claims that equipment or software supplied under this contract infringes any intellectual property right, [supplier name], if requested to do so by either [Contractor name] or Canada, will defend both [Contractor name] and Canada against that claim at its own expense and will pay all costs, damages and legal fees payable as a result of that infringement." Obtaining this protection from the supplier is the Contractor's responsibility and, if the Contractor does not do so, it will be responsible to Canada for the claim.
- 6.12.4 If anyone claims that, as a result of the Work, the Contractor or Canada is infringing its intellectual property rights, the Contractor must immediately do one of the following:
- a. take whatever steps are necessary to allow Canada to continue to use the allegedly infringing part of the Work; or
 - b. modify or replace the Work to avoid intellectual property infringement, while ensuring that the Work continues to meet all the requirements of the Contract; or
 - c. take back the Work and refund any part of the Contract Price that Canada has already paid.

If the Contractor determines that none of these alternatives can reasonably be achieved, or if the Contractor fails to take any of these steps within a reasonable amount of time, Canada may choose either to require the Contractor to do (c), or to take whatever steps are necessary to acquire the rights to use the allegedly infringing part(s) of the Work itself, in which case the Contractor must reimburse Canada for all the costs it incurs to do so.

If your bid has already been submitted, you may wish to revise it. Revisions to your bid must be submitted in a sealed envelope or by facsimile on which the content is clearly written. Any revisions to your bid must be received by the Bid Receiving Unit on or before the time and date stated on page 1 of this document. Any revisions to your bid received after the closing date and time will be considered late and will be returned unopened.