



**RETURN BIDS TO:**  
**RETOURNER LES SOUMISSIONS À:**  
Public Works Government Services Canada- Bid  
Receiving / Réception des soumissions  
189 Prince William Street  
Room 405  
Saint John  
New Brunswick  
E2L 2B9

**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**

All enquiries are to be submitted in writing to the Contracting Authority, Crystal Bysterveldt, either by facsimile or by e-mail at:  
crystal.bysterveldt@pwgsc.gc.ca.

<b>Title - Sujet</b> Trail Revitalization,Fundy Nat Park	
<b>Solicitation No. - N° de l'invitation</b> EC015-162780/A	<b>Date</b> 2016-05-06
<b>Client Reference No. - N° de référence du client</b> R.077924.001	
<b>GETS Reference No. - N° de référence de SEAG</b> PW-\$PWB-006-3886	
<b>File No. - N° de dossier</b> PWB-5-38241 (006)	<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 2016-06-08</b>	
<b>Time Zone</b> <b>Fuseau horaire</b> Atlantic Daylight Saving Time ADT	
<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> Bysterveldt, Crystal	<b>Buyer Id - Id de l'acheteur</b> pwb006
<b>Telephone No. - N° de téléphone</b> (902) 940-7122 ( )	<b>FAX No. - N° de FAX</b> (506) 636-4376
<b>Destination - of Goods, Services, and Construction:</b> <b>Destination - des biens, services et construction:</b> DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA Dominion Public Building 1045 MAIN ST MONCTON New Brunswick E1C1H1 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**

Public Works Government Services Canada- Bid  
Receiving / Réception des soumissions  
189 Prince William Street  
Room 405  
Saint John  
New Bruns  
E2L 2B9

<b>Delivery Required - Livraison exigée</b> See Herein	<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/ de l'entrepreneur (taper ou écrire en caractères d'imprimerie)</b>	
<b>Signature</b>	<b>Date</b>

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## **SPECIAL INSTRUCTIONS TO BIDDERS (SI)**

### **SI01 INTEGRITY PROVISIONS – DECLARATION OF CONVICTED OFFENCES**

As applicable, pursuant to GI01 of the Declaration of Convicted Offences, paragraph 10 of IB02 (copied below), the Bidder must provide with its bid, a completed [Declaration Form](#), to be given further consideration in the procurement process.

#### *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.*

### **SI02 INSUFFICIENT FUNDING**

In the event that the lowest compliant bid exceeds the amount of funding allocated for the Work, Canada in its sole discretion may

- a. cancel the solicitation; or
- b. obtain additional funding and award the Contract to the Bidder submitting the lowest compliant bid; and/or
- c. negotiate a reduction in the bid price and/or scope of work of not more than 15% with the Bidder submitting the lowest compliant bid. Should an agreement satisfactory to Canada not be reached, Canada shall exercise option (a) or (b).

### **SI03 WEB SITES**

The connection to some of the Web sites in the solicitation documents is established by the use of hyperlinks. The following is a list of the addresses of the Web sites:

Treasury Board Appendix L, Acceptable Bonding Companies <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494&section=text#appl>

Contracts Canada (Buy and Sell) <https://www.achatsetventes-buyandsell.gc.ca/eng/welcome>

Canadian economic sanctions <http://www.international.gc.ca/sanctions/index.aspx?lang=eng>

Contractor Performance Evaluation Report (Form PWGSC-TPSGC 2913) <http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/2913.pdf>

Bid Bond (form PWGSC-TPSGC 504) <http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/504.pdf>

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Schedules of Wage Rates for Federal Construction Contracts

[http://www.rhdcc-hrsdc.gc.ca/eng/labour/employment\\_standards/contracts/schedule/index.shtml](http://www.rhdcc-hrsdc.gc.ca/eng/labour/employment_standards/contracts/schedule/index.shtml)

PWGSC, Industrial Security Services <Http://ssi-iss.tpsgc-pwgsc.gc.ca/index-eng.html>

PWGSC, Code of Conduct and Certifications

<Http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html>

The forms referenced herein are available at the following Website:

<Http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/formulaires-forms-eng.html>

## Introduction

Public Works and Government Services Canada (PWGSC) is inviting qualified Design-Build (D-B) bidders to design and construct the enhancement and expansion of the specified trails outlined in the scope of work at Fundy National Park, New Brunswick.

The objective of this RFP is to retain an individual Contractor or Joint Venture to provide the complete design-build work for the enhancement and expansion of the specified trails outlined in the terms of reference at Fundy National Park, New Brunswick.

*IMPORTANT NOTICE: New measures related to Code of Conduct and certifications included in the solicitation documents requires attention.*

This is a single phase selection process. This RFP Document sets out the project requirement, i.e., the particulars of the project itself and the broad scope of services required from the Contractor.

Based upon their analysis of the project requirements and the capability/capacity of their firm, the bidders formulate bids for the service, including their price.

The bidders describe their capabilities and proposed services in the "Technical Portion" of the submission (Envelope One). The "Price Portion" includes the proposed price and bid security which is submitted in a sealed envelope (envelope two).

The Technical Portion of competitive bids are evaluated, without knowledge of the price, by the Technical Evaluation Board. Evaluation is based on a set of pre-established criteria, components and weight factors. Numerical technical scores are awarded at the completion of the technical evaluation.

Price envelopes are then opened for the technically qualified proposals. The responsive submission with the lowest price will be recommended for award of the contract.

## INSTRUCTIONS TO BIDDERS

### Glossary of Terms:

1. In this Request for Proposal (RFP), the following words or phrases have the corresponding meaning.

*Bidder Team:* The team consisting of the prime Contractor, prime consultant, specialists and other firms or Subcontractors, including the Bidder, proposed by the Bidder to perform or furnish all the Services, Documents, Labour, Material and Plant for the execution of the Work.

*Key Personnel:* Staff of the Contractor, Subcontractors and specialists proposed to be assigned to this project.

*Technical Rating:* A rating assigned to the technical component of a proposal in the selection procedure.

*Bidder:* The entity (or in the case of a joint venture, the entities) submitting a bid. The successful Bidder will be the Contractor upon award of Contract.

*Evaluation Board:* The board established to evaluate and rate proposals. Board members represent a broad cross-section of professional qualifications and experience.

*Applicable Taxes :* means the Goods and Services Tax (GST), the Harmonized Sales Tax (HST), and any provincial tax, by law, payable by Canada such as, the Quebec Sales Tax (QST) as of April 1, 2013.

*NOTE:* Where "Proposal" appears in this bid solicitation and the resulting contract, this means "Bid" in the context of the Terms, Conditions and Instructions.

## IB01 BID DOCUMENTS

1) The following are the bid documents:

- (a) Request for Proposals - Page 1;
- (b) Instructions to Bidders;
- (c) Clauses and Conditions identified in Contract documents;
- (d) Submission Requirements and Evaluation;
- (e) Price Form;
- (f) Terms of Reference; and
- (g) any amendments prior to solicitation closing

Submission of a bid constitutes acknowledgment that the Bidder has read and agrees to be bound by these documents.

## IB02 INTREGRITY PROVISIONS - BID (2016-04-04)

1. The *Ineligibility and Suspension Policy* (the "Policy") in effect on the date the bid solicitation is issued, and all related Directives in effect on that date, are incorporated by reference into, and form a binding part of the bid solicitation. The Bidder must comply with the Policy and Directives, which can be found at [Ineligibility and Suspension Policy](#).
2. Under the Policy, charges and convictions of certain offences against a Supplier, its affiliates or first tier subcontractors, and other circumstances, will or may result in a determination by Public Works and Government Services Canada (PWGSC) that the Supplier is ineligible to enter, or is suspended from entering into a contract with Canada. The list of ineligible and suspended Suppliers is contained in PWGSC's Integrity Database. The Policy describes how enquiries can be made regarding the ineligibility or suspension of Suppliers.
3. In addition to all other information required in the bid solicitation, the Bidder must provide the following:
  - a. by the time stated in the Policy, all information required by the Policy described under the heading "Information to be Provided when Bidding, Contracting or Entering into a Real Property Agreement"; and
  - b. with its bid, a complete list of all foreign criminal charges and convictions pertaining to itself, its affiliates and its proposed first tier subcontractors that, to the best of its knowledge and belief, may be similar to one of the listed offences in the Policy. The list of foreign criminal charges and convictions must be submitted using an Integrity Declaration Form, which can be found at [Declaration form for procurement](#).
4. Subject to subsection 5, by submitting a bid in response to this bid solicitation, the Bidder certifies that:
  - a. it has read and understands the [Ineligibility and Suspension Policy](#);
  - b. it understands that certain domestic and foreign criminal charges and convictions, and other circumstances, as described in the Policy, will or may result in a determination of ineligibility or suspension under the Policy;
  - c. it is aware that Canada may request additional information, certifications, and validations from the Bidder or a third party for purposes of making a determination of ineligibility or suspension;
  - d. it has provided with its bid a complete list of all foreign criminal charges and convictions pertaining to itself, its affiliates and its proposed first tier subcontractors that, to the best of its knowledge and belief, may be similar to one of the listed offences in the Policy;
  - e. none of the domestic criminal offences, and other circumstances, described in the Policy that will or may result in a determination of ineligibility or suspension, apply to it, its affiliates and its proposed first tier subcontractors; and
  - f. it is not aware of a determination of ineligibility or suspension issued by PWGSC that applies to it.

5. Where a Bidder is unable to provide any of the certifications required by subsection 4, it must submit with its bid a completed Integrity Declaration Form, which can be found at [Declaration form for procurement](#).
6. 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 a certification or declaration is found by Canada to be false or misleading in any respect. If Canada establishes after award of the Contract that the Bidder provided a false or misleading certification or declaration, Canada may terminate the Contract for default. Pursuant to the Policy, Canada may also determine the Bidder to be ineligible for award of a contract for providing a false or misleading certification or declaration.

### **IB03 CONFLICT OF INTEREST - UNFAIR ADVANTAGE**

1. In order to protect the integrity of the procurement process, bidders are advised that Canada may reject a bid in the following circumstances:
  - (i) 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;
  - (ii) 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 bid 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 bid, 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.

### **IB04 COMPLETION OF BID**

- 1) The bid shall:
  - a) be submitted on the bid Form provided through the Government Electronic Tendering Service (GETS) or on a clear and legible reproduced copy of said Bid Form; the reproduced copy must be identical in every respect to the Bid Form provided through GETS;
  - b) not be delivered to the Bid Receiving Unit by means of facsimile transmission; facsimile copies of bids are not acceptable;
  - c) be based on the bid documents listed above;
  - d) be correctly completed in all respects;
  - e) be signed by a duly authorized representative of the Bidder; and
  - f) be accompanied by
    - i) the bid security as specified herein; and
    - ii) any other document or documents specified elsewhere in the solicitation where it is stipulated that said documents are to accompany the bid.

- 2) Any alteration to the preprinted or pre-typed sections of the Bid Form, or any condition or qualification placed upon the bid shall be direct cause for disqualification. Alterations, corrections, changes or erasures made to statements or figures entered on the Bid Form by the Bidder shall be initialed by the person or persons signing the bid. Initials shall be original(s). Alterations, corrections, changes or erasures that are not initialed shall be deemed void and without effect.
- 3) 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, including significant enquiries received and their replies, 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.

#### **IB05 IDENTITY OR LEGAL CAPACITY OF THE BIDDER**

- 1) In order to confirm the authority of the person or persons signing the bid or to establish the legal capacity under which the Bidder proposes to enter into Contract, any Bidder who carries on business in other than its own personal name shall, if requested by Canada, provide satisfactory proof of (a) such signing authority; and (b) the legal capacity under which it carries on business; prior to contract award. Proof of signing authority may be in the form of a certified copy of a resolution naming the signatory(ies) that is (are) authorized to sign this bid on behalf of the corporation or partnership. Proof of legal capacity may be in the form of a copy of the articles of incorporation or the registration of the business name of a sole proprietor or partnership

#### **IB06 SUBMISSION OF BID**

- 1) Bids are submitted following a "two envelope" procedure, in which bidders submit the "technical" components of their bid in one envelope and the proposed price, including bid security, in a second envelope. The Bid shall be addressed and submitted to the office designated for the receipt of bids. It must be received on or before the date and time set for bid closing.

Submissions are to be addressed to:

**Bid Receiving Unit, Public Works and Government Services Canada  
189 Prince William Street  
Room 405  
Saint John, NB E2L 2B9**

- 2) Prior to submitting the bid, the Bidder shall ensure that the following information is clearly printed or typed in the appropriate spaces on the face of the bid return envelope:
  - a) Solicitation Number
  - b) Description/Location
  - c) Name of Bidder
  - d) Closing Time/Date
- 3) Failure to comply with IB03.1 and IB03.2 may render the bid liable to disqualification.
- 4) To be considered responsive, a bid must meet all of the mandatory requirements set out in the RFP. No further consideration in the selection procedure will be given to a Bidder submitting a non-responsive bid

## **IB07 REVISION OF BIDS**

A bid submitted in accordance with these instructions may be revised by letter or facsimile provided the revision is received at the office designated for the receipt of bids, on or before the date and time set for the closing of bid. The facsimile must be on the Bidder's letterhead or bear a signature that identifies the Bidder. A revision to a unit price bid must clearly identify the change(s) in the unit price(s) and the specific item(s) to which each change applies. **Facsimile # (506) 636-4376**

## **IB08 CAPITAL DEVELOPMENT AND REDEVELOPMENT CHARGES**

For the purposes of GC1.8, of R2810T "Laws, Permits and Taxes", in the General Conditions of the Contract, only fees or charges directly related to the processing and issuing of building permits shall be included. The Bidder shall not include any monies in the bid amount for special municipal development, redevelopment or other fees or charges which a municipal authority may seek as a prerequisite to the issuance of building permits.

## **IB09 PRICE**

- 1) Unless specified otherwise elsewhere in the bid documents:
  - (a) the bid price shall be in Canadian currency, and
  - (b) the bid price shall not include any amount for the Goods and Services Tax (GST) or the Harmonized Sales Tax (HST) as may be applicable, and
  - (c) exchange rate fluctuation protection is not offered, and
  - (d) any request for exchange rate fluctuation protection will not be considered, and will render the bid non-responsive.

## **IB10 LICENSING REQUIREMENTS**

- 1) Bidder Team members and Key Personnel shall be, or be eligible to be licensed, certified or otherwise authorized to provide the necessary professional services to the full extent that may be required by provincial or territorial law in the Province or Territory in which the project is located.
- 2) By virtue of submission of a bid, the Bidder certifies that the Bidder's team and Key Personnel are in compliance with the requirements of paragraph 1. The Bidder's Bidder Team acknowledges that Canada reserves the right to verify any information in this regard and that false or erroneous certification may result in the bid being declared non-responsive.

## **IB11 COMPOSITION OF TEAM**

- 1) By submitting a bid, the Bidder represents and warrants that the entities and persons proposed in the bid to perform the required services will be the entities and persons that will perform the services in the fulfillment of the project under any contractual arrangement arising from submission of the bid. If the Bidder has proposed any person in fulfillment of the project who is not an employee of the Bidder, the Bidder warrants that it has written permission from such person (or the employer of such person) to propose the services of such person in relation to the services to be performed

## **IB12 LISTING OF SUBCONTRACTOR AND SUPPLIERS**

- 1) Notwithstanding any list of Subcontractors that the Bidder may be required to submit as part of the bid, the Bidder shall, within 48 hours of receipt of a notice to do so, submit all information requested in the said notice including the names of Subcontractors and Suppliers for the part or parts of the Work listed. Failure

to do so shall result in the disqualification of its bid. Once named, the successful Contractor may not substitute one Subcontractor for another without written approval from Canada.

### **IB13 FINANCIAL STATEMENTS**

- 1) In order to confirm a Bidder's financial capability to perform the subject requirement, the Contracting Authority reserves the right to have access, during the bid evaluation, to current Bidder financial information. If requested, the financial information to be provided shall include, but not be limited to, the Bidder's most recent audited financial statements or financial statements certified by the Bidder's chief financial officer.
- 2) Should the Bidder provide the requested information to Canada in confidence while indicating that the disclosed information is confidential, then Canada will treat the information in a confidential manner as provided in the Access to Information Act.
- 3) In the event that a bid 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.

### **IB14 LANGUAGE OF THE BID AND CONTRACT DOCUMENTS**

- 1) The Contract documents shall be in the same official language (English or French) as the language of the bid submitted.

### **IB15 REJECTION OF BID**

1. Canada may accept any bid, whether it is the lowest or not, or may reject any or all bids.
2. Without limiting the generality of paragraph 1) of IB15, Canada may reject a bid if any of the following circumstances is present:
  - a. the Bidder's bidding privileges are suspended or are in the process of being suspended;
  - b. the bidding privileges of any employee or subcontractor included as part of the bid are suspended or are in the process of being suspended, which suspension or pending suspension would render that employee or subcontractor ineligible to bid on the Work, or the portion of the Work the employee or subcontractor 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 or any subcontractor included as part of its bid;
  - e. evidence satisfactory to Canada that based on past conduct or behavior, the Bidder, a sub-contractor or a person who is to perform the Work is unsuitable or has conducted himself/herself improperly;
  - f. with respect to current or prior transactions with Canada
    - i. Canada has exercised, or intends to exercise, the contractual remedy of taking the work out of the contractor's hands with respect to a contract with the Bidder, any of its employees or any subcontractor included as part of its bid; or
    - ii. Canada determines that the Bidder's performance on other contracts is sufficiently poor to jeopardize the successful completion of the requirement being bid on.
3. In assessing the Bidder's performance on other contracts pursuant to subparagraph 2)(f)(ii) of IB15, Canada may consider, but not be limited to, such matters as:
  - a. the quality of workmanship in performing the Work;
  - b. the timeliness of completion of the Work;

- c. the overall management of the Work and its effect on the level of effort demanded of the department and its representative; and
  - d. the completeness and effectiveness of the Contractor's safety program during the performance of the Work.
4. Without limiting the generality of paragraphs 1), 2) and 3) of IB15, Canada may reject any bid based on an unfavourable assessment of the
    - a. adequacy of the bid price to permit the work to be carried out and, in the case of a bid providing prices per unit, whether each such price reasonably reflects the cost of performing the part of the work to which that price applies;
    - b. Bidder's ability to provide the necessary management structure, skilled personnel, experience and equipment to perform competently the work under the Contract; and
    - c. Bidder's performance on other contracts.
  5. Where Canada intends to reject a bid pursuant to a provision of paragraphs 1), 2), 3) or 4) of IB15, other than subparagraph 2)(a) of IB15, the contracting Authority will inform the Bidder and provide the Bidder ten (10) days within which to make representations, before making a final decision on the bid rejection.
  6. Canada may waive informalities and minor irregularities in bids received if Canada determines that the variation of the bid from the exact requirements set out in the Bid Documents can be corrected or waived without being prejudicial to other Bidders.

#### **IB16 ENQUIRIES DURING THE SOLICITATION PERIOD**

- 1) Enquiries regarding the bid must be submitted in writing to the Contracting Officer named on the front page of the Request for Proposal as early as possible within the bidding period. Enquiries should be received no later than 7 calendar days prior to the date set for bid closing to allow sufficient time to provide a response. Enquiries received after that time may not result in an answer being provided.
- 2) To ensure consistency and quality of the information provided to bidders, the Contracting Officer will examine the content of the enquiry and will decide whether or not to issue an amendment to the Bid Documents.
- 3) All enquiries and other communications sent throughout the bidding period are to be directed ONLY to the Contracting Officer named on the front page of the Request for Proposal. Failure to comply with this requirement may result in the bid being declared non-responsive.

#### **IB17 BID SECURITY REQUIREMENTS (2015-07-13)**

1. The Bidder shall submit bid security with the bid in the form of a bid bond or a security deposit in an amount that is equal to not less than 10 percent of the bid amount. Applicable Taxes shall not be included when calculating the amount of any bid security that may be required. The maximum amount of bid security required with any bid is \$2,000,000.
2. A bid bond (form [PWGSC-TPSGC 504](#)) shall be in an approved form, properly completed, with original signatures and issued by an approved company whose bonds are acceptable to Canada either at the time of solicitation closing or as identified in Treasury Board Appendix L, [Acceptable Bonding Companies](#).
3. A security deposit shall be an original, properly completed, signed where required and be either
  - a. a bill of exchange, bank draft or money order made payable to the Receiver General for Canada and certified by an approved financial institution or drawn by an approved financial institution on itself; or
  - b. bonds of, or unconditionally guaranteed as to principal and interest by, the Government of Canada.
4. For the purposes of subparagraph 3. a. of IB17
  - a. a bill of exchange is an unconditional order in writing signed by the Bidder and addressed to an approved financial institution, requiring the said institution to pay, on demand, at a fixed or determinable future time a sum certain of money to, or to the order of, the Receiver General for Canada;

- b. if a bill of exchange, bank draft or money order is certified by or drawn on an institution or corporation other than a chartered bank, it must be accompanied by proof that the said institution or corporation meets at least one of the criteria described in subparagraph 4.c. of IB17, either by letter or by a stamped certification on the bill of exchange, bank draft or money; and
- c. An approved financial institution is
  - i. a corporation or institution that is a member of the Canadian Payments Association as defined in the [Canadian Payments Act](#);
  - ii. a corporation that accepts deposits that are insured, to the maximum permitted by law, by the Canada Deposit Insurance Corporation or the "Autorité des marchés financiers";
  - iii. a corporation that accepts deposits from the public if repayment of the deposit is guaranteed by Her Majesty the Queen in right of a province;
  - iv. a corporation, association or federation incorporated or organized as a credit union or co-operative credit society that conforms to the requirements of a credit union which are more particularly described in paragraph 137(6) of the [Income Tax Act](#); or
  - v. Canada Post Corporation.
5. Bonds referred to in subparagraph 3. b. of IB17 shall be provided on the basis of their market value current at the date of solicitation closing, and shall be
  - a. payable to bearer;
  - b. accompanied by a duly executed instrument of transfer of the bonds to the Receiver General for Canada in the form prescribed by the Domestic Bonds of Canada Regulations; or
  - c. registered as to principal or as to principal and interest in the name of the Receiver General for Canada pursuant to the Domestic Bonds of Canada Regulations.
6. As an alternative to a security deposit an irrevocable standby letter of credit is acceptable to Canada and the amount shall be determined in the same manner as a security deposit referred to above.
7. An irrevocable standby letter of credit referred to in paragraph 8) of IB17 shall
  - a. be an arrangement, however named or described, whereby a financial institution (the "Issuer") acting at the request and on the instructions of a customer (the "Applicant") or on its own behalf,
    - i. is to make a payment to, or to the order of, the Receiver General for Canada as the beneficiary;
    - ii. is to accept and pay bills of exchange drawn by the Receiver General for Canada;
    - iii. authorizes another financial institution to effect such payment or accept and pay such bills of exchange; or
    - iv. authorizes another financial institution to negotiate against written demand(s) for payment provided that the terms and conditions of the letter of credit are complied with;
  - b. state the face amount which may be drawn against it;
  - c. state its expiry date;
  - d. provide for sight payment to the Receiver General for Canada by way of the financial institution's draft against presentation of a written demand for payment signed by the Departmental Representative identified in the letter of credit by his/her office;
  - e. provide that more than one written demand for payment may be presented subject to the sum of those demands not exceeding the face value of the letter of credit;
  - f. provide that it is subject to the International Chamber of Commerce (ICC) *Uniform Customs and Practice (UCP) for Documentary Credits, 2007 Revision*, ICC Publication No. 600, Pursuant to the ICC UCP, a credit is irrevocable even if there is no indication to that effect; and



## **IB21 PERFORMANCE EVALUATION**

- 1) Bidders shall take note that the performance of the Contractor during and upon completion of the work shall be evaluated by Canada. The evaluation will be based on the quality of workmanship; timeliness of completion of the work; project management, contract management and management of health and safety. Should the Contractor's performance be considered unsatisfactory, the Contractor's bidding privileges on future work may be suspended indefinitely.

The form PWGSC-TPSGC 2913

(<http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/2913.pdf>),

SELECT- Contractor Performance Evaluation report form, is used to record the performance.

## **IB22 BID COSTS**

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

## **IB23 PROCUREMENT BUSINESS NUMBERS**

- 1) Bidders are required to have a Procurement Business Number (PBN) before Contract award. Bidders may register for a PBN in the Supplier Registration Information system on the Contracts Canada Web site. For non-Internet registration, Bidders may contact the nearest Supplier Registration Agent.

## **IB24 BID VALIDITY PERIOD**

- 1) Canada reserves the right to seek an extension to the bid validity period beyond the **60 days** referred to therein. Upon notification in writing from Canada, the Bidders shall have the option to either accept or reject the proposed extension.
- 2) If the extension referred to in IB24.1 is accepted, in writing, by all those who submitted responsive bids, then Canada shall continue immediately with the evaluation of the bids and its approvals processes.
- 3) If the extension referred to in IB24.1 is not accepted, in writing, by all those who submitted responsive bids then Canada shall, at its sole discretion, either
  - a) continue to evaluate the bids of those who have accepted the proposed extension and seek the necessary approvals; or
  - b) cancel the RFP.
- 4) The provisions expressed herein do not in any manner limit Canada's rights in law or under Section 15 of the Instructions to Bidders.

## **IB25 DELAYED BIDS**

1. A bid delivered to the specified bid receiving unit after the closing date and time but before the contract award date may be considered, provided the bidder can prove the delay is due solely to a delay in delivery that can be attributed to the Canada Post Corporation (CPC) (or national equivalent of a foreign country). Purolator Inc. is not considered to be part of CPC for the purposes of delayed bids. The only pieces of evidence relating to a delay in the CPC system that are acceptable to PWGSC are:
  - a) a CPC cancellation date stamp; or
  - b) a CPC Priority Courier bill of lading; or
  - c) a CPC Xpresspost labelthat clearly indicates that the bid was mailed before the bid closing date.

2. Misrouting, traffic volume, weather disturbances, labour disputes or any other causes for the late delivery of bids are not acceptable reasons for the bid to be accepted by PWGSC.
3. Postage meter imprints, whether imprinted by the Bidder, the CPC or the postal authority outside Canada, are not acceptable as proof of timely mailing.

#### **IB26 NOTIFICATION**

- 1) Canada normally expects to advise in writing unsuccessful bidders within one week after entering into a contractual arrangement with the successful Bidder.

#### **IB27 DEBRIEFING**

- 1) A debriefing will be provided, on request, only following entry by Canada into a contractual arrangement with the successful Bidder. Should a Bidder desire a debriefing, the Bidder should contact the person identified on the front page of the RFP 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.

#### **IB28 LIMITATION OF SUBMISSIONS**

1. While there is no requirement for firms to participate in this procurement in joint venture, they may elect to do so if they see fit. However, only one submission per Proponent will be accepted, whether it is submitted by a firm as an individual Proponent or by that firm as part of a joint venture Proponent. If more than one submission is received from a firm acting either individually or in joint venture, all such submissions shall be rejected and no further consideration shall be given to the firm or to any proposed joint venture of which the firm forms a part.
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 Proponent who may retain a Designer or Builder, sub-consultants and/or specialist consultants and sub-contractors to perform portions of the Work is not a joint venture arrangement. In this case, Designers or Builders, sub-consultant or specialist consultant firms may be named as part of the Design-Builder's Team by more than one Proponent.
4. Notwithstanding paragraph 3. above, in order to avoid any conflict of interest, or any perception of conflict of interest, no firm acting as an individual Proponent or as part of a joint venture Proponent, shall be proposed as a member of another Proponent's Team, either as a Designer or Builder, sub-consultant or specialist consultant. Failure to comply with this limitation will result in all submissions so involved being rejected. In addition, the Designer or Builder named by one Proponent may not act as the Designer or Builder for another Proponent.
5. The Phase Two portion of the proposal must be made in the same name as the entity named as the Proponent in the Phase One portion. Proponents must utilize, in the preparation of their Phase Two proposal, the same Design-Builder's Team, firms and individuals, named in the Phase One proposal.
6. Any joint venture entered into for the provision of the Work 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.

## IB29 COMPOSITION OF DESIGN-BUILDER'S TEAM

1. By submitting a proposal, the Proponent represents and warrants that the entities and persons proposed in the proposal to perform and execute the Work will be the entities and persons that will perform and execute the Work in the fulfillment of the project under any contractual arrangement arising from the submission of the proposal. If the Proponent has proposed any person in fulfillment of the project who is not an employee of the Proponent, the Proponent warrants that it has written permission from such person (or the employer of such person) to propose the services of such person in relation to the Work to be performed.

## Submission Requirements and Evaluation (SRE's)

### SECTION 1: BID FORM AND CONTENT REQUIREMENTS

Canada is seeking bids specific to this project. The bid must demonstrate an analytical and creative response to the specific nature of the project as set out in the Terms of Reference.

The bid submission itself shall comprise two parts, *Part 1 - Technical Portion* and *Part 2 - Price Portion*.

#### ***Part 1 - "Technical Portion":***

Contains the material necessary to represent the technical content of the bid called for in the Request for Proposal document (which includes the Terms of Reference), in a concise and comprehensive manner. It is to be organized as per the Technical Criteria detailed in Section 3 (below).

No reference to "PRICE" is to be included in the "TECHNICAL" portion of the submission

#### ***Part 2 - "Price Portion":***

Contains the bid price to perform all required Work. Complete one copy only of the Bid Price Form (Annex C), and enclose it together with the bid security in a separate sealed envelope clearly marked with the Bidder's name and the project identification. It is mandatory that the Bid Price Form be used for this purpose.

Provide **one (1) bound and signed original, six (6) bound copies and one (1) CD containing electronic copies in PDF, MS Word and Autocad format of Part 1 - Technical Portion; and one (1) signed original of Part 2 -Price Portion.**

Bidders should not submit promotional materials as part of their submissions and are strongly encouraged,

- a) not to submit information that is not required;
- b) to be succinct in their submissions;
- c) to mark each page of their submissions with page numbers.

**The maximum number of pages (including text and graphics) for the Technical Portion is forty (40) pages. Double-sided submissions are preferred. The following format should be implemented.**

One (1) 'page' means one side of a sheet of paper  
Paper size - 8.5"x11" (metric equivalent A4)  
Font size - minimum 10 pt Times New Roman or equal on all documents including charts etc.  
Margin widths - minimum 12 mm  
11"x17" fold-out sheets for spreadsheets, schedules, Gantt Charts, WBS, organization charts etc. will be counted as two pages.

The following are not part of the page limitation mentioned herein;

- Covering letter
  - Table of Contents
  - Front page of the RFP
  - Front page of revision(s) to the RFP
  - Bid Price Form (Annex C)
  - Team Identification (Annex A)
  - Bidder Declaration Form (Annex B)
  - Section Dividers not containing text
- 
- Bidder Identification, Certifications and Bid Security.

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

## **SECTION 2: SELECTION**

Canada will evaluate the submissions received and such evaluation will be based on the following factors:

- a) compliance with the terms and conditions of this solicitation;
- b) the cost representing best value for a technically compliant bid to Canada for the Work;
- c) assessment of all technical documentation and information for technical compliance;

To be considered responsive, a submission must:

- a) meet all the mandatory requirements of this solicitation; and
- b) obtain the required minimum pass mark of **50%** in each Technical Criteria and achieve a minimum total score of **70%** of the available points for the Technical Criteria specified. The technical rating is performed on a scale of **100** points.

Submissions not meeting (a) or (b) above will be given no further consideration. Only those responsive proposals achieving a minimum Total Technical Points rating of 70/100 will have their Bid Price Form envelopes opened and be eligible for further consideration.

The responsive bid with the lowest evaluated price will then be recommended for award of a contract.

The evaluated price will be as identified in "Annex C, Bid Price Form".

## **SECTION 3: TECHNICAL EVALUATION**

### **Point Rated Criteria:**

The *Part 1 - Technical Portion* part of the bid will be evaluated by the Evaluation Board under the technical criteria listed in the Evaluation Criteria Table and as further explained in the Submission Requirements (both below).

The information will be rated from 1 to 10 for each Technical Criteria. The rating is then multiplied by a weight factor. The technical score is obtained by adding the sum of the weighted ratings.

## Evaluation Criteria Table

Technical Evaluation Criterion	Criterion weight factor	Rating	Technical Points Rating
<b>1. Design-Build Capability and Experience</b>	4	0-10	0-40
<b>2. Understanding the project</b>	4	0-10	0-40
<b>3. Work Breakdown Structure and Schedule</b>	2	0-10	0-20
<b>Total for technical portion</b>			0-100

## Submission Requirements

### Category 1 - Design-Build Capability and Experience (Max. 40 Points)

1. The Design Build Services will include Design Management work and General Contracting Work. The Bidder should describe their area of specialization and give Design Build experience related to two (2) similar projects completed in the last 5 years. Describing:

- a. How the two (2) projects were similar to the Fundy Trails project
- b. How budget, schedule and quality were managed
- c. How requirements of site safety and site security were addressed
- d. A description of materials and equipment used
- e. Design and construction firms involved and description of construction costs and budget

2. Provide client contact references including phone numbers for the referenced projects. The Evaluation Board reserves the right to contact the references.

3. As an Annex (Team Identification) to the *Technical Portion*, identify the individuals/firms comprising the Design Build team (by role and certification) and clearly describe the experience and responsibility of each member of the proposed team in relation to projects identified in the *Technical Portion* of the submission.

### Category 2. Understanding the Project (Max. 40 Points)

1. Demonstrate understanding of the project in terms of scope, site restrictions, coordination with PCA, access, timeline, schedule, time of year, phasing of construction, waste and environmental management, site safety and security, and a federal project delivery.

2. Demonstrate the compliance with the requirements of the Terms of Reference.

Note: Bidders are not to repeat the text of the RFP (word for word) when responding. **Category 3 Work Breakdown Structure and Schedule (Max. 20 Points)**

Provide work breakdown structure (WBS) in the form of a Gantt Chart for the project demonstrating how the Bidder plans to execute the Work. Identify key phases such as, hydrological assessment, design, bridge construction, construction phasing, substantial completion and warrantee. Highlight how phasing will be coordinated to ensure continued use of public trails.

#### **SECTION 4: MANDATORY SUBMISSION REQUIREMENTS**

To be considered compliant, a submission must meet all of the mandatory evaluation criteria. **Submissions not meeting all of the mandatory requirements will be given no further consideration. The Bidder must:**

1. Submit the bid to the Bid Receiving Unit prior to the closing date and time indicated on the front page of the solicitation document;
2. Team Identification (Annex A) – The design team must include a civil engineer and structural engineer licensed to practice in the province of New Brunswick. The construction team must include at least one(1) member with provincially-certified chainsaw safety training.
3. Complete and submit signed Declaration Form (Annex B);
4. Provide Bid Price Form (Annex C) and,
5. Bid Security per IB17 of the Instructions to Bidders;

#### **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 submission requirements.

##### **Technical Portion Submission:**

- **Proposal - one (1) original, plus six (6) bound copies, plus one (1) CD**
- **Note: the maximum number of pages (including text and graphics) to be submitted for the Technical Portion is 40 pages**
- **Front page of RFP - acknowledged**
- **Front page(s) of any solicitation amendment(s) - acknowledged**
- **Bid Price Form (in a separate envelope) - completed and signed**
- **Bid Security included with Bid Price Form (Annex C)**
- **Complete and submit signed Declaration Form (Annex B)**
- **Team Identification (Annex A);**

**ANNEX A: TEAM IDENTIFICATION FORMAT (page 1 of 1)**

The Design Firms' architects and engineers shall be, or eligible to be, licensed, certified or otherwise authorized to provide the necessary professional services to the full extent that may be required by provincial or territorial law.

**Proponent:**

Proponent's Name: .....

**Builder:**

Name of Builder's Firm: .....

Name of Builder's Project Manager: .....

Name of Builder's Site Superintendent: .....

**Structural Engineering Design Firm:**

Name of Structural Engineering Design Firm:.....

Name of Structural Project Engineer:.....

Provincial licensing status(if applicable): .....

**Civil Engineering Design Firm:**

Name of Civil Engineering Design Firm: .....

Name of Civil Project Engineer:.....

Provincial licensing status: .....

**One (1) member with provincially-certified chainsaw safety training:**

.....

**ANNEX B: DECLARATION FORM (page 1 of 2)**

Name of Proponent: \_\_\_\_\_

Procurement Business Number (PBN): \_\_\_\_\_

Street Address: \_\_\_\_\_ Mailing Address (if different than street address)  
\_\_\_\_\_

City: \_\_\_\_\_ City: \_\_\_\_\_

Prov./Terr./State: \_\_\_\_\_ Prov./Terr./State: \_\_\_\_\_

Postal/ZIP Code: \_\_\_\_\_ Postal/ZIP Code: \_\_\_\_\_

Telephone Number: ( ) Fax Number: ( ) \_\_\_\_\_

E-Mail : \_\_\_\_\_

Type of Organization:

- Sole Proprietorship  Incorporated Joint Venture
- Partnership  Limited Partnership Joint Venture
- Corporation  Partnership Joint Venture
- Contractual Joint Venture

This Request for Proposal (RFP) Declaration Form must form part of any proposal. Failure to include such representation and warranty with the proposal by executing the signature block below will render the proposal as non-responsive. The completed form should be included with your Phase One Proposal.

Education, Professional Accreditation and Experience:

All statements made with regard to the education, professional accreditation and the experience of individuals proposed for providing services under the Standing Offer are accurate and factual, and we are aware that the Minister reserves the right to verify any information provided in this regard and that untrue statements may result in the proposal being declared non-responsive. Should a verification by the Minister disclose untrue statements, the Minister shall have the right to treat any Standing Offer resulting from this solicitation as being in default and to terminate it accordingly.

**ANNEX B: DECLARATION FORM (page 2 of 2)**

**DECLARATION:**

**I, the undersigned, being a principal of the Proponent, hereby certify that the information given on this form and in the attached Proposal is accurate to the best of my knowledge.**

**Name (print):** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Telephone Number: ( )** \_\_\_\_\_

**Telephone Number: ( )** \_\_\_\_\_

**Fax Number: ( )** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

**Date:** \_\_\_\_\_

PWGSC contact will be with the above named person

## **ANNEX C: BID PRICE FORM**

This Bid Price Form, duly completed, the signed front page of the RFP, and the requisite bid security shall be enclosed and sealed in an envelope provided by the Bidder, and shall be addressed and submitted to the office designated for the receipt of bids.

---

### 1.1 Project Identification

Project Name: Trail Revitalization Project

Project Location: Fundy National Park, New Brunswick

Solicitation Number : EC015-162780/A

### 1.2 Business Name and Address of Bidder

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_ PBN: \_\_\_\_\_

Email: \_\_\_\_\_

### 1.3 Offer

The Bidder, hereby offers to Canada to perform and complete the work for the above named project in accordance with the Scope of Work (Annex E), at the place and in the manner set out therein for the Total Price (to be expressed in numbers only) of:

#### **Total Evaluated Price**

\$ \_\_\_\_\_ excluding GST/HST

### 1.4 Fixed Fee Schedule For Design and Construction Services and Changes

.1 Canada understands that the dollar amounts entered in the "Price to Complete" column of the Unit Pricing Table 1.4 are provided for the information and guidance of the persons managing and administering any subsequent contract and agrees that each individual Price to Complete may, from time to time, have to be adjusted as the plans and specifications are further developed. It is also understood that the OFFER in 1.3 above is a firm price and will only be adjusted as and when provided for in the Terms and Conditions of the Contract.

Item/ Map Ref. No.	Description of Work	Price to Complete
	<b>COASTAL TRAIL COMPONENTS</b>	
1	<b>Fundy Footpath Connector:</b>	
2	Trail tread construction	\$
3	Construct switchbacks	\$
4	Trail closure & reclamation	\$
	<b>Goose River trail restoration leading from Goose River campsites:</b>	
5	Re-grade(narrow) trail tread	\$
6	Construct grade reversals	\$
7	Culverts	\$
	<b>New Goose River trail segment along coast:</b>	
8	Trail Corridor construction	\$
9	Wet water crossings	\$
10	Timber bridges	\$
11	Culverts	\$
	<b>Emergency Trail Erosion Repair at Goose River Trail(former Road):</b>	
12	Trail tread construction	\$
13	Re-grade trail corridor	\$
14	Culverts	\$
15	Re-grade existing ditches	\$
	<b>Water Crossing Replacement at Goose River Trail(former Road):</b>	
16	Construct temporary water crossings;	\$
	<b>Coppermine trail(lower segment):</b>	
17	Trail tread construction	\$
18	Culverts	\$
19	Remove existing timber bridge– replace with wet water crossing	\$
	<b>New Coppermine Trail(upper segment to Mile Brook Campsite):</b>	
20	Trail corridor construction	\$
21	Construct climbing turns	\$
	<b>Restoration of Coppermine trail(upper segment):</b>	
22	Timber bridge replacement	\$
23	Restoration of trail corridor	\$
24	Construct grade reversals	\$
25	Trail corridor construction	\$
	<b>UPPER SALMON RIVER WATERSHED COMPONENTS</b>	
26	<b>Restoration of north portion, Upper Salmon River Trail:</b>	
27	Widen existing trail tread	\$
28	Trail corridor construction	\$
	<b>Laverty Falls Trail Re-Alignment:</b>	
29	Trail corridor construction	\$
30	Wet trail or raised bed crossings	\$
31	Construct climbing turns and/or switchbacks as required	\$
32	Trail closure & reclamation	\$
	<b>Moosehorn Trail Re-Alignment:</b>	

33	Trail corridor construction	\$
34	Timber water crossing	\$
35	Construct climbing turns and/or switchbacks as required	\$
36	Trail closure & reclamation	\$
	<b>Broad River Trail:</b>	
37	Trail corridor construction	\$
38	Culverts	\$
	<b>SOUTH CHIGNECTO COMPONENTS</b>	
39	<b>White Tail Trail Re-route:</b>	
40	Trail corridor construction	\$
41	wet water crossings	\$
42	Construct grade reversals	\$

1.5 Acceptance and Contract

Upon acceptance of the Bidder's offer by Canada, a binding Contract shall be formed between Canada and the Bidder. The documents forming the Contract shall be the contract documents identified in Contract Documents.

1.6 Construction Time

The Bidder agrees to complete the work by December 1, 2017.

1.7 Bid Security

The Bidder is enclosing bid security with its bid in accordance with IB17 of the Instructions to Bidders.

1.8 Bid Validity Period

The bid shall not be withdrawn for a period of **60** days following the date of solicitation closing.

1.9 Signature of Bidder or Joint Venture

\_\_\_\_\_  
Name and title of person authorized to sign on behalf of Bidder or Joint Venture (Type or print)

\_\_\_\_\_  
Signature Capacity

\_\_\_\_\_  
Name and title of person authorized to sign on behalf of Bidder or Joint Venture (Type or print)

\_\_\_\_\_  
Signature Capacity

**END OF BID PRICE FORM**

## **ANNEX D: TERMS AND CONDITIONS**

### **TERMS OF AGREEMENT**

A1 Contract Documents

A2 The Work

### **GENERAL CONDITIONS**

#### **GC1 GENERAL PROVISIONS**

- GC1.1 Interpretation
- GC1.2 Contract Documents
- GC1.3 Status of the Contractor
- GC1.4 Rights and Remedies
- GC1.5 Time of the Essence
- GC1.6 Indemnification by Contractor
- GC1.7 Indemnification by Canada
- GC1.8 Laws, Permits and Taxes
- GC1.9 Workers' Compensation
- GC1.10 National Security
- GC1.11 Public Ceremonies and Signs
- GC1.12 Conflict of Interest
- GC1.13 International Sanctions
- GC1.14 Certification - Contingency Fees
- GC1.15 Agreements and Amendments
- GC1.16 Unsuitable Workers
- GC1.17 Assignment
- GC1.18 Rights to Intellectual Property
- GC1.19 No Bribe
- GC1.20 Succession
- GC1.21 Integrity Provisions – Contract
- GC1.22 Code of Conduct for Procurement - Contract

#### **GC2 ADMINISTRATION OF THE CONTRACT**

- GC2.1 Departmental Representative's Authority
- GC2.2 Interpretation of Contract
- GC2.3 Notices
- GC2.4 Site Meetings
- GC2.5 Review and Inspection of Work
- GC2.6 Superintendent
- GC2.7 Non-discrimination in Hiring and Employment of Labour
- GC2.8 Accounts and Audits

#### **GC3 EXECUTION AND CONTROL OF THE WORK**

- GC3.1 Progress Schedule
- GC3.2 Project Design and Role of the Designer
- GC3.3 Construction Safety
- GC3.4 Execution of the Work
- GC3.5 Material
- GC3.6 Subcontracting
- GC3.7 Construction by Other Contractors or Workers
- GC3.8 Labour
- GC3.9 Material, Plant and Real Property become Property of Canada
- GC3.10 Defective Work
- GC3.11 Use of the Work and Cleanup of Site

GC3.12 Warranty and Rectification of Defects in Work

**GC4 PROTECTIVE MEASURES** - *condition incorporated by reference*

**GC5 TERMS OF PAYMENT**

- GC5.1 Interpretation
- GC5.2 Amount Payable
- GC5.3 Increased or Decreased Costs
- GC5.4 Progress Payment
- GC5.5 Substantial Performance of the Work
- GC5.6 Final Completion
- GC5.7 Payment not Binding on Canada
- GC5.8 Claims and Obligations
- GC5.9 Right of Set-off
- GC5.10 Assessments and Damages for Late Completion
- GC5.11 Delay in Making Payment
- GC5.12 Interest on Settled Claims
- GC5.13 Return of Security Deposit

**GC6 DELAYS AND CHANGES IN THE WORK**

- GC6.1 Changes in the Work
- GC6.2 Changes in Subsurface Conditions
- GC6.3 Human Remains, Archaeological Remains and Items of Historical or Scientific Interest
- GC6.4 Determination of Price
- GC6.5 Delays and Extension of Time

**GC7 DEFAULT, SUSPENSION OR TERMINATION OF CONTRACT**

- GC7.1 Taking the Work out of the Contractor's Hands
- GC7.2 Suspension of Work
- GC7.3 Termination of Contract
- GC7.4 Security Deposit - Forfeiture or Return

*Conditions incorporated by reference:*

**GC8 DISPUTE RESOLUTION**

**GC9 CONTRACT SECURITY**

**GC10 INSURANCE**

**ALLOWABLE COSTS FOR CONTRACT CHANGES UNDER GC6.4.1**

**SUPPLEMENTARY CONDITIONS**

- SC01 Payment for Design Changes and Revisions
- SC02 Professional Liability Insurance Requirements
- SC03 Insurance Terms

## TERMS OF AGREEMENT

### A1 CONTRACT DOCUMENTS

- 1) The Contractor understands and agrees that, upon acceptance of the offer by Canada
  - (a) a binding Contract shall be formed between Canada and the Contractor; and
  - (b) the contract documents forming the Contract shall be the following:
    - (i) the Front Page and these Terms of Agreement;
    - (ii) the Request for Proposal;
    - (iii) the Terms of Reference;
    - (iv) the terms, conditions, and clauses as amended, identified as:
      - a) the General Conditions;
      - b) the Supplementary Conditions, if any;
      - c) documents incorporated by reference as follows:
        - R2840D (2008-05-12) - (GC4) Protective Measures
        - R2880D (2016-01-28) - (GC8) Dispute Resolution
        - R2890D (2014-06-26) - (GC9) Contract Security
        - R2900D (2008-05-12) - (GC10) Insurance
        - R2950D (2015-02-25) - Allowable costs for contract changes under GC6.4.1
    - (v) the submission;
    - (vi) the Construction Documents;
    - (vii) any amendment incorporated into the solicitation documents before the date of the Contract; and
    - (viii) any amendment or variation of the contract documents that is made in accordance with the General Conditions.
  - (c) The documents identified by title, number and date above are incorporated by reference and are set out in the Standard Acquisition Clauses and Conditions (SACC) Manual, issued by Public Works and Government Services Canada (PWGSC). The SACC Manual is available on the PWGSC Website: <http://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R>
2. The Contract documents shall be in the same official language (English or French) as the language of the bid submitted.

### A2 THE WORK

- 1) The Design-Builder agrees
  - (a) to complete the Work by December 1, 2017.

## GENERAL CONDITIONS

### GC1.1 (2016-04-04) Interpretation

The following is an interpretation of heading and references.

#### GC1.1.1 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.

#### GC1.1.2 Terminology

In the Contract, unless the context otherwise requires:

"Applicable Taxes"

means the Goods and Services Tax (GST), the Harmonized Sales Tax (HST), and any provincial tax, by law, payable by Canada such as, the Quebec Sales Tax (QST) as of April 1, 2013;

"Canada", "Crown", "Her Majesty"

means Her Majesty the Queen in right of Canada;

"Contract"

means the contract documents referred to as such therein 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;

"Contract Amount"

means the amount set out in the Contract to be payable to the Contractor for the Work, subject to the terms and conditions of the Contract, exclusive of Applicable Taxes;

"Contract Security"

means any security given by the Contractor to Canada in accordance with the Contract;

"Contractor"

means the person contracting with Canada to provide or furnish all labour, Material and Plant for the execution of the Work under the Contract, and includes the Contractor's superintendent as designated in writing to Canada.

"Certificate of Completion"

means a certificate issued by Canada when the Work reaches Completion;

"Certificate of Measurement"

means a certificate issued by Canada certifying the correctness of the final quantities, prices per unit and values of labour, Plant and Material performed, used and supplied by the Contractor for the construction of the part of the Work to which a Unit Price Arrangement applies;

"Certificate of Substantial Performance"

means a certificate issued by Canada when the Work reaches Substantial Performance;

"Departmental Representative"

means the person designated in the Contract, or by written notice to the Contractor, to act as the Departmental Representative for the purposes of the Contract, and includes a person, designated and authorized in writing by the Departmental Representative to the Contractor;

"herein", "hereby", "hereof", "hereunder"

and similar expressions refer to the Contract as a whole and not to any particular section or part thereof;

"Lump Sum Arrangement"

means that part of the Contract that prescribes a lump sum as payment for performance of the Work to which it relates;

"Material"

includes all commodities, articles, machinery, equipment, fixtures and things required to be furnished in accordance with the Contract for incorporation into the Work;

"person"

also includes, unless there is an express stipulation in the Contract to the contrary, any partnership, proprietorship, firm, joint venture, consortium or corporation;

"Plant"

includes all tools, implements, machinery, vehicles, structures, equipment, articles and things that are necessary for the performance of the Contract, other than Material and those tools customarily provided by a tradesperson in practicing a trade;

"Subcontractor"

means a person having a direct contract with the Contractor, subject to GC3.6 "Subcontracting", to perform a part or parts of the Work, or to supply Material customized for the Work;

"Superintendent"

means the employee or representative of the Contractor designated by the Contractor to act pursuant to GC2.6, "Superintendent";

"Supplementary Conditions"

means the part of the Contract that amends or supplements the General Conditions;

"Supplier"

means a person having a direct contract with the Contractor to supply Plant or Material not customized for the Work;

"Total Estimated Cost", "Revised Estimated Cost", "Increase (Decrease)"

on Page 1 of the Contract or Contract Amendment means an amount used for internal administrative purposes only that comprises the Contract Amount, or the revised Contract Amount, or the amount that would increase or decrease the Contract Amount and the Applicable Taxes as evaluated by the Contracting Authority, and does not constitute tax advice on the part of Canada;

"Unit Price Arrangement"

means that part of the Contract that prescribes the product of a price per unit of measurement multiplied by a number of units of measurement for performance of the Work to which it relates;

"Unit Price Table"

means the table of prices per unit set out in the Contract;

"Work"

means, subject only to any express stipulation in the Contract to the contrary, everything that is necessary to be done, furnished or delivered by the Contractor to perform the Contract in accordance with the contract documents; and

"Working Day"

means a day other than a Saturday, Sunday, or a statutory holiday that is observed by the construction industry in the area of the place of the Work.

### **GC1.1.3 Application of certain provisions**

1. Any provisions of the Contract that are expressly stipulated to be applicable only to a Unit Price Arrangement are not applicable to any part of the Work to which a Lump Sum Arrangement applies.
2. Any provisions of the Contract that are expressly stipulated to be applicable only to a Lump Sum Arrangement are not applicable to any part of the Work to which a Unit Price Arrangement applies.

### **GC1.1.4 Substantial performance**

1. The Work shall be considered to have reached Substantial Performance when
  - a. the Work or a substantial part thereof has passed inspection and testing and is, in the opinion of Canada, ready for use by Canada or is being used for the intended purposes; and

- b. the Work is, in the opinion of Canada, capable of completion or correction at a cost of not more than
  - i. 3 percent of the first \$500,000;
  - ii. 2 percent of the next \$500,000; and
  - iii. 1 percent of the balance

of the Contract Amount at the time this cost is calculated.

2. Where the Work or a substantial part thereof is ready for use or is being used for the purposes intended and
  - a. the remainder of the Work or a part thereof cannot be completed by the time specified in the Contract, or as amended in accordance with GC6.5, "Delays and Extension of Time", for reasons beyond the control of the Contractor; or
  - b. Canada and the Contractor agree not to complete a part of the Work within the specified time;

the cost of that part of the Work that was either beyond the control of the Contractor to complete or Canada and the Contractor have agreed not to complete by the time specified, shall be deducted from the value of the Contract referred to in subparagraph 1)(b) of GC1.1.4 and the said cost shall not form part of the cost of the Work remaining to be done in determining Substantial Performance.

### **GC1.1.5 Completion**

The Work shall be deemed to have reached Completion when all labour, Plant and Material required have been performed, used or supplied, and the Contractor has complied with the Contract and all orders and directions made pursuant thereto, all to the satisfaction of Canada.

### **GC1.2 (2015-03-25) Contract documents**

The following discusses contract documents

#### **GC1.2.1 General**

1. The contract documents are complementary, and what is required by any one shall be as binding as if required by all.
2. References in the contract documents to the singular shall be considered to include the plural as the context requires.
3. Nothing contained in the contract documents shall create a contractual relationship between Canada and any Subcontractor or Supplier, their subcontractors or suppliers, or their agents or employees.

#### **GC1.2.2 Order of precedence**

1. In the event of any discrepancy or conflict in the contents of the following documents, such documents shall take precedence and govern in the following order:
  - a. any amendment or variation of the contract documents that is made in accordance with the General Conditions;
  - b. any amendment issued prior to tender closing;
  - c. Supplementary Conditions;
  - d. General Conditions;
  - e. the duly completed Bid and Acceptance Form when accepted;
  - f. drawings and specifications.

later dates shall govern within each of the above categories of documents.

2. In the event of any discrepancy or conflict in the information contained in the drawings and specifications, the following rules shall apply:
  - a. specifications shall govern over drawings;
  - b. dimensions shown in figures on a drawings shall govern where they differ from dimensions scaled from the same drawings; and
  - c. drawings of larger scale govern over those of smaller scale.

### **GC1.2.3 Security and protection of documents and Work**

1. The Contractor shall guard and protect contract documents, drawings, information, models and copies thereof, whether supplied by Canada or the Contractor, against loss or damage from any cause.
2. The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, and all information developed by the Contractor as part of the Work, and shall not disclose any such information to any person without the written permission of Canada, except that the Contractor 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
  - a. is publicly available from a source other than the Contractor; or
  - b. is or becomes known to the Contractor from a source other than Canada, except any source that is known to the Contractor to be under an obligation to Canada not to disclose the information.
3. When the Contract, the Work, or any information referred to in paragraph 2) is identified as top secret, secret, confidential, or protected by Canada, the Contractor shall, 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.
4. Without limiting the generality of paragraphs 2) and 3) of GC1.2.3, when the Contract, the Work, or any information referred to in paragraph 2) is identified as top secret, secret, confidential, or protected by Canada, Canada shall be entitled to inspect the Contractor'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 Contractor shall 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 Contractor 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.
5. The Contractor shall safeguard the Work and the Contract, the specifications, drawings and any other information provided by Canada to the Contractor, and shall be liable to Canada for any loss or damage from any causes.

### **GC1.2.4 Ownership and Re-use of Documents and Models**

1. Except as may be specified elsewhere in the Contract, Canada relinquishes any right to ownership of copyright in any and all documents which are instruments of the services to be provided or furnished and are prepared by or on behalf of the Contractor or the Designer under the terms of the Contract.
2. After negotiation with the owner or owners of the copyright, Canada may re-use for another project the documents and models referred to in paragraph 1) of GC1.2.4, and shall pay the owner or owners for such re-use an appropriate fee based on current practice.
3. Models furnished by the Contractor at Canada's expense shall be and remain the property of Canada.

### **GC1.3 (2008-05-12) Status of the Contractor**

1. The Contractor is engaged under the Contract as an independent contractor.
2. The Contractor, 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.
3. For the purposes of the contract the Contractor shall 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.

#### **GC1.4 (2015-02-25) Rights and remedies**

Except as expressly provided in the Contract, the duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

#### **GC1.5 (2015-02-25) Time of the essence**

Time is of the essence of the Contract.

#### **GC1.6 (2008-05-12) Indemnification by the Contractor**

1. The Contractor shall pay all royalties and patent fees required for the performance of the Contract and, at the Contractor's expense, shall defend all claims, actions or proceedings against Canada charging or claiming that the Work or any part thereof provided or furnished by the Contractor to Canada infringes any patent, industrial design, copyright trademark, trade secret or other proprietary right enforceable in Canada.
2. The Contractor shall 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 Contractor, its subcontractors and suppliers and any other person at any tier, in performing the Work.
3. For the purposes of paragraph 2) of GC1.6, "activities" means any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

#### **GC1.7 (2015-02-25) Indemnification by Canada**

Subject to the [Crown Liability and Proceedings Act](#), the [Patent Act](#), and any other law that affects Canada's rights, powers, privileges or obligations, Canada shall indemnify and save the Contractor harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of the Contractor's activities under the Contract that are directly attributable to

- a. a lack of or a defect in Canada's title to the Work site if owned by Canada, whether real or alleged; or
- b. an infringement or an alleged infringement by the Contractor of any patent of invention or any other kind of intellectual property occurring while the Contractor was performing any act for the purposes of the Contract employing a model, plan or design or any other thing related to the Work that was supplied by Canada to the Contractor.

#### **GC1.8 (2014-06-26) Laws, permits and taxes**

1. The Contractor shall 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 shall 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 Contractor shall 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 Contractor shall 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 Contractor shall 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 GC1.8, the Contractor shall 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 Contractor shall pay that amount to Canada within 6 days after the time stipulated in paragraph 4) of GC1.8.

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 Contractor, the Contractor shall pay any applicable tax arising from or related to the performance of the Work under the Contract.
8. In accordance with the Statutory Declaration referred to in paragraph 4) of GC5.5, "Substantial Performance of the Work", a Contractor who has neither residence nor place of business in the province or territory in which work under the Contract is being performed shall 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 Contractor in all real property, licences, powers and privileges, become the property of Canada after the time of purchase in accordance with GC3.10, "Material Plant and Real Property Become Property of Canada", the Contractor shall 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 Contractor 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 Contractor to charge Applicable Taxes at the correct rate in accordance with applicable legislation. The Contractor agrees to remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.
12. The Contractor is not entitled to use Canada's exemptions from any tax, such as provincial sales taxes, unless otherwise specified by law. The Contractor 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 Contractor 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 Contractor in respect of services provided in Canada if the Contractor is not a resident of Canada, unless the Contractor obtains a valid waiver from the Canada Revenue Agency. The amount withheld will be held on account for the Contractor in respect to any tax liability which may be owed to Canada.

#### **GC1.9 (2010-01-11) Workers' compensation**

1. Prior to commencement of Work, at the time of Substantial Performance of the Work, and prior to issuance of the Certificate of Completion, the Contractor shall provide evidence of compliance with workers' compensation legislation applicable to the place of the Work, including payments due thereunder.
2. At any time during the term of the Contract, when requested by Canada, the Contractor shall provide such evidence of compliance by the Contractor, its subcontractors and any other person at any tier and any other person performing part of the Work who is required to comply with such legislation.

### **GC1.10 (2008-05-12) National security**

1. If Canada determines that the Work is of a class or kind that involves national security, Canada may order the Contractor to
  - a. provide Canada with any information concerning persons employed or to be employed by the Contractor for purposes of the Contract; and
  - b. remove any person from the site of the Work if, in the opinion of Canada, that person may be a risk to the national security; and the Contractor shall comply with the order.
2. In all contracts with persons who are to be employed in the performance of the Contract, the Contractor shall make provision for the performance of any obligation that may be imposed upon the Contractor under paragraph 1) of GC1.10.

### **GC1.11 PUBLIC CEREMONIES AND SIGNS**

- 1) The *Contractor* shall not permit any public ceremony in connection with the *Work* without the prior consent of *Canada*.
- 2) The *Contractor* shall not erect nor permit the erection of any sign or advertising on the *Work* or its site without the prior consent of *Canada*.

### **GC1.12 CONFLICT OF INTEREST**

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

### **GC1.13 INTERNATIONAL SANCTIONS**

- 1) Persons and companies 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. Details on existing sanctions can be found at:  
[Http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp](http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp).
- 2) It is a condition of the Contract that the *Contractor* not supply to the Government of Canada any goods or services which are subject to economic sanctions.
- 3) By law, the *Contractor* must comply with changes to the regulations imposed during the life of the Contract. During the performance of the Contract should the imposition of sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Contractor, the Contractor may request that the Contract be terminated in accordance with GC7.3 TERMINATION OF CONTRACT.

### **GC1.14 CERTIFICATION - CONTINGENCY FEES**

- 1) In this clause:
  - (a) "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;
  - (b) "employee" means a person with whom the *Contractor* has an employer/employee relationship;

- (c) "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.
- 2) The *Contractor* certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay or 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.
- 3) All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the *Contract* shall be subject to the accounts and audit provisions of the *Contract*.
- 4) If the *Contractor* certifies falsely under this section or is in default of the obligations contained therein, *Canada* may either take the *Work* out of the *Contractor's* hands in accordance with the provisions of the *Contract* or recover from the *Contractor* by way of reduction to the *Contract Amount* or otherwise the full amount of the contingency fee.

#### **GC1.15 AGREEMENTS AND AMENDMENTS**

- 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.
- 2) The failure of either party at any time to require performance by the other party of any provision hereof shall not affect the right thereafter to enforce such provision. Nor shall 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.
- 3) The *Contract* may be amended only as provided for in the Contract.

#### **GC1.16 UNSUITABLE WORKERS**

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

#### **GC1.17 ASSIGNMENT**

- 1) The *Contract* shall not be assigned, in whole or in part by the contractor, without the written consent of *Canada*.

#### **GC1.18 RIGHTS TO INTELLECTUAL PROPERTY**

- 1) Definitions

"Background" means all Technical Output that is not Foreground and that is proprietary to or the confidential information of the Contractor, the Contractor's Subcontractors, or any other entity engaged by the Contractor in the performance of the Design Services;

"Foreground" means any Invention first conceived, developed or reduced to practice as part of the Design Services and all other Technical Output conceived, developed, produced or implemented as part of the Design Services;

"IP Rights" means any intellectual property rights recognized by law, including any intellectual property right protected through legislation (such as that governing copyright, patents, industrial design, or integrated circuit topography) or arising from protection of information as a trade secret or as confidential information;

"Invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter, whether or not patentable and without limiting the foregoing the term includes any unique design and construction system;

"Technical Output" means: (i) all information of a scientific, technical, or artistic nature relating to the Design Services, whether oral or recorded in any form or medium and whether or not subject to copyright, including but not limited to any Inventions, designs, methods, reports, photographs, physical models, surveys, drawings, specifications developed for the purpose of the Project; as well as (ii) computer printouts, design notes, calculations, CADD (Computer-aided Design and Drafting) files, and other data, information and material, prepared, computed, drawn, or produced for the purpose of the Project; and (iii) operating and maintenance manuals prepared or collected for the Project; and (iv) any buildings, built works, structures and facilities constructed as, or as part of, the Project. Technical Output does not include data concerned with the administration of the contract by Canada or the Contractor, such as internal financial or management information, unless it is a deliverable under the terms of the contract.

## 2. Identification and Disclosure of Foreground

The Contractor shall:

(a) promptly report and fully disclose to Canada all Foreground that could be Inventions, and shall report and fully disclose to Canada all other Foreground not later than the time of completion of the Design Services or such earlier time as Canada or the contract may require, and

(b) for each disclosure referred to in (a), indicate the names of all Sub-Contractors / Sub-Consultants at any tier, if any, in which IP Rights to any Foreground have vested or will vest.

Before and after final payment to the Contractor, Canada shall have the right to examine all records and supporting data of the Contractor which Canada reasonably decides is pertinent to the identification of the Foreground.

## 3. IP Rights Vest with Contractor

Subject to paragraphs 10 and 11 and the provisions of GC 1.10 National Security, and without affecting any IP Rights or interests therein that have come into being prior to the contract or that relate to information or data supplied by Canada for the purposes of the contract, all IP Rights in the Foreground shall immediately, as soon as they come into existence, vest in and remain the property of the Contractor.

## 4. Ownership Rights in Deliverables

Notwithstanding the Contractor's ownership of the IP Rights in the Foreground that is a prototype, built work, building, structure, facility, model or custom or customized system or equipment together with associated manuals and other operating and maintenance documents and tools, Canada shall have unrestricted ownership rights in those deliverables, including the right to make them available for public use, whether for a fee or otherwise, and the right to sell them.

5. Licence to Foreground

Without limiting any implied licences that may otherwise vest in Canada, and in consideration of Canada's contribution to the cost of development of the Foreground, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free licence to exercise all IP Rights in the Foreground that vest in the Contractor pursuant to paragraph 3, for the purpose of:

- (a) the further development or alteration or evolution of any part of the constructed or implemented Project, including procurement of materials and components for this purpose;
- (b) the further development, modification (including additions or deletions), completion, translation, or implementation of the Foreground and any addition to it as Canada may require for the purposes of the completion, utilization and subsequent evolution of the Project;
- (c) the use, occupancy, operation, exploitation, maintenance, repair or restoration of the constructed or implemented or subsequently modified Project, including the procurement of replacement materials and components required for any such purpose; and
- (d) the publishing and transmission of reproductions of the Project or any part thereof in the form of paintings, drawings, engravings, photographs or cinematographic works, to the public, in hard copy or by any electronic or other means, except for copies in the nature of architectural drawings or plans.

6. Licence to Foreground for Other Projects

The Contractor hereby grants to Canada a non-exclusive, perpetual, worldwide, irrevocable licence to exercise all IP Rights that vest in the Contractor pursuant to paragraph 3 for the purpose of planning, designing and constructing or otherwise implementing any project other than the Project, and for any purpose set out in paragraph 5 as it relates to such other project. In the event that Canada exercises such IP Rights in an other project, and provided that Canada does not already have equivalent rights under a previous contract or otherwise, Canada agrees to pay to the Contractor reasonable compensation determined in accordance with current industry practice and having regard to Canada's contribution to the cost of development of the Foreground. The Contractor shall ensure that in any sale, assignment, transfer or licence of any of the IP Rights that vest in the Contractor under this contract, the purchaser, assignee, transferee or licensee agrees to be bound by the terms of this provision and to accept reasonable compensation as is contemplated herein. The Contractor shall also ensure that any such purchaser, assignee, transferee or licensee of the IP Rights is required to impose the same obligations on any subsequent purchaser, transferee, assignee or licensee.

7. Licence to Background

Without limiting any implied licences that may otherwise vest in Canada, the Contractor hereby grants to Canada a non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free Licence to exercise such of the IP Rights in any Background incorporated into the Work or necessary for the performance of the Work as may be required

- (a) for the purposes contemplated in paragraphs 5 and 6;
- (b) for disclosure to any contractor engaged by Canada, or bidder for such a contract, to be used solely for a purpose set out in paragraphs 5 and 6; and the Contractor agrees to make any such Background available to Canada upon request.

## 8. Canada's Right to Disclose and Sub-license

The Contractor acknowledges that Canada may wish to award contracts, which may include a competitive process, for any of the purposes contemplated in paragraphs 5, 6 and 7. The Contractor agrees that Canada's licence in relation to the IP Rights in the Foreground and in the Background, includes the right to disclose that Foreground and Background to bidders for such contracts, and to sub-license or otherwise authorize the use of that Foreground and Background by any contractor or consultant engaged by Canada for the purpose of carrying out such a contract.

## 9. Contractor's Right to Grant Licence

(a) The Contractor represents and warrants that the Contractor has, or the Contractor shall obtain without delay, the right to grant to Canada the licence to exercise the IP Rights in the Foreground and the Background as required by the contract.

(b) Where the IP Rights in any Background or Foreground are or will be owned by a Designer, the Contractor shall either obtain a licence from that Designer that permits compliance with paragraphs 5, 6 and 7 or shall arrange for the Designer to convey directly to Canada the same rights by execution of the form provided for that purpose by Canada no later than the time of disclosure to Canada of that Background and Foreground.

## 10. Trade Secrets and Confidential Information

The Contractor shall not use or incorporate any trade secrets or confidential information in any Foreground or Background used or created in performance of this contract.

## 11. Canada Supplied Information

(a) Where performance of the Design Services involves the preparation of a compilation using information supplied by Canada, then the IP Rights that shall vest under paragraph 3 shall be restricted to the IP Rights in Foreground that are capable of being exploited without the use of the information supplied by Canada. All IP Rights in any compilation, the Foreground in which cannot be exploited without the use of such Canada supplied information shall vest in Canada. The Contractor agrees that the Contractor shall not use or disclose any Canada supplied information for any purpose other than completing the performance of the Work. The Contractor shall maintain the confidentiality of such information. Unless the contract otherwise expressly provides, the Contractor shall deliver to Canada all such information together with every copy, draft, working paper and note thereof that contains such information upon the completion or termination of the contract, or at such earlier time as Canada may require.

(b) If the Contractor wishes to make use of any Canada supplied information that was supplied for purposes of the contract, for the commercial exploitation or further development of any of the Foreground, then the Contractor may make a written request for a licence to exercise the required IP Rights in that Canada supplied information, to Canada. The Contractor shall give Canada an explanation as to why such a licence is required. Should Canada agree to grant such a licence, it shall be on terms and conditions to be negotiated between the parties including payment of compensation to Canada.

## 12. Transfer of IP Rights

(a) If Canada takes the Work out of the Contractor's hands in accordance with GC 7 of the General Conditions, in whole or in part, or if the Contractor fails to disclose any Foreground in accordance with paragraph 2, Canada may upon reasonable notice, require the Contractor to convey to Canada all of the IP Rights in the Foreground or in the case of a failure to disclose, all the IP Rights in the Foreground not provided. The IP Rights to be conveyed shall include the IP Rights in any Foreground that have vested or are to vest in a Designer. In the case of IP Rights in Foreground which have been sold or assigned to a party other than a Designer, the Contractor shall not be

obligated to convey those IP Rights to Canada, but shall pay to Canada on demand an amount equal to the consideration which the Contractor received from the sale or assignment of the IP Rights in that Foreground or, in the case of a sale or assignment was not at arm's length, the fair market value of the IP Rights in that Foreground, in each case including the value of future royalties or licence fees.

(b) In the event of the issuance by Canada of a notice referred to in (a), the Contractor shall, at the Contractor's own expense and without delay, execute such conveyances or other documents relating to title to the IP Rights as Canada may require, and the Contractor shall, at Canada's expense, afford Canada all reasonable assistance in the preparation of applications and in the prosecution of any applications for, or any registration of, any IP Right in any jurisdiction, including without limitation the assistance of the inventor in the case of Inventions.

(c) Until the Contractor completes the performance of the Work and discloses all of the Foreground in accordance with paragraph 2, and subject to the provisions of GC 1.10 National Security, the Contractor shall not, without the prior written permission of Canada, sell, assign or otherwise transfer title to the IP Rights in any of the Foreground, or license or otherwise authorize the use of the IP Rights in any of the Foreground by any person.

(d) In any sale, assignment, transfer or licence of IP Rights in Foreground by the Contractor except a sale or licence for end use of a product based on Foreground, the Contractor shall impose on the other party all of its obligations to Canada in relation to the IP Rights in the Foreground and any restrictions set out in the contract on the use or disposition of the IP Rights in the Foreground (and, if applicable, the Foreground itself), including the obligation to impose the same obligations and restrictions on any subsequent transferee, assignee or licensee. The Contractor shall promptly notify Canada of the name, address and other pertinent information in regard to any transferee, assignee or licensee.

#### **GC1.19 NO BRIBE**

- 1) The Contractor represents and covenants that no bribe, gift, benefit, nor other inducement has been nor shall be paid, given, promised or offered directly or indirectly to any official or employee of Canada or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.

#### **GC1.20 SUCCESSION**

- 1) The Contract shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and, subject to GC1.17, "Assignment", permitted assigns.

#### **GC1.21 (2016-04-04) Integrity provisions—contract**

The *Ineligibility and Suspension Policy* (the "Policy") and all related Directives incorporated by reference into the bid solicitation on its closing date are incorporated into, and form a binding part of the Contract. The Contractor must comply with the provisions of the Policy and Directives, which can be found on Public Works and Government Services Canada's website at [Ineligibility and Suspension Policy](#).

#### **GC1.22 (2016-04-04) Code of Conduct for Procurement—contract**

The Contractor agrees to comply with the [Code of Conduct for Procurement](#) and to be bound by its terms for the period of the Contract.

## **GC2 ADMINISTRATION OF THE CONTRACT**

### **GC2.1 DEPARTMENTAL REPRESENTATIVES AUTHORITY**

Technical Authority" shall be recognized as the Departmental representative and designated at time of award of contract and shall perform the following:

- a. is responsible for all matters concerning the technical content of the work under the contract;
- b. authorized to issue notices, instructions, and changes within the scope of the Work, relevant to the contract.
- c. accept on behalf of Canada any notice, order or other communication from the contractor relating to the Work
- d. within a reasonable time, review and respond to submissions made by the Contractor in accordance with the requirements of the Contract

The technical authority has no authority to authorize changes to the Contract terms and conditions of the Contract.

"Contracting Authority" shall be recognized as the authority delegated by the Minister of PWGSC to enter into contracts, amend the contracts and is responsible for all matters concerning and interpretation of the terms and conditions of the Contract.

The contracting authority is responsible for the management of the Contract and any changes to the Contract terms and conditions must be authorized in writing by the Contracting Authority.

### **GC2.2 INTERPRETATION OF CONTRACT**

- 1) If, at any time before Canada has issued a Certificate of Completion, any question arises between the parties about whether anything has been done as required by the Contract or about what the Contractor is required by the Contract to do, and in particular but without limiting the generality of the foregoing, about
  - (a) the meaning of anything in the Terms of Reference ;
  - (b) the meaning to be given to the Terms of Reference in case of any error therein, omission therefrom, or obscurity or discrepancy in their wording or intention;
  - (c) whether or not the quality or quantity of any Material or workmanship supplied or proposed to be supplied by the Contractor meets the requirements of the Contract;
  - (d) whether or not the labour, Plant or Material performed, used and supplied by the Contractor for performing the Work and carrying out the Contract are adequate to ensure that the Work shall be performed in accordance with the Contract and that the Contract shall be carried out in accordance with its terms;
  - (e) what quantity of any of the Work has been completed by the Contractor; or
  - (f) the timing and scheduling of the various phases of the performance of the Work as specified in the Contract;

the question shall be decided, subject to the provisions of GC8, " Dispute Resolution", by Canada.
- 2) The Contractor shall perform the Work in accordance with any decisions of Canada that are made under paragraph 1) of GC2.2 and in accordance with any consequential directions given by Canada.
- 3) If the Contractor fails to comply with any instruction or direction issued by Canada pursuant to the Contract, Canada may employ such methods as Canada deems advisable to do what the Contractor failed to do, and

the Contractor shall, on demand, pay Canada an amount that is equal to the aggregate of all costs, expenses and damages incurred or sustained by Canada by reason of the Contractor's failure to comply with such instruction or direction, including the cost of any methods employed by Canada in doing what the Contractor failed to do.

### **GC2.3 NOTICES**

- 1) Subject to paragraph 3) of GC2.3, any notice, order or other communication may be given in any manner, and if required to be in writing, shall 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) Any notice, order or other communication given in writing in accordance with paragraph 1 of GC2.3 shall 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.
3. A notice given under GC7.1, "Taking the Work out of the Contractor's Hands", GC7.2, "Suspension of Work" and GC7.3, "Termination of Contract", shall be given in writing and, if delivered personally, shall be delivered, if the Contractor is a sole proprietor, to the Contractor or, if the Contractor is a partnership or corporation, to an officer thereof.

### **GC2.4 SITE MEETINGS**

- 1) In consultation with Canada, the Contractor shall arrange site meetings at regular intervals, with all involved parties who are to attend, in order to ensure, among other things, the proper co-ordination of the Work.

### **GC2.5 REVIEW AND INSPECTION OF WORK**

- 1) Canada shall review the Work to determine if it is proceeding in conformity with the Contract and to record the necessary data to make an assessment of the value of Work completed. Canada shall measure and record the quantities of labour, Plant and Material performed, used or supplied by the Contractor in performing the Work or any part thereof that is subject to a Unit Price Arrangement and, on request, shall inform the Contractor of those measurements, and permit the Contractor to inspect any records pertaining thereto.
- 2) Canada shall reject Work or Material which in Canada's opinion does not conform to the requirements of the Contract, and shall require inspection or testing of Work, whether or not such Work is fabricated, installed, or completed. If such Work is not in accordance with the requirements of the Contract, the Contractor shall correct the Work and shall pay Canada, on demand, all reasonable costs and expenses that were incurred by Canada in having the examination performed.
- 3) The Contractor shall provide Canada with access to the Work and its site at all times, and at all times shall 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 shall be given access to such Work whenever it is in progress.
- 4) The Contractor shall furnish Canada with such information respecting the performance of the Contract as Canada may require, and render every possible assistance to enable Canada to verify that the Work is performed in accordance with the Contract, carry out any other duties and exercise any powers in accordance with the Contract.

- 5) If Work is designated for tests, inspections, or approvals in the Contract or by Canada's instructions, or by laws or ordinances of the place of the Work, the Contractor shall give Canada reasonable notice of when such Work shall be ready for review and inspection. The Contractor shall arrange for and shall give Canada reasonable notice of the date and time of inspections, tests or approvals.
- 6) If the Contractor covers, or permits to be covered, Work that has been designated for tests, inspections or approvals before such tests, inspections or approvals are made, completed or given, the Contractor shall, if so directed by Canada, uncover such Work, have the inspections, tests or approvals satisfactorily made, completed or given and make good the covering of the Work at the Contractor's expense.

#### **GC2.6 SUPERINTENDENT**

- 1) Prior to commencing the Work, the Contractor shall designate a Superintendent and shall notify Canada of the name, address and telephone number of the Superintendent. The Contractor shall keep the Superintendent at the Work site during working hours until the Work has reached completion.
- 2) The Superintendent shall be in full charge of the operations of the Contractor during the performance of the Work and shall be authorized to accept on behalf of the Contractor any notice, order or other communication given to the Superintendent or the Contractor relating to the Work.
- 3) Upon request of Canada, the Contractor shall remove any Superintendent who, in the opinion of Canada, is incompetent or has been guilty of improper conduct, and shall forthwith designate another Superintendent who is acceptable to Canada.
- 4) The Contractor shall not substitute a Superintendent without the written consent of Canada. If a Superintendent is substituted without such consent, Canada shall be entitled to refuse to issue any documentation or certification relating to progress payments, Substantial Performance or Completion of the Work until the Superintendent has returned to the Work site or another Superintendent who is acceptable to Canada has been substituted.

#### **GC2.7 (2014-06-26) Non-discrimination in Hiring and Employment of Labour**

1. For the purposes of this clause, "persons" include the Contractor, 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.
2. Without restricting the provisions of paragraph 3) of GC2.6, "Superintendent", the Contractor shall not refuse to employ and shall not discriminate in any manner against any person because
  - a. 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;
  - b. 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
  - c. a complaint has been made or information has been given in respect of that person relating to an alleged failure by the Contractor to comply with subparagraph (a) or (b).

3. Within two working days immediately following receipt of a written complaint pursuant to paragraph 2) of GC2.7, the Contractor shall
  - a. 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;
  - b. forward a copy of the complaint to Canada by registered mail or courier service.
4. Within 24 hours immediately following receipt of a direction from Canada to do so, the Contractor shall cause to have removed from the site of the Work and from the performance of Work under the Contract, any person or persons whom Canada believes to be in breach of the provisions of paragraph 2) of GC2.7.
5. No later than 30 days after receipt of the direction referred to in paragraph 4) of GC2.7, the Contractor shall cause the necessary action to be commenced to remedy the breach described in the direction.
6. If a direction is issued pursuant to paragraph 4) of GC2.7, Canada may withhold from monies that are due and payable to the Contractor or setoff pursuant to GC5.9, "Right of Setoff", whichever is applicable, an amount representing the sum of the costs and payment referred to in paragraph 8) of GC2.7.
7. If the Contractor fails to proceed in accordance with paragraph 5) of GC2.7, Canada shall take the necessary action to have the breach remedied, and shall determine all supplementary costs incurred by Canada as a result.
8. Canada may make a payment directly to the complainant from monies that are due and payable to the Contractor upon receipt from the complainant of
  - a. a written award issued pursuant to the federal [Commercial Arbitration Act](#), R.S. 1985, c. 17 (2nd Supp.);
  - b. a written award issued pursuant to the [Canadian Human Rights Act](#), R.S. 1985, c. H-6;
  - c. a written award issued pursuant to provincial or territorial human rights legislation; or
  - d. a judgement issued by a court of competent jurisdiction.
9. If Canada is of the opinion that the Contractor has breached any of the provisions of this clause, Canada may take the Work out of the Contractor's hands pursuant to GC7.1, "Taking the Work out of the Contractor's Hands".
10. Subject to paragraph 7) of GC3.6, "Subcontracting", the Contractor shall ensure that the provisions of this clause are included in all agreements and contracts entered into as a consequence of the Work.

### **GC2.8 (2014-06-26) Accounts and Audits**

1. The Contractor shall, in addition to the requirements expressed in paragraph 6) of GC3.4, "Execution of the Work", 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 shall 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.
2. The Contractor shall allow any of the persons referred to in paragraph 1) of GC2.8 to make copies of and take extracts from any of the records and material, and shall 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.

3. The Contractor shall 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.
4. The Contractor shall cause all subcontractors at any tier and all other persons directly or indirectly controlled by or affiliated with the Contractor and all persons directly or indirectly having control of the Contractor to comply with the requirements of this clause as if they were the Contractor.

### **GC3 EXECUTION AND CONTROL OF THE WORK**

#### **GC3.1 PROGRESS SCHEDULE**

- 1) The *Contractor* shall:
  - (a) prior to the submission of the *Contractor's* first progress claim, prepare and submit to *Canada* a progress schedule in accordance with the requirements set out in the Contract ;
  - (b) monitor the progress of the *Work* relative to the schedule and update the schedule as stipulated by the Contract Documents;
  - (c) advise *Canada* of any revisions required to the schedule as the result of any extension of time for completion of the *Contract* which was approved by *Canada*, and
  - (d) at the time of issuance of a *Certificate of Substantial Performance*, prepare and submit to *Canada* an update of any schedule clearly showing a detailed timetable that is acceptable to *Canada* for the completion of any unfinished *Work* and the correction of all listed defects.

#### **GC3.2 PROJECT DESIGN AND ROLE OF THE DESIGNER**

- 1) The *Contractor* shall report promptly to *Canada* any error, inconsistency, or omission the *Contractor* may discover when reviewing the contract documents provided by *Canada*. In making a review, the *Contractor* does not assume any responsibility to *Canada* or *Canada* for the accuracy of the review. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the contract documents prepared by or on behalf of *Canada* which the *Contractor* did not discover.
- 2) The *Contractor* shall employ or otherwise engage the architects, professional engineers and other consultants required to provide the *Design Services* to be performed by the *Designer* under the *Contract*.
- 3) The *Contractor* shall perform or furnish all necessary architectural services and structural, electrical, mechanical and other engineering services, and shall complete the design of the *Work* and prepare *Construction Documents* to permit the *Construction* and completion of the *Work*, all in accordance with the *Contract*.
- 4) The *Contractor* shall provide the co-ordination required to integrate all parts of the *Design Services*, and shall review with *Canada* reasonable alternative approaches to completion of the design of the *Work*.
- 5) During the progress of the *Work*, the *Contractor* shall provide or furnish *Canada* with design development documents and other submissions in furtherance of and in compliance with the *Request for Proposal* and *Proposal* and any qualification in the *Proposal* expressly accepted by *Canada*. The documents and submissions shall be submitted for review and acceptance in orderly sequence and sufficiently in advance so as to cause no delay in the *Work*.

- 6) Canada shall promptly review all documents and submissions referred to in paragraph 5) for conformity with the *Proposal* and *Request for Proposal*. It is understood and agreed that Canada can require the *Contractor*, at no additional expense to Canada, to have changes made to ensure that the *Work* shall be completed in accordance with the Contract.
- 7) Canada may issue additional instructions to the *Contractor* by means of plans, drawings or otherwise, as Canada may deem necessary for the performance of the *Work*. All such additional instructions shall be consistent with the Contract. The *Contractor* shall perform the *Work* in conformity with the additional instructions, and the *Contractor* shall not perform any such work without such additional instructions. In giving additional instructions, Canada may make minor changes to the *Work*, not inconsistent with the Contract, for which the *Contractor* shall not be entitled to claim any extra compensation from Canada.
- 8) Based on the accepted design development documents and other submissions, the *Contractor* shall furnish Canada with plans, drawings and specifications setting forth in detail the requirements for *Construction* of the *Work*. Once reviewed, accepted and signed by Canada and the *Contractor*, the plans, drawings and specifications shall be the *Construction Documents* for the purposes of the Contract and shall be part of the contract documents.
- 9) The *Contractor* shall cause the *Designer* to
  - (a) review the design, when required, with those public authorities having jurisdiction in order that the necessary consents, approvals, licences and permits referred to in GC1.8 LAWS, PERMITS AND TAXES may be applied for and obtained;
  - (b) on an ongoing basis, provide any required assurances to those authorities respecting conformance of the *Work* with the design approved for the issuance of any building permit;
  - (c) review the *Work* at intervals appropriate to the progress of *Construction* to determine and verify that the *Work* is proceeding in conformance with the Contract;
  - (d) estimate and certify the amounts owing to the *Contractor* from time to time in accordance with the provisions of GC5 TERMS OF PAYMENT and provide such estimates in writing to the *Departmental Representative*;
  - (e) prior to the issuance of a *Certificate of Substantial Performance*, review the *Work* and provide Canada with a written declaration describing those parts of the *Work* that, in the *Designer's* professional opinion, are completed in conformance with the Contract, and listing those parts of the *Work* that, in the designer's professional opinion, are not completed in conformance with the Contract;
  - (f) prior to issuance of a *Certificate of Completion*, review the *Work* and provide Canada with
    - (i) a written declaration attesting to the completeness of the *Work*, and
    - (ii) if the *Work* or a portion of the *Work* is subject to a *Unit Price Arrangement*, a certificate of measurement of the final quantities of the *Work*.

### GC3.3 CONSTRUCTION SAFETY

- 1) Subject to GC3.7, "Construction by Other Contractors or Workers", the Contractor shall be solely responsible for construction safety at the place of the Work and for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. In any emergency, the Contractor shall either stop the Work, make changes or order extra work to ensure the safety of life and the protection of the Work and neighbouring property.

- 2) Prior to commencing the Work, the Contractor shall notify the authorities having jurisdiction for construction safety at the site of the Work with respect to the intended commencement of the Work, and shall provide such authority with whatever additional information may be required by that authority.

#### **GC3.4 EXECUTION OF THE WORK**

- 1) It is acknowledged and agreed by the *Contractor* that any information contained in the *Request for Proposal* regarding soil conditions at the site of the *Work* was provided for information purposes only and that the *Contractor* is required to undertake its own geotechnical investigations for the purpose of determining the soil conditions and obtaining other information which may be required for foundation design or construction methodology purposes. The *Contractor* shall not be entitled to any additional compensation, and shall not have any claim against *Canada*, as a result of any difference between the actual soil conditions encountered by the *Contractor* at the site of the *Work*, and any information relating to soil conditions contained in the *Request for Proposal*.
- 2) The *Contractor* shall provide or furnish, and pay for, all professional services, *Design Services*, labour, *Plant*, *Material*, tools, construction machinery and equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3) Subject to paragraph 4), the *Contractor* shall have complete care, custody and control of the *Work* and shall direct and supervise the *Work* so as to ensure compliance with the *Contract*. The *Contractor* shall be responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the *Work*, and shall ensure that all necessary safety precautions and protection are maintained throughout the *Work*. In any emergency, the *Contractor* shall either stop the *Work*, make changes or order extra work to ensure the safety of life and the protection of the *Work* and neighboring property.
- 4) When requested in writing by *Canada*, the *Contractor* shall make appropriate alterations in the method, *Plant* or work force at any time *Canada* considers the *Contractor's* actions to be unsafe, or damaging to either the *Work*, existing facilities, persons at the site of the work or the environment.
- 5) The *Contractor* shall have sole responsibility for the design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and for the construction methods required in their use. The *Contractor* shall engage and pay for registered professional engineering personnel, skilled in the appropriate discipline to perform these functions where required by law or by the *Contract*, and in all cases when such temporary facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 6) The *Contractor* shall keep at least one copy of current contract documents, submittals, reports, and records of meetings at the place of the *Work*, in good order and available to *Canada*.
- 7) Except for any part of the *Work* that is necessarily performed away from or off the site of the *Work*, the *Contractor* shall confine *Plant*, storage of *Material*, and operations of employees to limits indicated by laws, ordinances, permits or the contract documents.

#### **GC3.5 MATERIAL**

- 1) Unless otherwise specified in the *Contract*, all *Material* incorporated in the *Work* shall be new.
- 2) Subject to paragraph 3) of GC3.5, if a specified reused, refurbished, or recycled item of *Material* is not available, the *Contractor* shall apply to *Canada* to substitute a similar item for the one specified.
- 3) If *Canada* agrees that the *Contractor's* application for substitution of a reused, refurbished, or recycled item is warranted, and that the substitute item is of acceptable quality and value to that specified and is suitable for the intended purpose, *Canada* may approve the substitution, subject to the following:

- (a) the request for substitution shall be made in writing to *Canada* and shall be substantiated by information in the form of the manufacturer's literature, samples and other data which may be required by *Canada*;
- (b) the *Contractor* shall make the request for substitution in a manner that shall not negatively affect the progress schedule of the *Contract* and well in advance of the time the item of *Material* must be ordered;
- (c) substitution of *Material* shall be permitted only with the prior written approval of *Canada*, and any substituted items that are supplied or installed without such approval shall be removed from the site of the *Work* at the expense of the *Contractor*, and specified items installed at no additional cost to *Canada*; and
- (d) the *Contractor* shall be responsible for all additional expenses incurred by *Canada*, the *Contractor*, its designers, subcontractors and suppliers at any tier due to the *Contractor's* use of the substitute.

### **GC3.6 SUBCONTRACTING**

- 1) Subject to the provisions of this clause, the *Contractor* may subcontract any part of the *Work but not the whole of the work*.
- 2) The *Contractor* shall notify *Canada* in writing of the *Contractor's* intention to subcontract.
- 3) A notification referred to in paragraph 2) of GC3.6 shall identify the part of the *Work*, and the *Subcontractor* with whom the *Contractor* intends to subcontract.
- 4) *Canada* may for reasonable cause, object to the intended subcontracting by notifying the *Contractor* in writing within six (6) days of receipt by *Canada* of a notification referred to in paragraph 2) of GC3.6.
- 5) If *Canada* objects to a subcontracting, the *Contractor* shall not enter into the intended subcontract.
- 6) The *Contractor* shall not change nor permit to be changed the *Designer*, a *Subcontractor* engaged by the *Contractor* in accordance with this clause, or a person or entity named in the *Contractor's Proposal* and accepted by *Canada* as part of the *Contractor's Proposal*, without the written consent of *Canada*.
- 7) The *Contractor* shall ensure that all the terms and conditions of the *Contract* that are of general application shall 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*.
- 8) Neither a subcontracting nor *Canada's* consent to a subcontracting shall be construed to relieve the *Contractor* from any obligation under the *Contract* or to impose any liability upon *Canada*.

### **GC3.7 CONSTRUCTION BY OTHER CONTRACTORS OR WORKERS**

- 1) *Canada* reserves the right to send other contractors or workers, with or without *Plant* and *Material*, onto the site of the *Work*.
- 2) When other contractors or workers are sent on to the site of the *Work*, *Canada* shall:
  - (a) to the extent it is possible, enter into separate contracts with the other contractors under conditions of *Contract* that are compatible with the conditions of the *Contract*;
  - (b) ensure that the insurance coverage provided by the other contractors is co-ordinated with the insurance coverage of the *Contractor* 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 contractors or workers.
- 3) When other contractors or workers are sent on to the site of the Work, the *Contractor* shall:
- (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 contractors and workers;
  - (c) participate with other contractors and workers in reviewing their construction schedules when directed to do so;
  - (d) where part of the *Work* is affected by or depends upon for its proper execution the work of other contractors or workers, 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 *Contractor* to so report shall invalidate any claims against *Canada* by reason of the deficiencies in the work of other contractors or workers except those deficiencies not then reasonably discoverable; and
  - (e) when designated as being responsible for construction safety at the place of the work in accordance with the applicable provincial or territorial laws, carry out its duties in that role and in accordance with those laws.
- 4) 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 and provided the Contractor.
- (a) 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 that the other contractors or workers were sent onto the site of the Work

*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.

### **GC3.8 LABOUR**

- 1) To the extent to which they are available, consistent with proper economy and the expeditious carrying out of the Work, the Contractor shall, in the performance of the Work, employ a reasonable number of persons who have been on active service with the Armed Forces of Canada and have been honourably discharged therefrom.
- 2) The Contractor shall maintain good order and discipline among the Contractor's employees and workers engaged in the Work and shall not employ on the site of the Work anyone not skilled in the tasks assigned.

### **GC3.9 MATERIAL, PLANT AND REAL PROPERTY BECOME PROPERTY OF CANADA**

- 1) Subject to paragraph 9) of GC1.8 LAWS PERMITS AND TAXES, all *Material* and *Plant* and the interest of the *Contractor* in all real property, licences, powers and privileges purchased, used or consumed by the *Contractor* for the *Construction* of the *Work* shall immediately after the time of their purchase, use or consumption be the property of *Canada* for the purposes of the *Work* and they shall continue to be the property of *Canada*
  - (a) in the case of *Material*, until *Canada* indicates that the materials shall not be required for the *Work*, and

- (b) in the case of *Plant*, real property, licences, powers and privileges, until *Canada* indicates that the interest vested in *Canada* therein is no longer required for the purposes of the *Work*.
- 2) *Material* or *Plant* that is the property of *Canada* by virtue of paragraph 1) of GC3.9 shall not be taken away from the site of the *Work* nor used or disposed of except for the purposes of the *Work* without the written consent of the *Canada*.
- 3) *Canada* is not liable for loss of nor damage from any cause to the *Material* or *Plant* referred to in paragraph 1) of GC3.9, and the *Contractor* is liable for such loss or damage notwithstanding that the *Material* or *Plant* is the property of *Canada*.

### **GC3.10 DEFECTIVE WORK**

- 1) The *Contractor* shall promptly remove from the site of the *Work* and replace or re-execute defective *Work* whether or not the defective *Work* has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective *Material*, or damage through carelessness or other act or omission of the *Contractor*.
- 2) The *Contractor*, at the *Contractor's* expense, shall promptly make good other work destroyed or damaged by such removals or replacements.
- 3) If, in the opinion of *Canada* it is not expedient to correct defective *Work* or *Work* not performed as provided for in the Contract documents, *Canada* may deduct from the amount otherwise due to the *Contractor* the difference in value between the *Work* as performed and that called for by the Contract Documents.
- 4) The failure of *Canada* to reject any defective *Work* or *Material* shall not constitute acceptance of the defective *Work* or *Material*.

### **GC3.11 USE OF THE WORK AND CLEANUP OF SITE**

- 1) The *Contractor* shall be responsible for analyzing conditions at the site of the *Work* and selecting the appropriate design and construction solution for the successful completion of the *Work*.
- 2) Except for any part of the *Work* which is necessarily performed away or off the site of the *Work*, the *Contractor* shall confine *Plant*, storage of *Material*, and operations of employees to limits indicated by laws, ordinances, permits or the Contract.
- 3) The *Contractor* shall not load or permit to be loaded any part of the *Work* or its site with a weight or force that will endanger the safety of the *Work*.
- 4) The *Contractor* shall maintain the *Work* and its site in a tidy condition and free from an accumulation of waste material and debris.
- 5) Before the issue of a *Certificate of Substantial Performance*, the *Contractor* shall remove waste material and debris, and all *Plant* and *Material* not required for the performance of the remaining work and, unless otherwise stipulated in the Contract, shall cause the *Work* and its site to be clean and suitable for occupancy by *Canada*.
- 6) Before the issue of a *Certificate of Completion*, the *Contractor* shall remove all surplus plant and materials, and any waste products and debris from the site of the *Work*.
- 7) The *Contractor's* obligations described in paragraphs 4) to 6) do not extend to waste products and other debris caused by *Canada's* servants, or by other contractors and workers referred to in GC3.7  
CONSTRUCTION BY OTHER CONTRACTORS OR WORKERS.

### **GC3.12 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 *Contractor* shall, at the *Contractor'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;
  - (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 shall not extend the 12-month period whereby the *Contractor*, 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*; and
  - (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) of GC3.12.
- 2) *Canada* may direct the *Contractor* to rectify and make good any defect or fault referred to in paragraph 1) of GC3.12 or covered by any other expressed or implied warranty or guarantee, and the *Contractor* shall rectify and make good such defect within the time stipulated in the direction.
- 3) A direction referred to in paragraph 2) of GC3.12 shall be in writing and shall be given to the *Contractor* in accordance with GC2.3 NOTICES.

## **GC5 TERMS OF PAYMENT**

### **GC5.1 INTERPRETATION**

In these Terms of Payment

- 1) The "payment period" means a period of 30 consecutive days or such other longer period as is agreed between the *Contractor* and *Canada*.
- 2) An amount is "due and payable" when it is due and payable by *Canada* to the *Contractor* according to GC5.4 PROGRESS PAYMENT, GC5.5 SUBSTANTIAL PERFORMANCE OF THE WORK, or GC5.6 FINAL COMPLETION;
- 3) An amount is overdue when it remains unpaid on the first day following the day upon which it is due and payable.
- 4) The "date of payment" means the date of the negotiable instrument of an amount due and payable by the Receiver General for *Canada*.
- 5) The "Bank Rate" means the rate of interest established by the Bank of *Canada* as the minimum rate at which it makes short term advances to members of the Canadian Payments Association.
- 6) The "Average Bank Rate" means the simple arithmetic mean of the Bank Rate in effect at 4:00 p.m. Eastern Time each day during the calendar month which immediately precedes the calendar month in which payment is made.

## **GC5.2 AMOUNT PAYABLE**

- 1) Subject to any other provisions of the *Contract*, *Canada* shall pay the *Contractor*, at the times and in the manner hereinafter set out, the amount by which the amounts payable by *Canada* to the *Contractor* in accordance with the *Contract* exceed the amounts payable by the *Contractor* to *Canada*, and the *Contractor* shall accept that amount as payment in full satisfaction for everything furnished and done by the *Contractor* in respect of the work to which the payment relates.
- 2) When making any payment to the *Contractor*, the failure of *Canada* to deduct an amount payable to *Canada* by the *Contractor* shall not constitute a waiver of the right to do so, or an admission of lack of entitlement to do so in any subsequent payment to the *Contractor*.
- 3) Should any payment be made by *Canada* in excess of what is owed to the *Contractor* for the actual work performed, the *Contractor* will reimburse *Canada* the excess immediately, with or without demand, and any amounts outstanding shall bear simple interest at the Average Bank rate plus 3 percent per annum from the date of overpayment until the day prior to the date of repayment by the *Contractor*.
- 4) No payment other than a payment that is expressly stipulated in the *Contract*, shall be made by *Canada* to the *Contractor* for any extra expense or any loss or damage incurred or sustained by the *Contractor*.

## **GC5.3 (2014-06-26) Increased or Decreased Costs**

1. The Contract Amount shall not be increased nor decreased by reason of any increase or decrease in the cost of the Work that is brought about by an increase or decrease in the cost of labour, Plant, Material or any wage adjustment.
2. Notwithstanding paragraph 1) of GC5.3, if any change, including a new imposition or repeal, of any tax, customs or other duty, charge, or any similar imposition that is imposed under sales, customs or excise tax legislation of the Government of Canada or any Provincial or Territorial legislation, affects the cost of the Work to the Contractor, and occurs
  - a. after the date of submission by the Contractor of its bid; or
  - b. after the date of submission of the last revision, if the Contractor's bid was revised;
  - c. the Contract Amount shall be adjusted in the manner provided in paragraph 3) of GC5.3.
3. If a change referred to in paragraph 2) of GC5.3 occurs, the Contract Amount shall be increased or decreased by an amount established by an examination by Canada of the relevant records of the Contractor referred to in GC2.8, "Accounts and Audits", to be the increase or decrease in the cost incurred by the Contractor that is directly attributable to that change.
4. For the purpose of paragraph 2) of GC5.3, if a tax is changed after the tender closing, but public notice of the change has been given by the Minister of Finance or the corresponding Provincial or Territorial authority before that closing, the change shall be deemed to have occurred before the solicitation closing.
5. Notwithstanding paragraphs 2) to 4) of GC5.3, no adjustment to the Contract Amount in respect of the Work or a part thereof shall be made for a change in any imposition referred to in this section that occurs after the date required by the Contract for completion of the Work or that part of the Work.

#### **GC5.4 (2014-06-26) Progress Payment**

1. On the expiration of a payment period, the Contractor shall deliver to Canada
  - a. a written progress claim in a form acceptable to Canada that fully describes any part of the Work that has been completed, and any Material that was delivered to the Work site but not incorporated into the Work, during that payment period, and
  - b. a completed and signed statutory declaration containing a declaration that, up to the date of the progress claim, the Contractor has complied with all lawful obligations and that, in respect of the Work, all lawful obligations of the Contractor to its Subcontractors and Suppliers, referred to collectively in the declaration as " subcontractors and suppliers", have been fully discharged.
2. Within 10 days of receipt of a progress claim and statutory declaration from the Contractor, Canada shall inspect, or cause to have inspected, the part of the Work and the Material described in the progress claim, and shall issue a progress report to the Contractor, that indicates the value of the part of the Work and the Material described in the progress claim that, in the opinion of Canada
  - a. is in accordance with the Contract; and
  - b. was not included in any other progress report relating to the Contract.
3. Subject to GC5.2, "Amount Payable", and paragraph 5) of GC5.4, Canada shall pay the Contractor an amount that is equal to
  - a. 95 percent of the value that is indicated in Canada's progress report if a labour and material payment bond has been furnished by the Contractor; or
  - b. 90 percent of the value that is indicated in Canada's progress report if a labour and material payment bond has not been furnished by the Contractor.
4. Canada shall pay the amount referred to in paragraph 3) of GC5.4 not later than
  - a. 30 days after receipt by Canada of both a progress claim and a statutory declaration referred to in paragraph 1) of GC5.4; or
  - b. 15 days after receipt by Canada of the Contractor's progress schedule or updated progress schedule, in accordance with GC3.1, "Progress Schedule",whichever is later.
5. In the case of the Contractor's first progress claim, it is a condition precedent to Canada's obligation under paragraph 3) of GC5.4 that the Contractor has provided all necessary documentation required by the Contract for the first progress claim.

#### **GC5.5 (2014-06-26) Substantial Performance of the Work**

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", Canada shall issue a Certificate of Substantial Performance to the Contractor. The Certificate of Substantial Performance shall state or describe

- 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.
2. The issuance of a Certificate of Substantial Performance does not relieve the Contractor from the Contractor's obligations under GC3.11, "Defective Work".
  3. Subject to GC5.2, "Amount Payable", and paragraph 4) of GC5.5, Canada shall pay the Contractor the amount referred to in paragraph 1) of GC5.2, "Amount Payable", less the aggregate of
    - a. the sum of all payments that were made pursuant to GC5.4, "Progress Payment";
    - b. an amount that is equal to Canada's estimate of the cost to Canada of rectifying defects described in the Certificate of Substantial Performance; and
    - c. an amount that is equal to Canada's estimate of the cost to Canada of completing the parts of the Work described in the Certificate of Substantial Performance other than defects listed therein.
  4. Canada shall pay the amount referred to in paragraph 3) of GC5.5 not later than
    - a. 30 days after the date of issue of a Certificate of Substantial Performance, or
    - b. 15 days after the Contractor has delivered to Canada
      - i. a statutory declaration containing a declaration by the Contractor that up to the date of the Certificate of Substantial Performance, the Contractor has complied with all lawful obligations, discharged all its lawful obligations to its Subcontractors and Suppliers in respect of the work under the Contract, and discharged its lawful obligations referred to in GC1.8, "Laws, Permits and Taxes";
      - ii. evidence of compliance with workers' compensation legislation in accordance with GC1.9, "Workers' Compensation"; and
      - iii. an update of the progress schedule in accordance with the requirements of GC3.1, "Progress Schedule"; whichever is later.

#### **GC5.6 FINAL COMPLETION**

- 1) When Canada is of the opinion that the Work has been completed, the Contractor shall, on request, cause the Designer to provide Canada with
  - (a) a written declaration attesting to the completeness of the Work, and
  - (b) if the Work or a portion of the Work is subject to a Unit Price Arrangement, a certificate of measurement of the final quantities of the Workboth to the satisfaction of Canada.

- 2) Within five (5) days of the receipt of satisfactory documentation described in paragraph 1) of GC5.6 if Canada is satisfied that the *Contractor* has complied with the *Contract* and all orders and directions made pursuant thereto, and that the *Work* has been completed, 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 *Final Certificate of Measurement* which shall be binding upon and conclusive between Canada and the *Contractor* as to the quantities referred to therein.
- 3) Subject to GC5.2 AMOUNT PAYABLE and paragraph 4) of GC5.6,, Canada shall pay the *Contractor* the amount referred to in GC5.2 less the aggregate of
  - (a) the sum of all payments that were made pursuant to GC5.4 PROGRESS PAYMENT, and
  - (b) the sum of all payments that were made pursuant to GC5.5 SUBSTANTIAL PERFORMANCE OF THE WORK.
- 4) Canada shall pay the amount referred to in paragraph 3) of GC5.6 not later than
  - (a) 60 days after the date of issue of a *Certificate of Completion*, or
  - (b) 15 days after the *Contractor* has delivered to Canada
    - (i) a statutory declaration which contains a declaration by the *Contractor* that all of the *Contractor's* lawful obligations and any lawful claims against the *Contractor* that arose out of the performance of the *Contract* have been discharged and satisfied, and
    - (ii) evidence of compliance with workers' compensation legislation in accordance with GC1.9 WORKERS' COMPENSATION

whichever is later.

#### **GC5.7 PAYMENT NOT BINDING ON CANADA**

Neither acceptance of a progress claim or progress report, nor any payment made by Canada under the *Contract*, nor partial or entire use or occupancy of the *Work* by Canada shall constitute an acceptance by Canada of any portion of the *Work* or *Material* that is not in accordance with the requirements of the *Contract*.

#### **GC5.8 CLAIMS AND OBLIGATIONS**

- 1) The *Contractor* shall discharge all the *Contractor's* lawful obligations and shall 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 *Contractor*.
- 2) Whenever requested to do so by Canada, the *Contractor* shall make a statutory declaration declaring to the existence and condition of any obligations and claims against the *Contractor* arising out of the performance of the *Work*.
- 3) In order to discharge lawful obligations of and satisfy lawful claims against the *Contractor*, or its *Designers* or *Subcontractors* arising out of the performance of the *Contract*, 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*.

- 4) For the purposes of paragraph 3) of GC5.8, and subject to paragraph 6) of GC5.8, a claim or obligation shall be considered lawful when it is so determined by
- (a) a court of legal jurisdiction, or
  - (b) an arbitrator duly appointed to arbitrate the claim, or
  - (c) the written consent of the *Contractor* authorizing payment of the claim or obligation.
- 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 *Contractor* been performing the *Work* for a entity other than Canada:
- (a) such amount as may be paid by *Canada* pursuant to paragraphs 3) and 4) of GC5.8 shall not exceed the amount which the *Contractor* 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 8) of GC5.8 shall be deemed to replace the registration or provision of notice after the performance of work as required by any applicable legislation and no claim shall 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.
- 6) The *Contractor*, shall at the request of any claimant, submit to binding arbitration, those questions that need be answered to establish any entitlement of the claimant to payment. The arbitration shall have as parties to it any *Designer*, *Subcontractor*, or suppliers to whom the claimant supplied *Material*, performed work or rented equipment should such *Subcontractor*, *Designer*, or supplier wish to be adjoined, and *Canada* shall not be a party to such arbitration. Subject to any agreement between the *Contractor* and the claimant, the arbitration shall be conducted in accordance with the governing Provincial or Territorial legislation applicable to the site of the *Work*.
- 7) Paragraph 3) of GC5.8 shall apply only to claims and obligations
- (a) the notification of which has set forth the amount claimed to be owing and the person or entity who by contract is primarily liable and has been received by *Canada* in writing before final payment is made to the *Contractor* pursuant to GC5.6 FINAL COMPLETION, 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 *Contractor*, its *Designer*, *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, labour, or furnished the last of the *Material* pursuant to the claimant's Contract with the *Contractor*, its *Designer*, *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 5) of GC5.8, shall have commenced within one year from the date that the notification required by subparagraph 7)(a) of GC5.8 was received by *Canada*.

- 8) Upon receipt of a notice of claim, *Canada* may withhold from any amount that is due and payable to the *Contractor* pursuant to the *Contract*, the full amount of the claim or any portion thereof.
- 9) *Canada* shall notify the *Contractor* 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 *Contractor* 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* shall release to the *Contractor* any funds which would be otherwise payable to the *Contractor*, that were withheld pursuant to the provisions of this clause in respect of the claim of any claimant for whom the security stands.

#### **GC5.9 RIGHT OF SET-OFF**

- 1) Without limiting any right of setoff or deduction given or implied by law or elsewhere in the *Contract*, *Canada* may set off any amount payable to *Canada* by the *Contractor* under the *Contract*, or under any current contract, against any amount payable to the *Contractor* under the *Contract*.
- 2) For the purposes of paragraph 1) of GC5.9, "current contract" means a contract between *Canada* and the *Contractor*
  - (a) under which the *Contractor* has an undischarged obligation to perform or supply work, labour or material; or
  - (b) in respect of which *Canada* has, since the date of the *Contract*, exercised any right to take the work that is the subject of that contract out of the *Contractor's* hands.

#### **GC5.10 ASSESSMENTS AND DAMAGES FOR LATE COMPLETION**

- 1) For the purposes of this clause
  - (a) the *Work* shall be deemed to be completed on the date of *Certificate of Completion*, and
  - (b) the "period of delay" means the number of days commencing on the day fixed for completion of the *Work* and ending on the day immediately preceding the day on which the *Work* is completed but does not include any day within a period of extension granted pursuant to GC6.5 DELAYS AND EXTENSION OF TIME, and any other day on which, in the opinion of *Canada*, completion of the *Work* was delayed for reasons beyond the control of the *Contractor*.
- 2) If the *Contractor* does not complete the *Work* by the day fixed for its completion but completes it thereafter, the *Contractor* shall pay *Canada* an amount equal to the aggregate of
  - (a) all salaries, wages and traveling expenses incurred by *Canada* in respect of persons overseeing the performance of the *Work* during the period of delay;
  - (b) the cost incurred by *Canada* as a result of the inability to use the completed *Work* for the period of delay; and
  - (c) all other expenses and damages incurred or sustained by *Canada* during the period of delay as a result of the *Work* not being completed by the day fixed for its completion.
- 3) *Canada* may waive the right of *Canada* to the whole or any part of the amount payable by the *Contractor* pursuant to paragraph 2) of GC5.10 if, in the opinion of *Canada*, it is in the public interest to do so.

#### **GC5.11 DELAY IN MAKING PAYMENT**

- 1) Notwithstanding GC1.5 TIME OF THE ESSENCE, any delay by *Canada* in making any payment when it is due pursuant to GC5 shall not be a breach of the *Contract* by *Canada*.

- 2) Subject to paragraph 3) of GC5.11, *Canada* shall pay to the *Contractor* simple interest at the Average Bank Rate plus 3 percent per annum on any amount which is overdue pursuant to paragraph 3) of GC5.1 INTERPRETATION, and the interest shall apply from and include the day such amount became overdue until the day prior to the date of payment.
- 3) Interest shall be paid without demand by the *Contractor* except that
  - (a) in respect of amounts that are less than 15 days overdue, no interest shall be paid in respect of payment made within such 15 days unless the *Contractor* so demands after such amounts have become due and payable, and
  - (b) interest shall not be payable or paid on overdue advance payments, if any.

#### **GC5.12 INTEREST ON SETTLED CLAIMS**

- 1) For the purposes of this clause, a claim means a disputed amount subject to negotiation between *Canada* and the *Contractor* under the *Contract*.
- 2) A claim is deemed to have been settled when an agreement in writing is signed by *Canada* and the *Contractor* setting out the amount of the claim to be paid by *Canada* and the items of work for which the said amount is to be paid.
- 3) A settled claim is deemed to be outstanding from the day immediately following the date the said claim would have been due and payable under the *Contract* had it not been disputed.
- 4) *Canada* shall pay to the *Contractor* simple interest on the amount of a settled claim at the Average Bank Rate plus 3 per cent per annum from the date the settled claim was deemed to be outstanding until the day prior to the date of payment.

#### **GC5.13 RETURN OF SECURITY DEPOSIT**

- 1) After a *Certificate of Substantial Performance* has been issued, and if the *Contractor* is not in breach of nor in default under the *Contract*, *Canada* shall return to the *Contractor* all or any part of a Security Deposit that, in the opinion of *Canada*, is not required for the purposes of the *Contract*.
- 2) After a *Certificate of Completion* has been issued, *Canada* shall return to the *Contractor* the remainder of any security deposit unless the *Contract* stipulates otherwise.
- 3) If the security deposit was paid into the Consolidated Revenue Fund of *Canada*, *Canada* shall pay interest thereon to the *Contractor* at a rate established from time to time pursuant to section 21(2) of the Financial Administration Act.

#### **GC6 DELAYS AND CHANGES IN THE WORK**

##### **GC6.1 CHANGES IN THE WORK**

- 1) At any time before issuing a *Certificate of Completion*, *Canada* may issue orders for additions, deletions or other changes to the *Work*, or changes in the location or position of the whole or any part of the *Work*, if the addition, deletion, change or other revision is deemed by *Canada* to be, consistent with the general intent of the *Contract*.
- 2) An order referred to in paragraph 1) of GC6.1 shall be in writing and given to the *Contractor* in accordance with GC2.3 NOTICES.

- 3) Upon receipt of an order, the *Contractor* shall promptly perform the work in accordance with the order as if the order had appeared in and been part of the original Contract.
- 4) If anything done or omitted by the *Contractor* pursuant to an order increases or decreases the cost of the *Work* to the *Contractor*, payment for the work shall be made in accordance with GC6.4 DETERMINATION OF PRICE.

#### **GC6.2 CHANGES IN SUBSURFACE CONDITIONS**

- 1) If, during the performance of the Work, the Contractor encounters subsurface conditions that are substantially different from the subsurface conditions described in the Request for Proposal documents supplied to the Contractor, or a reasonable assumption of fact based thereon, the Contractor shall give notice to Canada immediately upon becoming aware of the situation.
- 2) If the Contractor is of the opinion that the Contractor may incur or sustain any extra expense or any loss or damage that is directly attributable to the changed subsurface conditions, the Contractor shall within 10 days of the date the changed subsurface conditions were encountered, give Canada written notice of intention to claim for that extra expense, loss or damage.
- 3) If the Contractor has given a notice referred to in paragraph 2) of GC6.2, the Contractor shall give Canada a written claim for extra expense, loss or damage no later than 30 days after the date that a Certificate of Substantial Performance is issued.
- 4) A written claim referred to in paragraph 3) of GC6.2 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable Canada to determine whether or not the claim is justified, and the Contractor shall supply such further and other information for that purpose as Canada requires.
- 5) If Canada determines that a claim referred to in paragraph 3) of GC6.2 is justified, Canada shall make an extra payment to the Contractor in an amount that is calculated in accordance with GC6.4, "Determination of Price".
- 6) If, in the opinion of Canada, the Contractor effects a saving of expenditure that is directly attributable to a substantial difference between the information relating to subsurface conditions at the site of the Work that is contained in the Request for Proposal documents, or a reasonable assumption of fact based thereon, and the actual subsurface conditions encountered by the Contractor, the Contract Amount shall be reduced by the amount of the saving of expenditure determined in accordance with GC6.4, "Determination of Price".
- 7) If the Contractor fails to give a notice referred to in paragraph 2) of GC6.2 and a claim referred to in paragraph 3) of GC6.2 within the times stipulated, an extra payment shall not be made to the Contractor in respect of the occurrence.
- 8) Canada does not warrant the content expressed in any subsurface report available for the perusal of the Contractor that does not form part of the Request for proposal and contract documents.

#### **GC6.3 HUMAN REMAINS, ARCHAEOLOGICAL REMAINS AND ITEMS OF HISTORICAL OR SCIENTIFIC INTEREST**

- 1) For the purposes of this clause
  - (a) "human remains" means the whole or any part of a deceased human being, irrespective of the time of death;

- (b) "archaeological remains" are items, artifacts or things made, modified or used by human beings in antiquity and may include, but not be limited to, stone, wood or iron structures or monuments, dump deposits, bone artifacts, weapons, tools, coins, and pottery;
  - (c) "items of historical or scientific interest" are naturally occurring or manufactured objects or things of any age that are not archaeological remains but may be of interest to society because of their historical or scientific significance, value, rarity, natural beauty, or other quality.
- 2) If, during the course of the *Work*, the *Contractor* encounters any object, item or thing which is described in paragraph 1) of GC6.3 or which resembles any object, item or thing described in paragraph 1) of GC6.3, the *Contractor* shall
- (a) take all reasonable steps, including stopping work in the affected area, to protect and preserve the object, item or thing,
  - (b) immediately notify *Canada* of the circumstances in writing, and
  - (c) take all reasonable steps to minimize additional costs which may accrue as a result of any work stoppage.
- 3) Upon receipt of a notification in accordance with paragraph 2)(b) of GC6.3, *Canada* shall promptly determine whether the object, item or thing is one described in, or contemplated by paragraph 1) of GC6.3, and shall notify the *Contractor* in writing of any action to be performed, or work to be carried out, by the *Contractor* as a result of *Canada's* determination.
- 4) *Canada* may, at any time, enlist the services of experts to assist in the investigation, examination, taking of measurements or other such recordings, placing of permanent protection around or removing of the object, item or thing encountered by the *Contractor*, and the *Contractor* shall, to the satisfaction of *Canada*, allow them access and cooperate with them in the carrying out of their duties and obligations.
- 5) Human remains, archaeological remains and items of historical or scientific interest encountered at the site of the *Work* shall be deemed to be the property of *Canada*.
- 6) Except as may be otherwise provided for in the *Contract*, the provisions of GC6.4 DETERMINATION OF PRICE, and GC6.5 DELAYS AND EXTENTION OF TIME shall apply.

#### **GC6.4 DETERMINATION OF PRICE**

##### **GC6.4.1 Price Determination Prior to Undertaking Changes**

- 1) If a Lump Sum Arrangement applies to the Contract or a part thereof, the price of any change shall be the aggregate estimated cost of labour, Plant and Material that is required for the change as agreed upon in writing by the Contractor and Canada plus an allowance for supervision, co-ordination, administration, overhead, margin and the risk of undertaking the work within the stipulated amount, which allowance shall be equal to
- (a) 20 percent of the aggregate costs referred to herein for that portion of the Work done by the Contractor's own forces, if the aggregate cost of the Work does not exceed \$50,000;
  - (b) 15 percent of the aggregate costs referred to herein for that portion of the Work that is done by subcontract, if the aggregate cost of the Work does not exceed \$50,000; or
  - (c) a negotiated percentage of the aggregate costs referred to herein or a negotiated amount
- (i) if the aggregate cost of the Work exceeds \$50,000; or

- (ii) if the Contractor and Canada agree in writing.
- 2) If a Unit Price Arrangement applies to the Contract or a part thereof, the Contractor and Canada may, by agreement in writing, add items, units of measurement, estimated quantities and prices per unit to the Unit Price Table.
  - 3) A price per unit referred to in paragraph 2) of GC6.4.1 shall be determined on the basis of the aggregate estimated cost of labour, Plant and Material that is required for the additional item as agreed upon by the Contractor and Canada, plus an allowance determined in accordance with paragraph 1) of GC6.4.1.
  - 4) To facilitate approval of the price of the change or the additional price per unit as applicable, the Contractor shall submit a cost estimate breakdown identifying, as a minimum, the estimated cost of labour, Plant, Material, each subcontract amount, and the amount of the allowance.
  - 5) If no agreement is reached as contemplated in paragraph 1) of GC6.4.1, the price shall be determined in accordance with GC6.4.2.
  - 6) If no agreement is reached, as contemplated in paragraphs 2) and 3) of GC6.4.1, Canada shall determine the class and the unit of measurement of the item of labour, Plant or Material and the price per unit shall be determined in accordance with GC6.4.2.

#### **GC6.4.2 Price Determination Following Completion of Changes**

- 1) If it is not possible to predetermine, or if there is failure to agree upon the price of a change in the Work, the price of the change shall be equal to the aggregate of
  - (a) all reasonable and proper amounts actually expended or legally payable by the Contractor in respect of the labour, Plant and Material that fall within one of the classes of expenditure described in paragraph 2) of GC6.4.2, that are directly attributable to the performance of the Contract;
  - (b) an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, in an amount that is equal to 10% of the sum of the expenses referred to in subparagraph 1)(a) of GC6.4.2; and
  - (c) interest on the amounts determined under subparagraphs 1)(a) and 1)(b) of GC6.4.2 calculated in accordance with GC5.12, "Interest on Settled Claims";
- 2) The cost of labour, Plant and Material referred to in subparagraph 1)(a) of GC6.4.2 shall be limited to the following categories of expenditure:
  - (a) payments to Subcontractors and Suppliers;
  - (b) wages, salaries, bonuses and, if applicable, travel and lodging expenses of employees of the Contractor located at the site of the Work and that portion of wages, salaries, bonuses and, if applicable, travel and lodging expenses of personnel of the Contractor generally employed at the head office or at a general office of the Contractor provided they are actually and properly engaged on the Work under the Contract;
  - (c) assessments payable under any statutory authority relating to workers' compensation, employment insurance, pension plan or holidays with pay, provincial health or insurance plans, environmental reviews, and Applicable Taxes collection costs;
  - (d) rent that is paid for Plant, or an amount equivalent to the said rent if the Plant is owned by the Contractor, that is necessary for and used in the performance of the Work, if the rent or the equivalent amount is reasonable and use of that Plant has been approved by Canada;
  - (e) payments for maintaining and operating Plant necessary for and used in the performance of the Work, and payments for effecting repairs thereto that, in the opinion of Canada, are necessary for

- the proper performance of the Contract, other than payments for any repairs to the Plant arising out of defects existing before its allocation to the Work;
- (f) payments for Material that is necessary for and incorporated in the Work, or that is necessary for and consumed in the performance of the Contract;
  - (g) payments for preparation, delivery, handling, erection, installation, inspection, protection and removal of the Plant and Material necessary for and used in the performance of the Contract; and
  - (h) any other payments made by the Contractor with the approval of Canada that are necessary for the performance of the Contract in accordance with the contract documents.

#### **GC6.4.3 Price Determination - Variations in Tendered Quantities**

For the purpose of this clause "tendered quantities" means the estimated quantities identified in the Request for Proposal documents.

- 1) Except as provided in paragraphs 2), 3), 4) and 5) of GC6.4.3, if it appears that the final quantity of labour, Plant and Material under a price per unit item shall exceed or be less than the estimated tendered quantity, the Contractor shall perform the Work or supply the Plant and Material required to complete the item and payment shall be made for the actual Work performed or Plant and Material supplied at the price per unit set out in the Contract.
- 2) If the final quantity of the price per unit item exceeds the estimated tendered quantity by more than 15 percent, either party to the Contract may make a written request to the other party negotiate an amended price per unit for that portion of the item which exceeds 115 percent of the estimated tendered quantity, and to facilitate approval of any amended price per unit, the Contractor shall, on request, provide Canada with
  - (a) detailed records of the actual cost to the Contractor of performing or supplying the tendered quantity for the price per unit item up to the time the negotiation was requested, and
  - (b) the estimated unit cost of labour, Plant and Material required for the portion of the item that is in excess of 115 percent of the tendered quantity.
- 3) If agreement is not reached as contemplated in paragraph 2) of GC6.4.3, the price per unit shall be determined in accordance with GC6.4.2.
- 4) If it appears that the final quantity of labour, Plant and Material under a price per unit item shall be less than 85 percent of the estimated tendered quantity, either party to the Contract may make a written request to the other party to negotiate a change to the price per unit for the item if
  - (a) there is a demonstrable difference between the unit cost to the Contractor of performing or supplying the estimated tendered quantity and the unit cost to the Contractor for performing or supplying the final quantity; and
  - (b) the difference in unit cost is due solely to the decrease in quantity and not to any other cause.
- 5) For the purposes of the negotiation referred to in paragraph 4) of GC6.4.3
  - (a) the onus of establishing, justifying and quantifying a proposed change lies with the party making the request for negotiation; and
  - (b) in no event shall the total price for an item that has been amended as a result of a reduction in quantity pursuant to paragraph 4) of GC6.4.3 exceed the amount that would have been payable to the Contractor had 85 percent of the tendered quantity actually been performed or supplied.

## **GC6.5 DELAYS AND EXTENSION OF TIME**

- 1) Upon application of the Contractor made before the date first fixed for completion of the Work or before any other date previously fixed under this clause, Canada may extend the time for completion of the Work by fixing a new date if Canada determines that causes beyond the control of the Contractor have delayed its completion.
- 2) The Contractor's application shall be accompanied by the written consent of the bonding company whose bond forms part of the Contract Security.
- 3) Subject to paragraph 4) of GC6.5, no payment, other than a payment that is expressly stipulated in the Contract, shall be made by Canada to the Contractor for any extra expense, loss or damage incurred or sustained by the Contractor due to delay, whether or not the delay is caused by circumstances beyond the control of the Contractor.
- 4) If the Contractor incurs or sustains any extra expense or any loss or damage that is directly attributable to any neglect or delay that occurs after the date of the Contract on the part of Canada in providing any information or in doing any act that the Contract either expressly requires Canada to do or that would ordinarily be done by an owner in accordance with the practice of the trade, the Contractor shall give Canada written notice of intention to claim for that extra expense or loss or damage within 10 working days of the date the neglect or delay first occurred.
- 5) When the Contractor has given a notice referred to in paragraph 4) of GC6.5, the Contractor shall give Canada a written claim for the extra expense, loss or damage no later than 30 days after the date that a Certificate of Completion is issued and not afterwards.
- 6) A written claim referred to in paragraph 5) of GC6.5 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable Canada to determine whether or not the claim is justified and the Contractor shall supply such further and other information for that purpose as Canada may require.
- 7) If Canada determines that a claim referred to in paragraph 5) of GC6.5 is justified, Canada shall make an extra payment to the Contractor in an amount that is calculated in accordance with GC6.4, "Determination of Price".
- 8) If the Contractor fails to give a notice referred to in paragraph 4) and a claim referred to in paragraph 5) of GC6.5 within the times stipulated, an extra payment shall not be made to the Contractor in respect of the occurrence.

## **GC7 DEFAULT, SUSPENSION OR TERMINATION OF CONTRACT**

### **GC7.1 TAKING THE WORK OUT OF THE CONTRACTOR'S HANDS**

- 1) By giving notice in writing to the Contractor in accordance with GC2.3, "Notices", Canada, without any other authorization, may take all or any part of the Work out of the Contractor's hands, and may employ such means as Canada sees fit to have the Work completed if the Contractor
  - (a) fails to remedy any delay in the commencement or default in the diligent performance of the Work to the satisfaction of Canada within 6 days of Canada giving notice to the Contractor 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 the consent required by GC1.17, "Assignment", or
  - (f) otherwise fails to observe or perform any of the provisions of the Contract.
- 2) If the whole or any part of the Work is taken out of the Contractor's hands, the Contractor's right to any further payment that is due or accruing due under the Contract is, subject only to paragraph 3) of GC7.1, extinguished, and the Contractor 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 Contractor's failure to complete the Work.
  - 3) If the whole or any part of the Work that is taken out of the Contractor's hands is completed by Canada, Canada may pay the Contractor 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 Contractor'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 Contractor's default.
  - 4) The taking of the Work or any part thereof out of the Contractor's hands does not relieve the Contractor 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 Contractor's hands.
  - 5) If the Work or any part thereof is taken out of the Contractor's hands, all Plant and Material and the interest of the Contractor, or its suppliers or subcontractors at any tier, in all real property, licences, powers and privileges acquired, used or provided by the Contractor, or its suppliers or subcontractors at any tier, under the Contract shall continue to be the property of Canada without compensation.
  - 6) When Canada certifies that any Plant, Material, or any interest of the Contractor 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 shall revert to the Contractor.
  - 7) If the Contractor 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 Contractor shall immediately forward a copy of the proposal or the notice of intention to Canada.

## **GC7.2 SUSPENSION OF WORK**

- 1) When, in Canada's opinion, it is in the public interest to do so, Canada may require the Contractor to suspend performance of the Work either for a specified or an unspecified period, by giving a notice of suspension in writing to the Contractor in accordance with GC2.3, "Notices".
- 2) When a notice of suspension is received by the Contractor, the Contractor shall 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.
- 3) During a period of suspension, the Contractor shall not remove any part of the Work, Plant or Material from its site without the consent of Canada.
- 4) If a period of suspension is 60 days or less, the Contractor shall resume the performance of the Work on the expiration of that period, and the Contractor is entitled to be paid the extra costs necessarily incurred by the Contractor as a result of the suspension, determined in accordance with GC6.4, "Determination of Price".
- 5) If a period of suspension is more than 60 days, Canada and the Contractor may agree that the performance of the Work shall be continued by the Contractor, and the Contractor shall resume performance of the Work

subject to any terms and conditions agreed upon by Canada and the Contractor. If Canada and the Contractor do not agree that performance of the Work shall be continued by the Contractor, or upon the terms and conditions under which the Contractor shall continue the Work, the notice of suspension shall be deemed to be a notice of termination pursuant to GC7.3, "Termination of Contract".

### **GC7.3 TERMINATION OF CONTRACT**

- 1) Canada may terminate the Contract at any time by giving a notice of termination in writing to the Contractor in accordance with GC2.3, "Notices".
- 2) If the Contractor receives a notice of termination, the Contractor shall forthwith cease all operations in performance of the Contract, subject to any conditions stipulated in the notice.
- 3) Subject to paragraph 4) of GC7.3, if the Contract is terminated, Canada shall pay the Contractor an amount determined to be due to the Contractor pursuant to GC6.4, "Determination of Price", less the aggregate of all amounts that were paid to the Contractor by Canada and all amounts that are due to Canada from the Contractor pursuant to the Contract.
- 4) In no event shall the total amount payable by Canada to the Contractor exceed the amount, calculated in accordance with GC5, "Terms of Payment", that would have been payable to the Contractor had the Contractor completed the Work.
- 5) Payment to the Contractor, if any, shall be made as soon as practicable under the circumstances.

### **GC7.4 SECURITY DEPOSIT - FORFEITURE OR RETURN**

- 1) If the Work is taken out of the Contractor's hands, or the Contractor is in breach of, or in default under, the Contract, Canada may convert a security deposit to Canada's own use.
- 2) If Canada converts a security deposit, the amount realized shall be deemed to be an amount due from Canada to the Contractor under the Contract.
- 3) Any balance of the amount realized that remains after payment of all losses, damage and claims of Canada and others shall be paid by Canada to the Contractor if, in the opinion of Canada, it is not required for the purposes of the Contract.

## SUPPLEMENTARY CONDITIONS

### SC01 PAYMENT FOR DESIGN CHANGES AND REVISIONS

1. Payment for any additional or reduced Design Services authorized by Canada prior to their performance, and for which a basis of payment has not been established at the time of execution of the Contract, shall be in an amount or amounts to be mutually agreed upon from time to time, subject to the Terms of Payment and the approval of Canada.
2. Where it is not possible, or appropriate, to agree upon a fixed price fee prior to the performance of the additional or reduced Design Services, payment shall be made on the basis of a time based fee as follows:
  - (a) The *Designer's* principals and executives, and other personnel approved in that capacity by Canada shall be paid at the hourly rates provided for in clause 1.3.4 of the Price Bid Form.
  - (b) The *Designer's* staff approved by Canada shall be paid at the hourly rate specified in Annex B..
  - (c) The normal working hours per day for *Designer's* principals, executives and the employees, shall be deemed to be seven and a half (7.5) hours of any day during which they are actually engaged in the performance of the *Design Services*.
  - (d) Travel time during normal working hours, that is related to the Project and authorized by Canada, shall be chargeable as time worked.
  - (e) The maximum amount(s) that applies (apply) to the *Design Services* to be carried out at time rates shall be as specified in the change request notice issued by Canada, which amount(s) shall not be exceeded without the prior authorization of Canada.
3. Subject to paragraph 5 below and prior to the performance of additional or reduced *Design Services* on the basis of a time based fee, the *Contractor* shall comply with any request made by Canada regarding persons to be employed by its *Designer* or its *Designer's subconsultants* to provide the additional or reduced *Design Services*. In addition, Canada shall determine, based on industry practice and input from the Contractor, hourly rates for any of those persons for whom the relevant information does not appear in the Price Bid Form.
4. The *Contractor* shall, on request, submit to Canada for approval, the names, addresses, qualifications, experience and proposed roles of all persons, including principals, to be employed by its *Designer* to provide the *Design Services* for the Project and, on request, submit any subsequent changes to Canada for approval.
5. Payment for additional *Design Services* not identified at the time of execution of the Contract shall be made only to the extent that
  - (a) the additional *Design Services* are *Services* that are not included in stated *Design Services* in the *Contract*,
  - (b) the additional *Design Services* are required for reasons beyond the control of the Contractor, and
  - (c) any fee adjustment for *Design Services* resulting from an adjustment in the Construction Cost Estimate arising from the additional *Services* is not commensurate with the additional *Services* performed.
6. Disbursements
  1. The following costs shall be included in the bid Price required to deliver the Work and shall not be reimbursed separately;
    - (a) Standard office expenses such as any photocopying, computer costs, Internet, long distance telephone and fax, including that between the Contractor's main office and branch offices or between the Contractor's offices and other team member's offices;
    - (b) Travel time;
    - (c) Travel expenses; and
    - (d) Local project office.

(e) Deliverables identified in Design-Build Services and Specifications.

## **SC02 PROFESSIONAL LIABILITY INSURANCE REQUIREMENTS:**

1. The Contractor shall ensure that appropriate Professional Liability insurance coverage is in place to cover the Designers and other consultants engaged for the services required in the performance of the Work. If required, the Contractor shall furnish evidence satisfactory to Canada of such insurance coverage and any renewals thereof.
2. The Professional Liability insurance coverage shall be in an amount usual for the nature and scope of the services but, shall have a limit of liability of not less than \$1,000,000 per claim, and be continually maintained from the commencement of performance of the services until five (5) years after their completion.

## **SC03 INSURANCE TERMS**

### 1) Insurance Contracts

- (a) The Contractor must, at the Contractor'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.
- (b) Compliance with the insurance requirements does not release the Contractor from or reduce its liability under the Contract. The Contractor 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 Contractor's expense, and for its own benefit and protection.

### 2) Period of Insurance

- (a) 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.
- (b) The Contractor 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.

### 3) Proof of Insurance

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

### 4) Insurance Proceeds

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

### 5) Deductible

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

## ANNEX E: TERMS OF REFERENCE

### 1.0 PROJECT DESCRIPTION – PARKS CANADA TRAILS REVITALIZATION PROJECT – FUNDY NATIONAL PARK

#### 1.1. MANDATE:

The mandate of Parks Canada is to, *on behalf of the people of Canada, to protect and present nationally significant examples of Canada's natural and cultural heritage, and foster public understanding, appreciation and enjoyment in ways that ensure the ecological and commemorative integrity of these places for present and future generations.*

Within the context of the National Parks System Plan, Fundy National Park was established in 1948 to protect representative examples of Canada's Fundy Coastal and Southern Uplands ecoregions. The park is also significant as the core of the UNESCO Fundy Biosphere Reserve which focuses on protection and encouraging sustainable tourism in the biosphere region.

In total, Fundy National Park protects 206 km<sup>2</sup> of land that is characterized by a rolling, hilly plateau cut by deep valleys and cascading rivers in southern New Brunswick.

#### 1.2. PURPOSE:

These Terms of Reference (TOR) have been developed to engage the services of a Design-Builder to undertake the design and construction of enhancement and expansion of the specified trails outlined in the scope of work, section 1.5 The purpose is to improve the sustainability of the trail network and enhance the quality of visitor experiences within Fundy National Park.

This effort is being undertaken in the context of the broader goal to preserve the Fundy National Park trail system as a leading destination in New Brunswick, offering numerous opportunities for enjoyable, accessible and educational trail experiences to a variety of visitors.

Specific objectives are:

1. Decrease the long-term trail maintenance requirements and improve ecosystem health by addressing deferred work and mitigating ecological impacts such as erosion;
2. Enhance overall visitor experience on our trails by:
  - a. Improving the overall trail experience including access to vistas and points of interest;
  - b. Increasing and enhancing our multi-use trail offer (mountain biking and hiking) to visitors.

#### 1.3. BACKGROUND:

Fundy National Park is well recognized for its extensive trail network through which visitors are able to explore the park. Much of the network was based on old logging, horse and travel routes that were in place prior to the park's establishment. While this was a practical solution during the early years of the park, some of these trails do not meet current best practice standards in design.

Over the years, the popularity of these trails for both hiking and cycling has left the system in need of maintenance and redevelopment to address various environmental impacts and visitor

safety concerns. At the same time, Parks Canada has seized on this opportunity to enhance the quality of experiences available to visitors on the trails.

In 2010, Parks Canada developed a Trail System Concept Vision for Fundy National Park. In accordance with the goals established in the Concept Vision, Parks Canada then commissioned a study of the condition of several trails within the National Park and the development of a concept plan for the enhancement and expansion of the trail network in 2014. The study focused on the Goose River and Coppermine trails in the Fundy Coastal ecoregion, and the Lavery Falls, Moosehorn, Broad River, and The Forks trails in the Southern Uplands ecoregion. Various options for each trail area were presented and potential alignments were identified, however, final alignments were neither established nor flagged on site. In response to these studies, Parks Canada has identified three(3) general areas of work that are to be addressed through this design-build contract, identified as follows:

- 1) Coastal Trails: Goose River and Coppermine Trails
- 2) Upper Salmon River Watershed Trails, including Lavery Falls, Moosehorn, Broad River and;
- 3) South Chignecto Trail Components; Whitetail Trail

These areas are identified in Appendix J: Trail Location Plan - Fundy Trails Revitalization project. Trail alignments shown on plan are schematic. The Trail Design/Builder will identify actual alignments for approval by the Project Manager.

#### **1.4. PROJECT DELIVERY APPROACH:**

##### **1.4.1 Design Phase:**

This project will use a Design-Build approach to deliver the project. Design services will be engaged directly by the Design Builder, who will direct and coordinate all the design-related work. Design Builder's responsibilities will include developing a cohesive functional partnership between all members of the project delivery team and stakeholders throughout all phases of the project life.

##### **1.4.2 Construction Phase:**

The Design-Builder will safely and efficiently deliver the project, using industry best practices in conformance with PWGSC standards, respecting the approved scope, quality, budget and schedule. The Design-Builder will construct backcountry trails using appropriate tools and techniques in order to meet project objectives.

#### **1.5 ROLES AND RESPONSIBILITIES:**

##### **1.5.1 Design Builder:**

The Design Builder shall:

- .1 Assign qualified staff or engage the services of Specialist Consultants licensed to practice in the Province of New Brunswick as required to provide the design services to meet the General Performance Requirements.
- .2 Provide all necessary personnel to perform the services and duties for the Project, either by assignment of Design Builder qualified staff or by engagement of services contracted directly to the Design Builder.
- .3 Ensure continuity of key personnel and maintain a dedicated working team for the life of this project.
- .4 Submit in writing, to the Departmental Representative for review and acceptance:
  - .1 The respective names, addresses and confirmation of qualifications of any and all individuals and/or firms engaged to provide Services for this Project, who may be identified after award of contract.
  - .2 Proposed changes to the roles of any and all persons to be employed by the Design Builder or

any and all firms to be contracted by the Design Builder to provide the Services and Work for the Project and shall include the names, addresses, qualifications and experience of the proposed individual(s) or firm(s).

#### **1.5.2 PWGSC:**

PWGSC will:

- .1 Manage the project through managing the contract with the Design Builder.
- .2 Provide authorizations, reviews and approvals to the Design Builder for each design phase and during design and construction.

#### **1.5.3 THE PWGSC TEAM:**

- .1 The PWGSC Project Manager Is the Departmental Representative during the design and construction phase of the project, and
  - .1 Is responsible for conveying all resultant PCA requirements to the Design Builder
  - .2 Agent for PCA, the liaison amongst and between the Design Builder, Public Works and Government Services Canada and the User Department.
- .2 PWGSC Professional & Technical Resources Teams:
  - .1 The Architectural & Engineering Resources Team will be represented by the following disciplines:
    - .1 Landscape Architectural, .
    - .2 Engineering:
      - .1 Structural,
      - .2 Civil

#### **1.5.4 PCA TEAM:**

- .1 The PCA Project Leader:
  - .1 Is the primary PCA contact for all issues arising during the design and construction phases of the project that require input or decisions from PCA.

### **1.6 COMMUNICATION AND MEETINGS:**

#### **1.6.1 COMMUNICATION:**

- .1 Correspondence:
  - .1 All correspondence from the Design Builder shall be distributed as directed by the Departmental Representative.
  - .2 There shall be no correspondence between PCA and the Design Builder unless indicated otherwise by the Departmental Representative.
  - .3 All correspondence must carry the Contract name/number, PWGSC Project title, PWGSC Project number and File number and a date (i.e. Month/Day/Year).

#### **1.6.2 MEETINGS DURING THE DESIGN PHASE:**

- .1 Meetings with PWGSC, the Design Builder and PCA will normally be held bi-weekly.
- .2 Design Builder will arrange meetings bi-weekly, or scheduled at a frequency acceptable to the Departmental Representative and PCA, through to the completion of the construction documents with representatives from:
  - .1 PWGSC
  - .2 Design Builder
  - .3 PCA
- .3 Design Builder will be responsible for:
  - .1 Preparing minutes of meetings during the design phases,
  - .2 Distributing and setting agenda.

### **1.6.3 MEETINGS DURING THE CONSTRUCTION PHASES:**

- .1 Design Builder shall:
  - .1 Arrange and coordinate all construction bi-weekly meetings on site:
    - .1 Endeavour to hold all meetings as Green Meetings (i.e. Electronic copies of documents where possible or double sided hard copies).
  - .2 Establish a list of standing agenda items, including (as a minimum) the following standing agenda items:
    - .1 Schedule and progress,
    - .2 Cost issues and changes,
    - .3 Risk and quality issues,
    - .4 Quality,
    - .5 Scope of work,
    - .6 Site safety,
    - .7 Sustainable development, and
    - .8 Commissioning.

### **1.6.4 SUBMISSIONS TO PWGSC:**

- .1 Where submissions to PWGSC include summaries, reports, network diagrams, drawings, plans, specifications or finish schedules, submit one (1) original to the Departmental Representative in electronic format, unless otherwise directed in writing.
- .2 Electronic format:
  - .1 The electronic deliverables shall be provided in original format using Microsoft applications or AutoCAD
  - .2 The Design Builder shall also submit all work in Adobe Acrobat pdf format

### **1.6.5 PROJECT RESPONSE TIME:**

- .1 During the project, the Design Builder's Key Personnel shall be:
  - .1 Available to attend meetings and respond to inquiries within one (1) working days' notice,
  - .2 Able to respond to emergencies within one (1) hour, including those occurring during off-hours and on weekends/ holidays
- .2 On occasion, there may be urgent, problem-solving meetings.
  - .1 The Design Builder must be available to attend such meetings within four (4) business hours.

### **1.7 DELIVERABLES:**

#### **ACCEPTANCE OF PROJECT DELIVERABLES:**

- .1 While PWGSC acknowledges the Design Builder's obligations to meet project requirements, the project delivery process entitles PWGSC to review all work.
- .2 PWGSC (and PCA via PWGSC reserves the right to reject undesirable or unsatisfactory work.
- .3 The Design Builder must obtain Departmental Representative acceptance of all required deliverables for the Project.
  - .1 Acceptance indicates that, based on a general review of material for specific issues, the material is considered to comply with the performance requirements and that the overall project objectives appear to be satisfied.
  - .2 Acceptance does not relieve the Design Builder of responsibility for the work and compliance with the contract.
  - .3 Acceptance does not prohibit rejection of work, which is determined to be unsatisfactory at later stages of review.

### **1.8 REVIEW AND ACCEPTANCE:**

**FEDERAL GOVERNMENT:**

.1 Except for reasonable design changes after contract award, the Design Builder shall consider the RFP design submission as having completed the Conceptual Design Stage, as defined in the Procedures and Standards document.

.2 Following the contract award the Design Builder, shall as part of the Construction Documentation Process, submit to the Departmental Representative for review 33%, 66% and 99% complete construction drawings and specifications.

.1 Design Builder shall respond in writing to Departmental Representative's written review comments.

.2 Allow 10 working days for review and comments

**1.9 SCOPE OF SERVICES:**

- Management and coordination of the design and construction team;
- Backcountry trail design;
- All studies and investigations as required to obtain required permits and approvals;
- GPS layout of trail centrelines;
- Hydrological assessment of watershed areas;
- Structural Engineering;
- Civil Engineering;
- Preparation of contract documents, including drawings and specifications;
- Cost estimating;
- Construction;
- Management and quality control on Site;
- Inspections and final reviews at Substantial Performance;

**1.10 SCOPE OF WORK:**

The scope of work required includes:

1. Field investigations and ground truthing to identify and layout actual alignment of each segment of trail revitalization on site. Trail centreline control points at minimum one (1) km intervals will be provided by PCA. This will be used as a basis to identify actual trail alignment.
2. Hydrologic assessment of watershed areas to quantify flows  
Conduct hydrologic and hydraulic analysis/modeling to investigate capacities of the existing drainage system, to identify potential impacts of proposed developments on the storm water drainage system and to design drainage structures and erosion control measures as required for the proposed trail developments in Fundy National Park. Specifics as follows:
  - .1 Perform hydrologic study and provide extreme flows (1, 2, 10, 20, 50, 100 years return periods) at different stream crossings and recommend the design flows.
  - .2 Conduct hydraulic analysis and modeling to determine stream crossing capacities, water surface and velocity profiles under existing and with proposed developments.
  - .3 Design the drainage system including bridge/culvert crossings, erosion protection and sediment control measures following applicable guidelines and regulatory requirements.
  - .4 Provide a report outlining, but not limited to, watershed map delineating sub-watersheds and showing hydrologic characteristics; hydrologic and hydraulic analysis results; sizes and capacity of existing and proposed hydraulic structures; hydrologic and hydraulic design parameters used for drainage structure sizing; longitudinal

profiles of stream bed, bank elevation, water surface and velocity profiles for design flows in existing and proposed drainage systems.

The hydrologic assessment data will be used as a basis for detailed design of all trail drainage, water crossing structures and specifications.

3. Detailed design of trails and related infrastructure: Design is based on user experience enhancement, site drainage and operation/maintenance of trails. Identification of trail construction methods, preparation construction details and specifications for construction to suit site specific conditions and meet environmental, safety, and visitor experience requirements. As described below, design costs/disbursements are identified separately for each of three(3) areas.
4. Construction of trails and related infrastructure: Includes, but not limited to: clearing, grubbing, earthwork, water crossings, timber bridges and supply and installation of materials. An outline of required work in each of the three identified areas is as follows:

**Coastal Trail Components - Goose River and Coppermine Trail:**

.1 Design and Consulting services for coastal trail components(RS3, RS4, disbursements)

.2 Enhancement of Fundy Footpath Connector (+/- 2.km):

New trail tread (.75m wide) to be installed on existing trail centreline. Construct climbing turns(9 est.) and/or switchbacks as required. Trail corridor to be restored. Reclamation of trail closure sections(16 est.) as required.

.3 Goose River Trail leaving from camp sites (+/- 1.29km):

Re-grade (narrow) existing trail tread to 1.2m. Restore trail corridor and construct grade reversals(14 est.) to improve drainage as required. Construct culverts(5 est.). Typical culvert size 250mm dia., 2.0m long.

.4 New Goose River Trail Segment along coast (+/- 9.0km):

- Construct a new trail corridor(2.0m wide), including 1.2m wide trail tread. Install wet water crossings(22 est.).
- Construct two (2) new crossings (approx.10m clear span; approx. 1. m minimum clear width, to allow for pedestrian and ATV/UTV access) over Mile Brook and Second Mile Brook.
- Install new drainage culverts(20 est.) across trail as required. Typical size 250mm dia., 2.0m long.

.5 Emergency Trail Erosion Repair at Goose River Trail:

Sections of former Goose River Road have severe erosion issues. Road must remain operational until new Goose River Trail is constructed. The Design-Builder is to construct 1.2m wide trail tread(1,100 l.m.) on existing centreline within existing trail corridor. Re-grade trail corridor(2,000 sq.m.) back to original conditions. Remove/re-install existing drainage culverts(34) drainage culverts. Replace culverts as required. Re-grade existing drainage ditches(1,000 l.m.) back to original conditions.

.6 Water Crossing Replacement at Goose River Trail:

The existing plans for the park trail system propose using the existing Goose River Trail as construction access for the creation of new trails in the area. The Design-Builder shall investigate the possibility of using these existing(2) pedestrian bridge structures to transport the required construction equipment over these two river crossings. The Design-Builder shall evaluate the existing structure to safely carry a 5 ton vehicle such as a CAT 305 (or similar) for the duration of a 2 -3 year construction schedule; must consider load carrying capacity, width requirements and bridge railing/barrier requirements. The total amount of reinforcing, renovations or modifications to the existing structure shall be determined in order to estimate the cost for modifications.

- a. The Design-Builder shall also consider if providing their own temporary crossing structures for construction equipment is a feasible option.
- b. The existing bridges have three steel girders with transverse wooden deck and light framed wood railings. The existing bridges are used for pedestrians and also for ATV access by Parks Canada personnel.
- c. An additional option to be considered is extending the trail network upstream to allow the re-use of the existing bridges for future trail crossings, with modifications and upgrades as necessary to act as construction access, but later revert to pedestrian and ATV access only at the completion of the construction.

.7 Coppermine Trail Restoration (lower segment - +/- 2.0km):

Construct new trail tread 1.2m wide(1,950 l.m. est.) within existing corridor. Install new drainage culverts(5 est.) as required. Typical size - 250mm dia., 2.0m long  
Remove existing timber bridge (5m x 1.2m) and replace with wet water crossing(1).

.8 Coppermine Trail Restoration (upper segment - +/- 2.0km):

Construct new trail tread 1.2m wide(2,000 l.m. est.) within existing corridor. Construct sections of new trail corridor(500 l.m. x 2.0m wide est.). Install new drainage culverts as required. Replace existing timber pedestrian bridges(2) with new 13m+/- clear span x 1.5 wide timber bridges complete with code –compliant handrails on two sides. Construct grade reversals(6 est.) as required.

.9 New Coppermine Trail (upper segment from Mile Brook campsites(+/- .9 km):

Works to include: New trail corridor(2.0m wide x 900 l.m. est. ) including 1.2m wide trail tread. Construct climbing turns(6 est) and/or switchbacks as required.

**Upper Salmon River Watershed Trails (Lavery, Moosehorn, and Broad River):**

**.10** Design and Consulting services for Upper Salmon river trail components(RS3, RS4, disbursements), including north and south portions, Lavery Trail Re-alignment, Moosehorn Trail Re-alignment, and new bench cut trail along Broad River. Note the south portion of Upper Salmon River Trail(2.5 km est.) is **design only**; construction by others).

.11 Restoration of north portion of Upper Salmon River trail (+/- 4.3km):

Within the existing trail corridor, the trail tread is to be widened(4,300 l.m. est.) to 1.2m wide and restored. Designated sections of the existing trail are to be re-routed out of flood plain area. This requires new trail corridor(1,500 l.m. est.) including new trail tread(1.2m wide) and restoration of side slopes.

**.12 Laverty Trail Re-alignment (+/- 4.8km):**

Works include trail corridor (2.0m wide) construction including new trail tread(4,800 l.m. est.) 1.2m wide, to create switchbacks(13 est.) or climbing turns crossing the existing fall line trail. Works to include wet trail(16 est.) or raised bed crossings. Restoration of intersecting areas(15 est.) to discourage use of existing fall line trail.

**.13 Moosehorn Trail Re-alignment (+/- 5.9km):**

Works include trail corridor (2.0m wide) construction including new trail tread(5,900 l.m. est.) 1.2m wide, to create switchbacks or climbing turns(8 est.), as required, crossing the existing trail. Works also to include restoration of the areas at the intersecting points(6 est.)of the new trail sections, to discourage continued use of existing trail.

Construct drainage culverts(4 est.) and minor timber water crossings(1.5m x 3m typ. - 4 est.) as required.

**.14 New Bench cut trail along Broad River (approx. 1.8 km):**

Works include construction of new (2.0m wide) trail corridor(1,800 l.m. est.) including re-grading, construction of 1.2m wide trail tread and restoration of side slopes. Construct drainage culverts(8 est.) as required. Typical size 250mm dia. X 2.0m long.

**South Chignecto Trail Components**

**.15 Design and Consulting services for South Chignecto trail components(RS3, RS4, disbursements)**

**.16 Whitetail Trail Additional Route (approx.. 2.0 km)**

Works include new wet trail crossings (2);

New trail corridor construction including climbing turns to create new hiking / lower speed multi-use trail route to bypass steep downhill section (+/- 2km);

On existing steep downhill section, construction of nine (9) grade reversals.

**1.11 TRAIL CONSTRUCTION REQUIREMENTS**

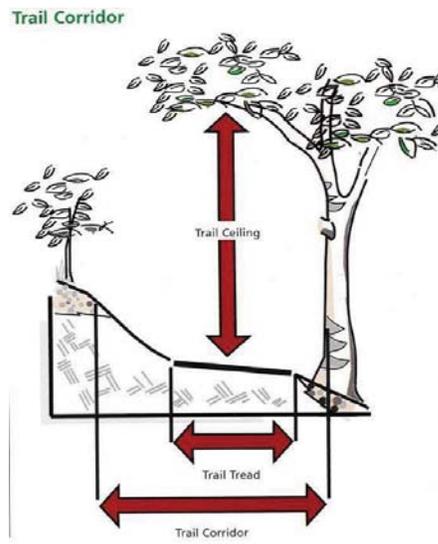


Diagram A

- a. Trail Tread (see diagram A): The travelled portion within the trail corridor consisting of local mineral soil or granular material on stable subgrade. Trail tread to be hard and stable. Trail tread to be compacted using mechanical means equal or above to three(3) passes using a vibratory plate or roller exerting 7KPA of centrifugal force and an operating weight of 50kg min. Compacted depth – 100mm.
- b. Restoration of trail corridor: The Design-Builder shall restore natural drainage patterns, scarify the existing trail tread (5-10 cm deep or down to bedrock in areas with shallower soils) if it consists of compacted materials, and apply organic material (e.g., leaf litter or down woody debris from nearby areas – less than 15m from trail) over scarified areas to stabilize soils. Plant material, woody debris and rocks required for the restoration of closed sections of trails shall be collected from the adjacent landscape or salvaged from the footprint of the newly constructed trail. Organic mulch can be used to replace topsoil where needed. Junctions between the old and new trail must be adequately screened (e.g., rocks, transplanted vegetation) to discourage trail users from continual use of the closed sections of trail. Any plant material salvaged for transplanting must be protected from frost, excessive heat, wind and sun.
- c. Unsuitable materials: Grubbings, clay-based soils, large organic matter (e.g. branches, roots) and other deleterious materials.
- d. Borrow pit: An area where material (usually soil, gravel or sand) has been excavated for use at another location. On-site borrow pits must be pre-approved by Departmental Representative.
- e. Timber bridge: Pedestrian crossing of water ways (e.g. streams, brooks, rivers meeting the requirements of a class A2 bridge as defined by Parks Canada 'Directive for Design, Construction, and Inspection of Vehicular and Pedestrian Bridges' January 2008. The bridge must contain a timber deck wearing surface and timber handrails min. 1066mm high. The minimum cleared travelled width is to be 1.5m.
- f. Timber water crossing: A pedestrian crossing of minor water ways. Maximum clear

span length – 3m. Minimum cleared travelled width – 1.5m. Timber to be rot-resistant. Timber edging (150mm high min.) on two sides is required.

g. Mineral soil: Defined as mineral-based soil from on-site sources containing less than 20% of organic matter.

h. Switchback: A trail that reverses direction with the help of a relatively level, constructed landing. See IMBA “*Guide to Building Sweet Single Track*”.(2004) for complete explanation and drawing details.

i. Climbing turn: Used only on trails with less than 7% grade, these turns maintain a constant radius around the turn through the fall. There is no landing at the apex of the turn. See IMBA “*Guide to Building Sweet Single Track*”.(2004) for complete explanation and drawing details.

j. Work limits: The physical area where construction activities are authorized to take place.

k. Restoration: The process of assisting the recovery of a degraded, damaged or destroyed ecosystem. Sections of closed trails will require restoration treatment to rehabilitate the footprint to a natural environment to reflect that of the adjacent landscape. Restoration activities include scarification, placement of topsoil, planting of trees, placement of woody debris (down logs, snags and roots), mulch and the placement of rocks.

l. Scarification: The act of loosening compacted trail tread material to enable planting of vegetation and to promote natural regeneration. The extent of scarification depends on the compaction of the surface material and the current growth of vegetation.

m. Plant material: Native ground cover, shrubs or trees that is found within the project limits or adjacent to the project limits.

n. Woody debris: Any down logs, snags or root material found within the adjacent landscape that could be used to rehabilitate the existing footprint (closed sections of trail) and provide micro habitat for small mammals and other living organisms. Placement of this material could greatly influence the visual impact of a site.

o. Mulch material: Refers to leaf litter, twigs and branches that can be used to provide erosion control, used to help maintain moisture control for planted vegetation and used to add organic benefit to the soil.

p. Rock material of various sizes can be salvaged from the adjacent landscape or newly constructed trail area and used on the trail restoration sections to provide habitat for small animals and break up the continuity of the visual footprint.

## 1.12 PROJECT CONSTRAINTS:

1. Existing Goose River Trail is to remain open to the public during construction.
2. Goose River and Coppermine Trail sections are to be included in phase one construction.
3. Winter Construction Constraints:
  - .1 Existing trails are not winter –maintained; No excavation to be done while snow is on the ground;

- .2 No additional snow clearing by 3rd parties are allowed on park roads;
  - .3 Design requires phased work to accommodate winter condition constraints;
  - .4 The Point Wolfe road (main access to the Coastal sites) is not cleared during the winter and should not be used during the winter.
4. Temporary facilities: Design-Builder is responsible for provision of construction access to site including construction of any temporary facilities.
- .1 Obtain all necessary permits and approvals for construction and operation of temporary facilities.
  - .2 Remove temporary facilities and restore site to original condition on completion of contract to satisfaction of Departmental Representative.
  - .3 Make good and repair damage resulting from Design-Builder's use of existing infrastructure, roads, trails, and landscaped areas to satisfaction of Departmental Representative.
5. Restrictions on Equipment:
- 1. To minimize environmental impact and to keep the footprint of disturbance within the immediate trail construction area only, construction equipment shall be limited to hand tools or small (mini or micro) walk-behind or ride on mechanized equipment no wider than the desired final trail width.
  - 2. Equipment shall be maximum weight of 900 kg and maximum width of 1.2m

6. Environmental mitigation and Health & Safety measures:

Required site specific Environmental (EA) and archaeological assessments and monitoring shall be conducted by Parks Canada personnel in winter/spring 2016. The following general mitigation measures are included in this project:

**1. General**

- 1. All activities pursuant to the project shall be governed by and carried out in accordance with the Canada National Parks Act and Regulations and with all other laws of Canada and the Province of New Brunswick. The Design-Builder is required to notify the Project Manager (PWGSC) of the proposed work schedule at least one week in advance of potential start up.
- 2. A pre-construction meeting will be held on-site and attended by the Design-Builder, the Departmental Representative, the Parks Canada Representative, and the Environmental Assessment Officer. The meeting is to ensure construction personnel are aware of the environmental concerns, laws, rules and regulations in Fundy National Park.
- 3 All project personnel shall be given copies of the mitigation measures and have them handy at all times.

4 Emergency contact list with phone numbers to be compiled and posted in a conspicuous location at the construction/project site.

5. Site access and the work area will be defined by PWGSC and the Design-Builder, in coordination with Parks Canada, prior to initiating project activities. Work will be confined to the identified disturbance footprint. Site access during construction must be restricted to authorized personnel only.

6 During construction phases, provide barricades, signs, and/or fencing as required to protect the public.

7 A designated Environmental Protection Officer shall be kept informed of project scheduling and will be notified of changes at all times.

**2. Wildlife**

1. Workers will minimize unnecessary noise (e.g., idling equipment, no audible music).

2. Feeding wildlife is not permitted. All work sites must be kept free of edible and other garbage that could attract or harm wildlife.

**3. Borrow Pit Location and Removal of Unsuitable Materials**

1. Materials for use within trail corridor may only be obtained from pre-approved borrow pit areas within Fundy National Park. Areas designated as special preservation areas (see FNP Trails – Park Map- USR Data) are prohibited from use as borrow pit areas. Unsuitable soil can be scattered per instruction or used to fill borrow pits. Additional trucking should be minimised or eliminated.

**4. Vegetation and soils**

1. Only light equipment such as a mini-excavator, ATV, skid steer, gators shall be used on the project site. Power tools such as chainsaws and brush-cutters can also be used.

2. Blast mats or mud mats will be put in place to minimize damage to vegetation.

3. All equipment and materials will be stored in the staging area within a clearly defined space, on top of suitable ground protection (e.g., mud mats or tarps). Fundy National Park will delineate the staging area with the Design-Builder. Ground protection will remain in place for the duration of the project.

4. Prior to project completion, the staging area will be assessed for wear and damage due to equipment operation. The Design-Builder will repair the site to the condition prior to the project start. The project will not be considered complete until this is addressed to the satisfaction of Fundy National Park.

5. Construction activities will be carried out so damage to native plants on either side of the trail is minimized. Only vegetation that encroaches into the trail corridor will be removed. Tree removal will be limited to individual that are smaller than 20 cm diameter at breast height, unless previously approved by the Departmental Representative.

6. Side-casting of soil should be avoided whenever possible. If unavoidable, loose soil should be broadcasted downhill without creating piles. Broadcasted material should be evenly spread out and no thicker than an inch.

7. Work will be suspended if soils become saturated during wet weather.

8. Equipment and workers should stay on trail tread as much as possible; equipment shall not be stored along the sides of trails.

9. To minimize the introduction of invasive weeds, all gravel must be clean and free of weeds prior to delivery; all equipment must be cleaned of plant seeds, roots, and soil that might contain plant parts prior to arrival in Fundy National Park.

**5. Pollution, hazardous materials, and safety**

1. The Design- Builder will provide a site –specific Environmental Protection Plan(EPP) for approval by the Departmental Representative at least two (2) weeks prior to commencement of construction in order to clearly define environmental protection measures. The plan must expand on the use of materials, products, procedures, and application techniques that respond to and have effects on the environment and contingency plans to deal with environmental problems that may arise due to the work.

2. Every effort will be made to ensure that no polluting substances from spills or by-product wastes enter aquatic or terrestrial environments.

3. All waste, including wood scraps and sawdust will be contained and disposed of at an approved site in accordance with applicable regulations and using environmentally sound practices.

4. The Design-Builder will ensure transport of hazardous material to, from, or stored on-site is done so in compliance with Transportation of Dangerous Goods legislation and WHMIS labeling.

5. Proof of disposal of hazardous waste must be provided to the Departmental Representative.

6. The Design-Builder will maintain motorized equipment in good working condition and inspect it daily for fluid/fuel leaks. Equipment will be inspected and cleaned prior to entering the Park.

7. When on-site, equipment will only be fuelled in the approved staging area, and a mud mat or similar placed beneath to capture small spills. Equipment re-fuelling shall take place only with appropriate spill control and clean-up measures in place.

8. An appropriate spill kit (minimum 100-litre spill) must be available on-site at all times and capable of containing 110% of the largest possible spill on site. Design-Builder's staff must be trained to use the spill kit in an emergency.

9. The Design-Builder shall immediately address any hazardous fluid spill or leak with actions taken to contain and clean up the spill in accordance with the Provincial Spill Reporting Regulation. Any spills of oil, fuels, etc., shall also be reported to the Departmental Representative.

10. The Design-Builder's will have an Emergency Response Plan. The Contractor's staff must be trained to implement the plan.

11. The Design- Builder will provide a site –specific Health & Safety Plan for approval by the Departmental Representative at least two (2) weeks prior to commencement of construction. The Design-Builder shall be responsible for the safety of all workers and equipment on the site in accordance with all applicable safety legislation passed by Federal, Provincial and Local Authorities governing construction safety.

**6. Cultural resource and visitor mitigations**

1. If cultural artefacts are discovered, work in the immediate area will stop. The Design-Builder will notify the Departmental Representative.
2. The Design-Builder will post temporary information signs both ends of trails under construction notifying visitors of trail work and possible closure, and will be signed and flagged as closed until officially opened. The Design-Builder shall ensure the signs and flags are not damaged by the work, and will notify the Departmental Representative if more signs or flags are required or need repair.

**1.13 REFERENCE DOCUMENTS:**

Trail Design Reference Guidelines:

In addition to the requirements identified in 1.11(above), trail construction shall be designed and implemented in compliance with the following guidelines:

**The following reference documents will not be provided by PWGSC.**

1. *'Managing Mountain Biking - IMBA's Guide to Providing Great Riding'* International Mountain Bicycling Association (IMBA), 2007.
2. *'Trail Solutions - IMBA's Guide to Building Sweet Singletrack'*. International Mountain Bicycling Association (IMBA), 2004.
3. *'Guide d'aménagement de sentiers de vélo de montagne'* Vélo Québec;

**The following reference documents can be found in Appendix 5**

4. Parks Canada Trail Guidelines, *'Trail Classification System'*; PCA 2015.
5. Parks Canada Trail Guidelines, *'Trail Specifications'*; PCA 2015.

**The following reference materials will be provided via e-mail upon request.**

6. *'Fundy National Park(FNP) Park Map – Contours Data'*. PCA Charles Landry. Google Maps.
7. *'Fundy National Park(FNP) Park Map – Park Data'*. PCA Charles Landry. Google Maps.
8. *'Fundy National Park(FNP) Park Map – USR Data'*. PCA Charles Landry. Google Maps.
9. *'Fundy National Park(FNP) Park Map – Goose River Data'*. PCA Charles Landry. Google Maps.

**ANNEX F: INSURANCE CERTIFICATE**

**CERTIFICATE OF INSURANCE**

**Page 1 of 2**



Travaux publics et  
Services gouvernementaux  
Canada

Public Works and  
Government Services  
Canada

<b>Description and Location of Work</b> The objective of this RFP is to retain an individual Contractor or Joint Venture to provide the complete design-build work for the enhancement and expansion of the specified trails outlined in the terms of reference at Fundy National Park, New Brunswick.	Contract No. EC015-162780
	Project No. R.077924.001

Name of Insurer, Broker or Agent	Address (No., Street)	City	Province	Postal Code
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Name of Insured (Contractor)	Address (No., Street)	City	Province	Postal Code
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Additional Insured  
**Her Majesty the Queen in Right of Canada as represented by the Minister of Public Works and Government Services**

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
<b>Commercial General Liability</b>				\$	\$	\$
				\$	\$	\$

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 page 2 of this Certificate of Insurance, including advance notice of cancellation / reduction in coverage.

<input type="text"/>	<input type="text"/>
Name of person authorized to sign on behalf of Insurer(s) (Officer, Agent, Broker)	Telephone number
<input type="text"/>	<input type="text"/>
Signature	Date D / M / Y

## CERTIFICATE OF INSURANCE Page 2 of 2

### General

The insurance policies required on page 1 of the Certificate of Insurance must be in force and must include the insurance coverage listed under the corresponding type of insurance on this page.

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.

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.

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.

### Commercial General Liability

The insurance coverage provided must not be substantially less than that provided by the latest edition of IBC Form 2100.

The policy must either include or be endorsed to include coverage for the following exposures or hazards if the Work is subject thereto:

- (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.

The policy must have the following minimum limits:

- (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.

Umbrella or excess liability insurance may be used to achieve the required limits.



## APPENDIX 2 - VOLUNTARY CERTIFICATION TO SUPPORT THE USE OF APPRENTICES

*Note; The contractor will be asked to fill out a report every six months or at project completion as per sample "Voluntary Reports for Apprentices Employed during the Contract" provided at Appendix 4*

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Legal Name: \_\_\_\_\_

Solicitation Number: \_\_\_\_\_

Number of company employees: \_\_\_\_\_

Number of apprentices planned to be working on this contract: \_\_\_\_\_

Trades of those apprentices:

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### **APPENDIX 3 – DEPARTMENTAL REPRESENTATIVE'S AUTHORITY**

#### **TO BE PROVIDED AT CONTRACT AWARD.**

Contracting Authority is :

Name : \_\_\_\_\_

Title : \_\_\_\_\_

Department : \_\_\_\_\_

Division : \_\_\_\_\_

Telephone : \_\_\_\_ - \_\_\_\_ - \_\_\_\_\_

e-mail : \_\_\_\_\_

Technical Authority is :

Name : \_\_\_\_\_

Title : \_\_\_\_\_

Department : \_\_\_\_\_

Division : \_\_\_\_\_

Telephone : \_\_\_\_ - \_\_\_\_ - \_\_\_\_\_

e-mail : \_\_\_\_\_



## **APPENDIX 5 – PARKS CANADA TRAIL GUIDELINES**

**SEE ATTACHMENTS**

## **APPENDIX 6 – FUNDY SITE LOCATION PLAN**

**SEE ATTACHMENTS**