



RETURN BIDS TO:

RETOURNER LES SOUMISSIONS À:

Travaux publics et Services gouvernementaux
Canada
Place Bonaventure, portail Sud-Est
800, rue de La Gauchetière Ouest
7^{ème} étage
Montréal
Québec
H5A 1L6

INVITATION TO TENDER

APPEL D'OFFRES

**Tender 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.

**Soumission 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 et sur toute feuille ci-annexée, au(x) prix indiqué(s).

Comments - Commentaires

Vendor/Firm Name and Address

Raison sociale et adresse du
fournisseur/de l'entrepreneur

Issuing Office - Bureau de distribution

Travaux publics et Services gouvernementaux Canada
Place Bonaventure, portail Sud-Est
800, rue de La Gauchetière Ouest
7^{ème} étage
Montréal
Québec
H5A 1L6

Title - Sujet Sand warehouse Waskaganish Airport	
Solicitation No. - N° de l'invitation EF997-170416/A	Date 2016-06-27
Client Reference No. - N° de référence du client R.070405.001	GETS Ref. No. - N° de réf. de SEAG PW-\$MTC-410-13942
File No. - N° de dossier MTC-6-39066 (410)	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2016-07-19	
Time Zone Fuseau horaire Heure Avancée de l'Est HAE	
F.O.B. - F.A.B.	
Plant-Usine: <input type="checkbox"/> Destination: <input checked="" type="checkbox"/> Other-Autre: <input type="checkbox"/>	
Address Enquiries to: - Adresser toutes questions à: Spina, Angelina	Buyer Id - Id de l'acheteur mtc410
Telephone No. - N° de téléphone (514) 496-3785 ()	FAX No. - N° de FAX (514) 496-3822
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction: Aéroport de Waskaganish, Waskaganish, Québec.	

Instructions: See Herein

Instructions: Voir aux présentes

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

INVITATION TO TENDER

IMPORTANT NOTICE TO BIDDERS

TENDER DOCUMENTS: Firms intending to submit tenders on this project should obtain tender documents through the website

<https://www.achatsetventes-buyandsell.gc.ca/>

THIS DOCUMENT CONTAINS AN INDUSTRIAL SECURITY REQUIREMENT

For further instructions please consult "Supplementary Conditions" SC01 "Industrial Security Related Requirements, Document Safeguarding Location".

SUPPORT THE USE OF APPRENTICES

Through Canada's Economic Action Plan 2013, the Government of Canada proposes to support the employment of apprentices in federal construction and maintenance projects. Refer to SI08.

INTEGRITY PROVISIONS - BID

Changes have been made to the Integrity Provisions - Bid as of 2016-04-04. See GI01, Integrity Provision-Bid of R2710T of the General Instructions for more information.

LISTING of SUBCONTRACTORS

As per GI07 of R2710T you should provide using Annex C at Bid closing a list of Subcontractors that have 20% or more of the tendered price value.

PWGSC UPDATE ON ASBESTOS USE

Effective April 1, 2016, all Public Works and Government Services Canada (PWGSC) contracts for new construction and major rehabilitation will prohibit the use of asbestos-containing materials. Further information can be found at <http://www.tpsgc-pwgsc.gc.ca/comm/vedette-features/2016-04-19-00-eng.html>

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R2710T GENERAL INSTRUCTIONS - CONSTRUCTION SERVICES - BID SECURITY REQUIREMENTS (GI) (2016-04-04)

The following GI's are included by reference and are available at the following Web Site <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R>

- GI01 Integrity Provisions - Bid
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- BA08 Signature

Solicitation No. - N° de l'invitation
EF997-170416/A
Client Ref. No. - N° de réf. du client
R.070504.001

Amd. No. - N° de la modif.
File No. - N° du dossier
MTC-6-93066

Buyer ID - Id de l'acheteur
mtc410
CCC No./N° CCC - FMS No/ N° VME

APPENDIX 1 – INTEGRITY PROVISIONS

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SPECIAL INSTRUCTIONS TO BIDDERS (SI)

SI01 BID DOCUMENTS

1. The following are the bid documents:
 - a. Invitation to Tender - Page 1;
 - b. Special Instructions to Bidders;
 - c. General Instructions - Construction Services - Bid Security Requirements R2710T (2016-04-04)
 - d. Clauses & Conditions identified in "Contract Documents";
 - e. Drawings and Specifications;
 - f. Bid and Acceptance Form and related Appendix(s); and
 - g. Any amendment issued prior to solicitation closing.

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

2. General Instructions - Construction Services - Bid Security Requirements R2710T is incorporated by reference and is 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 Web site: <https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R>
3. Bids sent by fax will not be accepted

SI02 ENQUIRIES DURING THE SOLICITATION PERIOD

1. Enquiries regarding this bid must be submitted in writing to the Contracting Officer named on the Invitation to Tender - Page 1 as early as possible within the solicitation period. Except for the approval of alternative materials as described in GI15 of R2710T, enquiries should be received no later than **ten (10)** calendar days prior to the date set for solicitation 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 shall examine the content of the enquiry and shall decide whether or not to issue an amendment.
3. All enquiries and other communications related to this bid sent throughout the solicitation period are to be directed **ONLY** to the Contracting Officer named on the Invitation to Tender - Page 1. Failure to comply with this requirement may result in the bid being declared non-responsive.

SI03 REVISION OF BID

A bid may be revised by letter or facsimile in accordance with GI10 of R2710T. The facsimile number for receipt of revisions is (514) 496-3822.

SI04 BID RESULTS

1. A public bid opening will be held in the office designated on the Front Page "Invitation to Tender" for the receipt of bids shortly after the time set for solicitation closing.
2. Following solicitation closing, bid results may be obtained by calling at number (514) 496-3388

SI05 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).

SI06 BID VALIDITY PERIOD

1. Canada reserves the right to seek an extension to the bid validity period prescribed in BA04 of the Bid and Acceptance Form. Upon notification in writing from Canada, Bidders shall have the option to either accept or reject the proposed extension.
2. If the extension referred to in paragraph 1. of SI07 is accepted, in writing, by all those who submitted bids, then Canada shall continue immediately with the evaluation of the bids and its approvals processes.
3. If the extension referred to in paragraph 1. of SI07 is not accepted in writing by all those who submitted 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 invitation to tender.
4. The provisions expressed herein do not in any manner limit Canada's rights in law or under GI11 of R2710T.

SI07 CONSTRUCTION DOCUMENTS

The successful Contractor will be provided with one paper copy of the sealed and signed drawings, the specifications and the amendments upon acceptance of the offer. Additional copies, up to a maximum five (5), will be provided free of charge upon request by the Contractor. Obtaining more copies shall be the responsibility of the Contractor including costs.

SI08 PUBLIC WORKS AND GOVERNMENT SERVICES CANADA APPRENTICE PROCUREMENT INITIATIVE

1. To encourage employers to participate in apprenticeship training, Contractors bidding on construction and maintenance contracts by Public Works and Government Services Canada (PWGSC) are being asked to sign a voluntary certification, signaling their commitment to hire and train apprentices.
2. Canada is facing skills shortages across various sectors and regions, especially in the skilled trades. Equipping Canadians with skills and training is a shared responsibility. In Economic Action Plan (EAP) 2013, the Government of Canada made a commitment to support the use of apprentices in federal construction and maintenance contracts. Contractors have an important role in supporting apprentices through hiring and training and are encouraged to certify that they are providing opportunities to apprentices as part of doing business with the Government of Canada.
3. Through the Economic Action Plan 2013 and support for training programs, the Government of Canada is encouraging apprenticeships and careers in the skilled trades. In addition, the government offers a tax credit to employers to encourage them to hire apprentices. Information on this tax measure administered by the Canada Revenue Agency can be found at: www.cra-arc.gc.ca. Employers are also encouraged to find out what additional information and supports are available from their respective provincial or territorial jurisdiction.
4. Signed certifications (Appendix 2) will be used to better understand contractor use of apprentices on Government of Canada maintenance and construction contracts and may inform future policy and program development.
5. The Contractor hereby certifies the following:

In order to help meet demand for skilled trades people, the Contractor agrees to use, and require its subcontractors to use, reasonable commercial efforts to hire and train registered apprentices, to strive to fully utilize allowable apprenticeship ratios * and to respect any hiring requirements prescribed by provincial or territorial statutes

The Contractor hereby consents to this information being collected and held by PWGSC, and Employment and Social Development Canada to support work to gather data on the hiring and training of apprentices in federal construction and maintenance contracts.

To support this initiative, a voluntary certification signaling the Contractor's commitment to hire and train apprentices is available at Appendix 2.

If you accept fill out and sign Appendix 2

* *The journey-person-apprentice ratio is defined as the number of qualified/certified journey persons that an employer must employ in a designated trade or occupation in order to be eligible to register an apprentice as determined by provincial/territorial (P/T) legislation, regulation, policy directive or by law issued by the responsible authority or agency.*

SI09 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§ion=text#appl>

Buy and Sell <https://www.achatsetventes-buyandsell.gc.ca>

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>

Performance Bond (form PWGSC-TPSGC 505) <http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/505.pdf>

Labour and Material Payment Bond (form PWGWSC-TPSGC 506)
<http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/506.pdf>

Standard Acquisition Clauses and Conditions (SACC) Manual
<https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R>

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/contexte-context-eng.html>

Construction and Consultant Services Contract Administration Forms Real Property Contracting
<http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/formulaires-forms-eng.html>

Declaration Form
<http://www.tpsgc-pwgsc.gc.ca/ci-if/formulaire-form-eng.html>

SI10 FINANCIAL BID

The total amount of the bid excludes taxes

SUPPLEMENTARY CONDITIONS (SC)

SC01 INDUSTRIAL SECURITY RELATED REQUIREMENTS, DOCUMENT SAFEGUARDING

There is no document security requirement applicable to this Contract.

SC02 LIMITATION OF LIABILITY

GC1.6 of R2810D is deleted and replaced with the following:

GC1.6 Indemnification by the Contractor

1. The Contractor shall indemnify and save Canada harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by Canada or in respect of claims 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 in performing the Work, provided such claims are caused by the negligent or deliberate acts or omissions of the Contractor, or those for whom it is responsible at law.
2. The Contractor's obligation to indemnify Canada for losses related to first party liability shall be limited to:
 - a. In respect to each loss for which insurance is to be provided pursuant to the insurance requirements of the Contract, the Commercial General Liability insurance limit for one occurrence as referred to in the insurance requirements of the Contract .
 - b. In respect to losses for which insurance is not required to be provided in accordance with the insurance requirements of the Contract, the greater of the Contract Amount or \$5,000,000, but in no event shall the sum be greater than \$20,000,000.

The limitation of this obligation shall be exclusive of interest and all legal costs and shall not apply to any infringement of intellectual property rights or any breach of warranty obligations.

3. The Contractor's obligation to indemnify Canada for losses related to third party liability shall have no limitation and shall include the complete costs of defending any legal action by a third party. If requested by Canada, the Contractor shall defend Canada against any third party claims.
4. 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.
5. Notice in writing of a claim shall be given within a reasonable time after the facts, upon which such claim is based, became known.

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.

CONTRACT DOCUMENTS (CD)

1. The following are the contract documents:

- a. Contract Page when signed by Canada;
- b. Duly completed Bid and Acceptance Form and any Appendices attached thereto;
- c. Drawings and Specifications;
- d. General Conditions and clauses
 - GC1 General Provisions – Construction Services R2810D (2016-04-04);
 - GC2 Administration of the Contract- R2820D (2016-01-28);
 - GC3 Execution and Control of the Work R2830D (2015-02-25);
 - GC4 Protective Measures R2840D (2008-05-12);
 - GC5 Terms of Payment R2850D (2016-01-28);
 - GC6 Delays and Changes in the Work R2860D (2016-01-28);
 - GC7 Default, Suspension or Termination of Contract R2870D (2008-05-12);
 - GC8 Dispute Resolution R2880D (2016-01-28);
 - GC9 Contract Security R2890D (2014-06-26);
 - GC10 Insurance R2900D (2008-05-12);
 - Allowable Costs for Contract Changes Under GC6.4.1 R2950D (2015-02-25);
 - Supplementary Conditions
- e. Any amendment issued or any allowable bid revision received before the date and time set for solicitation closing;
- f. Any amendment incorporated by mutual agreement between Canada and the Contractor before acceptance of the bid; and
- g. Any amendment or variation of the contract documents that is made in accordance with the General Conditions.

2. 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 Web site:
<https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual>

3. The language of the contract documents is the language of the Bid and Acceptance Form submitted.

BID AND ACCEPTANCE FORM (BA)

BA01 IDENTIFICATION

Construction of a prefabricated building for sand storage.

BA02 BUSINESS NAME AND ADDRESS OF BIDDER

Name: _____

Address: _____

Telephone: _____ Fax: _____ PBN: _____

E-mail address: _____

Industrial Security Program Organisation Number (ISP ORG#) _____
(when required)

BA03 THE OFFER

The Bidder offers to Canada to perform and complete the Work for the above named project in accordance with the Bid Documents for the Total Bid Amount of

\$ _____ excluding applicable tax(es).
(amount in numbers)

BA04 BID VALIDITY PERIOD

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

BA05 ACCEPTANCE AND CONTRACT

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

BA06 CONSTRUCTION TIME

The Contractor shall perform and complete the Work within ninety [90] days from the date of notification of acceptance of the offer.

BA07 BID SECURITY

The Bidder is enclosing bid security with its bid in accordance with G108 - Bid Security Requirements of R2710T - General Instructions - Construction Services - Bid Security Requirements.

BA08 SIGNATURE

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

Signature

Date

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 Annex C

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:

APPENDIX 3 – DEPARTMENTAL REPRESENTATIVE'S AUTHORITY

TO BE PROVIDED AT CONTRACT AWARD.

Contracting Authority is :

Name : Angelina Spina

Title : Procurement Agent

Department : Public Services and Procurement Canada

Division : Supply and Compensation Directorate

Telephone : 514 - 496 - 3785

e-mail : angelina.spina@tpsgc-pwgsc.gc.ca

Technical Authority is :

Name : _____

Title : _____

Department : _____

Division : _____

Telephone : ____ - ____ - _____

e-mail : _____

ANNEX A - CERTIFICATE OF INSURANCE (Not required at solicitation closing)

CERTIFICATE OF INSURANCE



Description and Location of Work	Contract No.
	Project No.

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
Commercial General Liability Umbrella/Excess Liability				\$	\$	\$
				\$	\$	\$
Builder's Risk / Installation Floater				\$		

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.

Name of person authorized to sign on behalf of Insurer(s) (Officer, Agent, Broker)

Telephone number

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.

Builder's Risk / Installation Floater

The insurance coverage provided must not be less than that provided by the latest edition of IBC Forms 4042 and 4047.

The policy must permit use and occupancy of any of the projects, or any part thereof, where such use and occupancy is for the purposes for which a project is intended upon completion.

The policy may exclude or be endorsed to exclude coverage for loss or damage caused by asbestos, fungi or spores, cyber and terrorism.

The policy must have a limit that is **not less than the sum of the contract value** plus the declared value (if any) set forth in the contract documents of all material and equipment supplied by Canada at the site of the project to be incorporated into and form part of the finished Work. If the value of the Work is changed, the policy must be changed to reflect the revised contract value.

The policy must provide that the proceeds thereof are payable to Canada or as Canada may direct in accordance with GC10.2, "Insurance Proceeds" (<https://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R/R2900D/2>).

ANNEX C - LISTING OF SUBCONTRACTORS

- 1) In accordance with GI07 - Listing of Subcontractors and Suppliers of R2710T- General Instructions - Construction Services - Bid Security Requirements, the Bidder should provide a list of Subcontractors with his Bid.
- 2) The Bidder should submit the list of Subcontractors and for any portion of the Work valued at 20% or greater of the submitted Bid Price.

	Subcontractor	Division	Estimated value of work
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

ANNEX D – ELIGIBILITY FOR ABORIGINAL PROCUREMENT SET ASIDE

Who is eligible?

An Aboriginal business, which can be:

- a band as defined by the Indian Act
- a sole proprietorship

or

- a limited company
- a co-operative
- a partnership
- a not-for-profit organization in which Aboriginal persons have at least 51 percent ownership and control,

or

- A joint venture consisting of two or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business(es), provided that the Aboriginal business(es) has at least 51 percent ownership and control of the joint venture. When an Aboriginal business has six or more full-time employees at the date of submitting the bid, at least thirty-three percent of them must be Aboriginal persons, and this ratio must be maintained throughout the duration of the contract. The bidder must certify in its submitted bid that it is an Aboriginal business or a joint venture constituted as described above.

Are there any other requirements attached to bidders in the Set-Aside Program for Aboriginal Business?

Yes.

In respect of a contract, (goods, service or construction), on which a bidder is making a proposal which involves subcontracting, the bidder must certify in its bid that at least thirty-three percent of the value of the work performed under the contract will be performed by an Aboriginal business. Value of the work performed is considered to be the total value of the contract less any materials directly purchased by the contractor for the performance of the contract. Therefore, the bidder must notify and, where applicable, bind the subcontractor in writing with respect to the requirements that the Aboriginal Set-Aside Program (the Program) may impose on the subcontractor or subcontractors.

The bidder's contract with a subcontractor must also, where applicable, include a provision in which the subcontractor agrees to provide the bidder with information, substantiating its compliance with the Program, and authorize the bidder to have an audit performed by Canada to examine the subcontractor's records to verify the information provided. Failure by the bidder to exact or enforce such a provision will be deemed to be a breach of contract and subject to the civil consequences referred to in this document.

As part of its bid, the bidder must complete the Certification of Requirements for the Set-Aside Program for Aboriginal Business (certification) stating that it:

- i. meets the requirements for the Program and will continue to do so throughout the duration of the contract;
- ii. will, upon request, provide evidence that it meets the eligibility criteria;
- iii. is willing to be audited regarding the certification; and
- iv. acknowledges that if it is found NOT to meet the eligibility criteria, the bidder shall be subject to one or more of the civil consequences set out in the certification and the contract.

How must the business prove that it meets the requirements?

It is not necessary to provide evidence of eligibility at the time the bid is submitted. However, the business should have evidence of eligibility ready in case it is audited. The civil consequences of making an untrue statement in the bid documents, or of not complying with the requirements of the Program or failing to produce satisfactory evidence to Canada regarding the requirements of the Program, may include: forfeiture of the bid deposit; retention of the holdback; disqualification of the business from participating in future contracts under the program; and/or termination of the contract. In the event that the contract is terminated because of an untrue statement or non-compliance with the requirements of the Program, Canada may engage another contractor to complete the performance of the contract and any additional costs incurred by Canada shall, upon the request of Canada, be borne by the business.

What evidence may be required from the business?

Evidence of ownership and control of an Aboriginal business or joint venture may include incorporation documents, shareholders' or members' register; partnership agreements; joint venture agreements; business name registration; banking arrangements; governance documents; minutes of meetings of Board of Directors and Management Committees; or other legal documents.

Ownership of an Aboriginal business refers to "beneficial ownership" i.e. who is the real owner of the business. Canada may consider a variety of factors to satisfy whether Aboriginal persons have true and effective control of an Aboriginal business. (See Appendix A for a list of the factors which may be considered by Canada.)

Employment and employees

Where an Aboriginal business has six or more full-time employees at the date of submitting the certification and is required by Canada to substantiate that at least thirty-three percent of the full-time employees are Aboriginal, the business must, upon request by Canada, immediately provide a completed Owner/Employee Certification form for each full-time employee who is Aboriginal.

Evidence as to whether an employee is or is not full-time and evidence as to the number of full-time employees may include payroll records, written offers for employment, and remittance and payroll information maintained for Revenue Canada purposes as well as information related to pension and other benefit plans. A full-time employee, for the purpose of this program, is one who is on the payroll, is entitled to all benefits that other full-time employees of the business receive, such as pension plan, vacation pay and sick leave allowance, and works at least 30 hours a week. It is the number of full-time employees on the payroll of the business at the date of bid submission that determines the ratio of Aboriginal to total employees of the business for the purpose of establishing eligibility under the Program. Owners who are Aboriginal and full-time employees who are Aboriginal must be ready to provide evidence in support of such status. The Owner/Employee Certification to be completed by each owner and full-time employee who is Aboriginal shall state that the person meets the eligibility criteria and that the information supplied is true and complete. This certification shall provide the person's consent to the verification of the information submitted.

Subcontracts

Evidence of the proportion of work done by subcontractors may include contracts between the contractor and subcontractors, invoices, and paid cheques. Evidence that a subcontractor is an Aboriginal business (where this is required to meet the minimum Aboriginal content of the contract) is the same as evidence that a prime contractor is an Aboriginal business.

Who is an Aboriginal person for the purposes of the set-aside program for Aboriginal business?

An Aboriginal person is an Indian, Metis or Inuit who is ordinarily resident in Canada.

Evidence of being an Aboriginal person will consist of such proof as:

- Indian registration in Canada
- membership in an affiliate of the Metis National Council or the Congress of Aboriginal Peoples, or other recognized Aboriginal organizations in Canada
- acceptance as an Aboriginal person by an established Aboriginal community in Canada
- enrolment or entitlement to be enrolled pursuant to a comprehensive land claim agreement, or membership or entitlement to membership in a group with an accepted comprehensive claim

Evidence of being resident in Canada includes a provincial or territorial driver's license, a lease or other appropriate document.

For further information on the Set-Aside Program for Aboriginal Business, contact the Economic Development Program Directorate in the Department of Indian Affairs and Northern Development at (819) 956-9836 or 1 (800) 400-7677 or fax (819) 956-9837.

Certification of requirements for the Set-Aside Program for Aboriginal Business

A bidder who submits, under this program, a bid or proposal in response to a solicitation must complete and submit this certification. Failure to submit this certification will result in the proposal's being found non-compliant.

1. i) I, _____ (Name of duly authorized representative of business) hereby certify that _____ (Name of business) meets, and shall continue to meet throughout the duration of the contract, the requirements for this program as set out in the attached document entitled "Requirements for the Set-Aside Program for Aboriginal Business", which document I have read and understand.

ii) The aforementioned business agrees to ensure that any subcontractor it engages with respect to the contract shall, if required, satisfy the requirements set out in "Requirements for the Set-Aside Program for Aboriginal Business."

iii) The aforementioned business agrees to provide to Canada, immediately upon request, information to substantiate a subcontractor's compliance with this program.

PLEASE CHECK THE APPLICABLE BOXES IN 2 AND 3 BELOW

2. i) The aforementioned business is an Aboriginal business which is a sole proprietorship, band, limited company, co-operative, partnership or not-for-profit organization, []

OR

ii) The aforementioned business is a joint venture between two or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business. []

3. The Aboriginal business or businesses have:

i) fewer than six full-time employees []

OR

ii) six or more full-time employees []

4. The aforementioned business agrees to immediately furnish to Canada, such evidence as may be requested by Canada from time to time, corroborating this certification. Such evidence shall be open to audit during normal business hours by a representative of Canada, who may make copies and take extracts from the evidence. The aforementioned business agrees to provide all facilities for audits and to furnish information requested by Canada with respect to the certification.

5. It is understood that the civil consequences of making an untrue statement in the bid documents, or of not complying with the requirements of the Program or failing to produce satisfactory evidence to Canada regarding the requirements of the Program, may include: forfeiture of the bid deposit; retention of the holdback; disqualification of the business from participating in future contracts under the Program; and/or termination of the contract. In the event that the contract is terminated because of an untrue statement or non-compliance with the requirements of the Program, Canada may engage another contractor to complete the performance of the contract and any additional costs incurred by Canada shall, upon the request of Canada, be borne by the aforementioned business.

6. Date _____

Signature _____

Place _____

Title (Duly authorized representative of business)

For: (Name of Business)

Appendix A: Factors to determine Aboriginal ownership

Factors that may be considered in determining whether Aboriginal persons have at least 51% ownership and control of an Aboriginal business include:

- Capital Stock and Equity Accounts, i.e., preferred stock, convertible securities, classes of common stock, warrants, options
- Dividend policy and payments
- Existence of Stock Options to employees
- Different treatment of Equity transactions for Corporations, Partnerships, Joint Ventures, Community organizations, Cooperatives, etc.
- Examination of Charter Documents, i.e., corporate charter, partnership agreement, financial structure
- Concentration of ownership or managerial control in partners, stockholders, officers trustees and directors based definition of duties
- Principal occupations and employer of the officers and directors to determine who they represent, i.e. banker, vested ownerships
- Minutes of directors meetings and stockholders meetings for significant decisions that affect operations and direction
- Executive and employee compensation records for indication of level of efforts associated with position
- Nature of the business in comparison with the type of contract being negotiated
- Cash management practices, i.e., payment of dividends - preferred dividends in arrears
- Tax returns to identify ownership and business history
- Goodwill contribution/contributed asset valuation to examine and ascertain the Fair Market value of non-cash capital contributions
- Contracts with owners, officers and employees to be fair and reasonable
- Stockholder authority, i.e. appointments of officers, directors, auditors
- Trust agreements made between parties to influence ownership and control decisions
- Partnership - allocation and distribution of net income, i.e., provision for salaries, interest on capital and distribution share ratios
- Litigation proceedings over ownership
- Transfer pricing from non-Aboriginal joint venture
- Payment of management or administrative fees
- Guarantees made by the Aboriginal business
- Collateral agreements

Owner/Employee Certification Form

1. I, _____, am an owner and/or full-time employee
of _____, and an Aboriginal person, as described in the document "Requirements
for the Set-Aside Program for Aboriginal Business".

2. I certify that the above statement is true and consent to its verification upon the request of Canada.

Date _____

Signature of owner/employee

Place _____