

REQUEST FOR QUOTATION

CANADIAN COMMERCIAL CORPORATION
Project No. 104246

**FOR THE SUPPLY AND DELIVERY OF
TACTICAL EQUIPMENT AS DIRECT GOVERNMENT
ASSISTANCE TO A FOREIGN RECIPIENT**

Issued:
April 24, 2017

Questions to be received by CCC no later than:
2:00 PM EDT, April 28, 2017

Quotations to be received by CCC no later than Closing Time:
2:00 PM EDT, May 8, 2017

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SECTION 1: INSTRUCTIONS TO RESPONDENTS

1. SUBJECT

1.1 This Section provides general instructions for the solicitation in the form of a Request for Quotation (“RFQ”) for the equipment as described in Appendix A (Equipment Pricing Table) of this RFQ, (the “Equipment”).

1.2 The Equipment is to be delivered to the Recipient no later than September 17, 2017.

2. SOURCE OF FUNDS

2.1 The Canadian Commercial Corporation (CCC) is a federal Crown corporation working in conjunction with the Canadian Department of Foreign Affairs, Trade, and Development (DFATD) to deliver in-kind contributions of goods and services to international recipients to enable those recipients to improve regional security. Those contributions are typically acknowledged and accepted by the foreign recipients through instruments entered into between themselves and DFATD. No direct benefit is being provided to the Crown under this contribution. This contribution is governmental assistance, no element of which is procurement, and thus the relevant procurement conventions and Government of Canada procurement regulations and rules do not apply. CCC is currently seeking quotes from suppliers on Equipment that will form part of an in-kind contribution.

3. RFQ AUTHORITY

3.1 The CCC, under a Memorandum of Understanding with the Department of Foreign Affairs, Trade, and Development International Trade (DFATD), will be managing the supply activities for this project.

3.2 The RFQ Authority is:

Canadian Commercial Corporation
350 Albert Street, Suite 700
Ottawa, Ontario K1A 0S6
Attn: Jackie Peplinski
Facsimile: (613) 995-2121
E-mail: bids@ccc.ca

3.3 All matters concerning this RFQ must be discussed with the RFQ Authority exclusively.

4. ENQUIRIES

4.1 Enquiries and/or requests for clarifications must be received no later than 2:00pm EDT on April 28, 2017.

4.2 All enquiries shall be in writing and addressed to the RFP Authority. All responses to enquiries submitted in accordance with Section 1, Article 4.1 shall be provided in writing to all others invited to submit, unless the exception contemplated under Section 1 Articles 4.3 and 4.4 applies.

4.3 A Respondent may request that a response to an enquiry pertaining only to the Respondent who submitted the enquiry be kept confidential by clearly marking the enquiry “Commercial in Confidence” if the Respondent considers the enquiry to be commercially confidential.

4.4 CCC shall have sole and absolute discretion to determine if any enquiry marked “Commercial in Confidence” shall be responded to confidentially or not. If CCC decides the enquiry should not be responded to confidentially, the Respondent shall have the opportunity to either withdraw the enquiry or receive a written response which will be communicated to all Respondents.

5. MANDATORY SUBMISSION REQUIREMENTS

5.1 Quotations are to be submitted in the following format:

(a) Submission of a complete Quotation is to be sent electronically to the email address listed under Section 1, Article 5.2 and to be received no later than the Closing Time provided on the cover page (page 1) of this RFQ. A complete submission shall include:

- One (1) completed Appendix A (Equipment Pricing Table) in Microsoft Excel format; and
- One (1) Adobe® PDF format copy of the completed Appendix B (Respondent Declaration), signed and dated by an authorized representative of the Respondent.

(b) The Respondent shall ensure that no emails are greater than 17 MB in size.

5.2 Quotations are to be submitted via email to the following address:

Email: bids@ccc.ca
Subject: 104246 – Equipment - Jamaica
Attn: Jackie Peplinski

6. COST OF PREPERATION AND SUBMISSION OF QUOTATION

6.1 The Respondent shall bear all costs of whatever nature, associated with the preparation and submission of its quotation. CCC and DFATD shall bear no responsibility to any Respondent or prospective Respondent for any costs of whatever nature, associated with the preparation and submission of a quote.

7. EVALUATION

7.1 Submissions including pricing for a portion of the listed Equipment under Appendix A – Equipment Pricing Table will be accepted.

7.2 Evaluation of the quotations will be based on the lowest evaluated price on an item by item basis, and meeting all requirements contained herein.

7.3 Subject to any provision in this RFQ to the contrary, and contingent upon the successful completion of the financial capacity review in accordance with Article 7.4, the Respondent with the lowest evaluated price on an item, who meets the requirements contained herein, will be the first entity to be designated the Preferred Respondent for each item. CCC shall notify all Preferred Respondents in writing upon completion of the evaluation.

7.4 CCC may decide to conduct financial due diligence on any Preferred Respondent. Once a Preferred Respondent has been identified and in order for the Preferred Respondent to demonstrate its financial capacity to successfully complete the Project, the Preferred Respondent must submit any financial information requested to CCC, within five (5) business days following CCC's request. Failure to provide the requested financial information within the required timeframe may result in the disqualification of the Preferred Respondent. If the requested financial information does not sufficiently demonstrate the Preferred Respondent's financial capacity to successfully complete the Project at CCC's sole and absolute discretion, CCC may request additional information, guarantees and/or securities. It will be at CCC's sole and absolute discretion to determine if the Preferred Respondent has demonstrated its financial capacity to successfully deliver one or more items of Equipment.

7.5 CCC may elect to award one agreement for all Equipment or to award multiple agreements for portions of the Equipment where, in the sole discretion of CCC, it is deemed in the best interest of the Government of Canada. Quantities may increase or decrease depending on the budget available without a new RFQ being issued.

7.6 Alternate Equipment will be considered, provided that such requests are the subject of an Enquiry in accordance with Article 4. Acceptance of any alternate Equipment shall be at the sole and absolute discretion of the RFQ Authority.

7.7 All accepted alternate Equipment shall be posted publicly via addenda to this RFQ.

8. ACCEPTANCE OF AWARD

8.1 This RFQ is not an offer or commitment and is not to be interpreted as "Contract A" and is not capable of being accepted to form a binding agreement. CCC reserves the right, in its sole discretion, to withdraw or modify the RFQ at any time, to reject any and all quotes for any reason, or no reason, and to enter into further discussions or interviews with any one or more Respondents, without incurring any liability to any of the Respondents.

8.2 While CCC may enter into an agreement or contractual arrangement without prior negotiation, or consultation with any or all of the Respondents, CCC reserves the right to negotiate with any of the Respondents.

9. NOTIFICATION OF AWARD

9.1 In the event of an award, CCC will notify the successful Respondent in writing by email. An agreement (“Agreement”), substantially in the form of Section 3 (Draft Supply Arrangement Agreement), should be accepted within seven (7) calendar days of the notice of award. If no Agreement is accepted by the successful Respondent within seven (7) calendar days of the notice of award, then the notice of award with the successful Respondent shall be automatically terminated.

10. GOVERNING LAW

10.1 This RFQ and the resulting Agreement, if any, shall be governed and interpreted in accordance with the laws in force in the Province of Ontario, Canada, unless otherwise specified in the RFQ.

11. PRICING GUIDELINES

11.1 All prices quoted must be firm and fixed for the duration of the Agreement.

11.2 The Respondent must quote all prices in Canadian dollars (CAD) and include any applicable customs, taxes, duties or similar charges.

11.3 The Equipment to be supplied to DFATD/CCC is intended for export from Canada and as such would constitute a "zero-rated supply" as this expression is defined in Part IX of the Excise Tax Act. The Goods and Services Tax or the Harmonized Sales Tax should not be added to the value of these Goods and services.

12. RESERVATION OF RIGHTS BY CCC AND DFATD

12.1 CCC may investigate the quote of any Respondent and may require confirmation of information furnished by the Respondent.

12.2 CCC reserves the right, in its sole discretion, to:

- (a) Reject any or all of the quotes with no financial liability to any Respondent;
- (b) Issue a new RFQ, to temporarily or permanently abandon the RFQ in whole or in part with no financial liability to any Respondent;
- (c) Issue Addenda for the purpose of clarification, information, supplements, or changes to this RFQ;

- (d) To request additional information or documents and conduct discussions and correspondence from any or all Respondents;
- (e) Waive minor deficiencies, informalities, and irregularities in the quote;
- (f) Award one agreement for all Equipment where, in the sole discretion of CCC, it is deemed in the best interest of the Government of Canada;
- (g) Award multiple agreements for portions of the Equipment where, in the sole discretion of CCC, it is deemed in the best interest of the Government of Canada;
- (h) Increase or decrease quantities depending on the budget available without a new RFQ being issued; and
- (i) Accept alternate Equipment where, in the sole discretion of CCC, the alternate Equipment meets all requirements contained herein.

13. RESTRICTION ON SUBMITTALS

13.1 A Respondent shall submit only one (1) quotation.

14. NON-COLLUSION

14.1 Any evidence of agreement or collusion among Respondents and prospective respondents acting to illegally restrain freedom of competition by agreement to quote a fixed price, or otherwise, will render the quotes of such respondents void.

15. CONFIDENTIALITY

15.1 Each recipient of this RFQ shall treat all information directly or indirectly related to this RFQ, in particular the delivery destinations and the list of Equipment being delivered, as confidential for an unlimited period of time and shall not disclose any record or information to any third parties unless prior written consent to disclose is given by CCC.

SECTION 2: PROJECT BRIEF

1. Canada's Anti-Crime Capacity Building Program

The Anti-Crime Capacity Building Program (ACCBP) was established in December 2009 to enhance the capacity of beneficiary states, government entities and international organizations to prevent and respond to threats posed by transnational criminal activity in the Americas. In April 2015, the ACCBP's mandate was amended to allow for programming globally, while maintaining a focus on the Americas.

The ACCBP has the following six thematic priorities:

- Security System Reform;
- Illicit Drugs;
- Corruption;
- Human Trafficking and Migrant Smuggling;
- Money Laundering and Proceeds of Crime; and
- Crime Prevention (including Cyber).

The ACCBP is informed by an Interdepartmental Steering Committee composed of representatives from 19 federal departments and agencies. Program assistance is delivered by Canadian government departments and agencies as well as through partnerships with international organizations, and non-governmental organizations.

2. Canadian Commercial Corporation

Recognised as a leader in contracting, acquisition and project management; the Canadian Commercial Corporation (CCC) works with the Canadian federal government to deliver Government Assistance in the form of in-kind contributions to foreign recipients all around the world.

Over the past 60 years, CCC has become a trusted partner to government departments such as DFATD to provide trusted, timely and cost-effective acquisition solutions in crisis response and other challenging environments.

3. The Requirement

CCC, working in conjunction with DFATD's ACCBP has the intent of acquiring, for the purpose of directly providing governmental assistance to foreign recipients, the tactical equipment as described in Appendix "A".

The Equipment described in Appendix "A" includes makes and models of requested equipment. This is the result of a needs analysis of the Recipient's requirements that also maintains compatibility with various training initiatives coordinated with DFATD's ACCBP.

All Equipment are to be delivered to the Recipient.

END OF SECTION 2

SECTION 3: DRAFT SUPPLY ARRANGEMENT AGREEMENT

SUPPLY ARRANGEMENT AGREEMENT

DFATD Reference ACCBP 2016-382

CCC Project 104246 – Supply and Delivery of Equipment for JDF – Jamaica

BETWEEN:

CANADIAN COMMERCIAL CORPORATION, a Crown corporation having its head office in the in the City of Ottawa, Ontario (“CCC“)

AND:

(INSERT LEGAL NAME FOR SUPPLIER HERE), a company incorporated pursuant to the laws of **(INSERT JURISDICTION OF INCORPORATION)**, having its head office in the City of **(INSERT NAME OF CITY AND COUNTRY HERE)** (“the Supplier”)

WHEREAS the Canadian Commercial Corporation (“CCC”), a federal Crown corporation, and the Department of Foreign Affairs, Trade and Development (“DFATD”) executed a Memorandum of Understanding setting out a framework for Supply Arrangement Agreements, by which assistance, primarily in the form of in-kind contributions of goods and services will be delivered to foreign government recipients to support the objectives of the Anti-Crime Capacity Building Program (“ACCBP”), a program administered by DFATD;

AND WHEREAS the Parties acknowledge and agree that this Supply Arrangement Agreement and the related transaction constitutes an element of an in-kind contribution to a foreign government recipient and is governmental assistance and not a procurement for the benefit of the Government of Canada. The Parties further acknowledge that this transaction is not subject to international and national trade agreements dealing with government procurement including but not limited to the WTO Agreement on Government Procurement, the North American Free Trade Agreement and the Agreement on Internal Trade;

AND WHEREAS the government assistance described above is typically acknowledged and accepted by the foreign government recipients through instruments entered into between themselves and DFATD;

AND WHEREAS CCC has been tasked by DFATD to manage/enter into and administer this Supply Arrangement Agreement (“Agreement”) for the supply and delivery of equipment as more fully described in Annex A (“the Equipment”) to the Jamaican Defence Force (“Recipient”), to support Canada’s commitment pursuant to the ACCBP;

AND WHEREAS the Supplier has agreed to supply and deliver the aforesaid Equipment;

NOW THEREFORE, in consideration of the mutual covenants and subject to the terms and conditions hereinafter set forth, CCC and the Supplier agree as follows:

1. SUBJECT MATTER OF THIS SUPPLY ARRANGEMENT AGREEMENT

1.1 The Supplier agrees to supply the Equipment as set out in Annex A, and to deliver same to the Recipient in accordance with the terms and conditions of this Agreement.

2. AGREEMENT DOCUMENTS

2.1 This Agreement is composed of the following documents and shall be interpreted in the following order of precedence:

- (a) Supply Arrangement Agreement containing Articles 1 to 43;
- (b) Annex “A” – Statement of Requirements; and
- (c) Annex “B” – Equipment Acceptance Certificate.

3. EFFECTIVE DATE OF THIS AGREEMENT

3.1 This Agreement shall become effective on the date it is signed by both Parties (“Effective Date”), or, if signed on separate dates, the date of the last signature (the “Effective Date”).

4. SUPPLIER’S GENERAL OBLIGATIONS

4.1 The Supplier shall fulfil and assume all of the Supplier’s obligations as contained in the Agreement documents. For greater certainty, the Supplier shall obtain any and all necessary approvals including export certificates and pay any fees associated thereto. The Supplier understands and agrees that failure to deliver the Equipment in accordance with Article 10 will constitute a fundamental breach of the Agreement and CCC may proceed in accordance with Article 19 of this Agreement.

4.2 The Supplier hereby agrees to indemnify and hold harmless DFATD and CCC from and against any loss, liability, costs, claims, demands, proceedings, taxes, charges, fines, sanctions, penalties and expenses of whatsoever nature or kind, arising, suffered or incurred by DFATD and CCC as a result of any personal injuries, death or property damages or any other types of damage attributable to the Supplier, its employees, its subcontractors or any other affiliated parties directly or indirectly arising from this Agreement.

4.3 The Supplier shall comply with all applicable laws in force in the country where the Equipment is delivered and installed. The laws will include all local, state, national or other laws that affect the performance of the Agreement. The Supplier shall indemnify and hold harmless CCC and DFATD from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including any subcontractors and their personnel.

5. SUPPLIER REPRESENTATION

5.1 The Supplier represents and warrants that it has the personnel, experience, qualifications, facilities and all other skill and resources to perform its obligations under the Agreement.

5.2 Any breach of the supplier representation in Article 5.1 shall entitle CCC to terminate the Agreement for default by the Supplier, and to recover damages from the Supplier, including any additional costs incurred by DFATD to perform and complete the delivery of the Equipment.

6. PRICE

6.1 DFATD, through CCC, shall pay the Supplier a sum not to exceed CAD XXXXXXXXX (\$XXXXXXXXX CAD), (“Price”) inclusive of delivery costs and all applicable duties and taxes for the Equipment, less any bank wire costs incurred by DFATD or CCC.

6.2 In the event that customs duties, taxes or other government imposed costs or fees are demanded of the Supplier by any governmental authority within Jamaica, the Supplier shall not pay any such amounts and shall immediately notify CCC who will forthwith take the appropriate action to request the Recipient to exempt such duties, taxes or similar charges.

6.3 In order to facilitate the completion of the delivery of the Equipment, CCC may formally request the Supplier, in writing, to pay duties, permit costs, taxes, including sales taxes, or similar charges. Payment of the reimbursable costs or fees shall be based upon actual tax receipts supplied by the Supplier and will not form part of the Price. Upon written request from CCC to pay such costs, the Supplier will submit a Change Order Request to CCC in accordance with Article 31.2 of this Agreement.

6.4 There will be a day for day extension of the delivery schedule for delays due to non-exempted taxes, duties or fees. The Supplier may also submit a Change Order Request to CCC for costs related to delivery schedule delays due to non-exempted taxes, duties or fees and an amendment will be executed as per Article 30.3 of this Agreement.

6.2 Price will remain valid for the duration of the Agreement.

7. TERMS OF PAYMENT

7.1 Payment terms are 100% of the Price of the Agreement within thirty (30) calendar days after receipt of all documents required under Article 16.

8. TITLE AND RISK

8.1 All risks of loss or damage shall remain with the Supplier until the Equipment is delivered DDP (Incoterms 2010) [INSERT PLACE OF DESTINATION].

8.2 Title to the Equipment shall transfer to the Recipient upon acceptance of the Equipment as evidenced by receipt of a completed Equipment Acceptance Certificate that appears as Annex “B”.

8.3 All Equipment shall be free of any liens and any other similar charges at all times.

9. ASSIGNMENT AND SUBCONTRACTING

- 9.1 The Supplier shall not assign the Agreement or subcontract any of the obligations without the prior written consent of CCC and any assignment or subletting made without such consent shall be of no effect.
- 9.2 In the event that CCC consents to any assignment or subcontracting, the Supplier agrees to bind each assignee or subcontractor by the terms of the Agreement. No assignment or subcontracting shall relieve the Supplier from any of its obligations under the Agreement or impose any liability upon DFATD or CCC.
- 9.3 Subject to the preceding provisions of this Article, the Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Supplier, respectively. CCC may, at its discretion, require the Supplier to provide from time to time evidence that its accounts with its subcontractors and suppliers are current with respect to its own terms of payment with such subcontractors and suppliers. If such evidence is not provided or CCC is not satisfied with the evidence, CCC may withhold payment under this Agreement until such time that the Supplier provides evidence to the satisfaction of CCC.

10. DELIVERY AND ACCEPTANCE

- 10.1 The Supplier shall deliver all Equipment as described in Annex "A" to the Accepting Party identified in Article 13 (Accepting Party) in compliance with DDP (Incoterms 2010) [INSERT PLACE OF DESTINATION] no later than **XXXXXXXXXX, 2017**, and notify the Accepting Party identified in Article 13 (Accepting Party) in writing at least five (5) calendar days in advance of delivery at Destination.
- 10.2 Any anticipated deviation from this delivery schedule is to be communicated in writing immediately by the Supplier directly to CCC within five (5) calendar days of the event giving rise to the anticipated deviation.
- 10.3 Time is of the Essence and the Supplier understands and agrees that failure to deliver the Equipment in accordance with the delivery schedule shall, subject to an Excusable Delay as defined in Article 11, constitute a fundamental breach of the Agreement, in which case CCC may proceed to terminate the Agreement in accordance with Article 19 of this Agreement.
- 10.4 Upon delivery of the Equipment by the Supplier pursuant to Article 10.1, the Equipment shall be examined to verify that it was supplied and delivered in the quality and quantities required and in accordance with the requirements in the Agreement.
- 10.5 Where the Recipient and CCC determine that the provisions of Article 10.4 have been met, an Equipment Acceptance Certificate in the form of Annex B attached to this Agreement, shall be issued.

11. EXCUSABLE DELAYS

- 11.1 A delay in the performance by the Supplier of any of its obligations under this Agreement which is caused solely by an event that:

(i) was beyond the reasonable control of the Supplier, not including delays specific to obtaining financing, a contracting permit or any permits required by any Government department or agency;

(ii) could not reasonably have been foreseen;

(iii) could not reasonably have been prevented by means reasonably available to the Supplier; and

(iv) occurred without the fault or neglect on the part of the Supplier;

shall constitute an “Excusable Delay”, provided that the Supplier has promptly notified CCC in that regard in accordance with Article 11.2 below.

11.2 The Supplier shall notify CCC promptly upon the occurrence of an event giving rise to an Excusable Delay specifically citing Article 11.2 in the notice, with full particulars of the facts involved, together with a clear “work-around” plan, for CCC’s approval, containing in detail the commercially reasonable efforts that the Supplier proposes to take in order to minimize any adverse effects of such event of Excusable Delay. The Supplier shall thereafter carry out the “work-around” plan as approved by CCC.

11.3 In the event of an Excusable Delay, any delivery date or other date that is directly affected shall be postponed for a reasonable time, not to exceed the period of the Excusable Delay, taking into account the work-around plan approved. Should an event of Excusable Delay prevent CCC and/or DFATD from meeting its commitment, then CCC, reserves the right to terminate the Agreement for convenience as set out in Article 20.

11.4 DFATD and CCC shall not be liable for any costs or charges of any nature incurred by the Supplier or any of its subcontractors or agents as a result of an Excusable Delay.

12. SHIPPING, PACKING AND MARKING INSTRUCTIONS & LABELS

12.1 The Supplier shall be responsible to arrange delivery of the Equipment to the Accepting Party as set out in Article 10.1 of this Agreement.

12.2 Packaging must take place in accordance with all national and international regulatory requirements. Shipments must contain the following markings on all packaging and documentation:

[INSERT REQUIRED MARKINGS]

12.3 The Equipment is to be packed in appropriate packaging and clearly marked for safe transit, bearing the name and address of the Accepting Party indicated in Article 13.

12.4 Five (5) calendar days prior to shipment of the Equipment, the Supplier shall notify the CCC Project Manager, as set out in Article 27.2 of the:

- (i) Mode and reference number of shipment;
- (ii) Expected date and place of arrival;
- (iii) Description of the Equipment being shipped;
- (iv) CCC Project Number and DFATD reference number.

13. ACCEPTING PARTY

13.1 The Accepting Party for this order will be:

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

14. QUALITY CONTROL, INSPECTION AND TESTING

14.1 DFATD and its designated representatives including CCC shall have access to the Supplier’s plant or premises where the Equipment is being produced during usual business hours and subject to 1 (one) day notice to the Supplier.

14.2 All Equipment, which constitutes the subject matter of this Agreement, shall be subject to an inspection by DFATD or its designated representatives including CCC.

14.3 DFATD and its designated representatives including CCC reserve the right to reject any Equipment which does not conform to the required technical specifications, as set out in Annex “A” to this Agreement. At its option, DFATD or its designated representatives including CCC, may require that the Supplier forthwith, at its own expense, make good any Equipment which does not conform to the technical specifications.

15. PERMITS AND LICENCES

15.1 The Supplier will be responsible for obtaining and paying for all permits, licences, certificates or other documents as required by any Government authority in the performance of any obligation under the Agreement if so requested by DFATD or CCC in writing.

16. DOCUMENTATION/INVOICING INSTRUCTIONS:

16.1 For payment pursuant to Articles 6.1 and 7.1, the Supplier shall submit the following documentation to CCC:

- (a) Valid commercial invoice addressed to CCC;
- (b) Packing list;
- (c) Original Signed Equipment Acceptance Certificate (Annex “B”);
- (d) Certificate of Origin for Equipment;
- (e) Original Warranty Certificate in accordance with Article 21;

16.2 The distribution of the documents shall be made as follows:

- (a) One original of each of the documents to be couriered to the Accepting Party in Article 13.1;
- (b) All other remaining originals to be submitted for payment to CCC, Attn: XXXXXXXXXXXX; and
- (c) Copy of the full set to be faxed or emailed to CCC (Attention: XXXXXXXXXXXX, Fax No: XXXXXXXXXXXX or XXXXXXXXXXXX@ccc.ca)

17. LIMITATION OF LIABILITY

- 17.1 The extent of the liability of DFATD and CCC, its servants and employees to the Supplier for all losses, expenses, claims or damages of every kind and nature, arising out of or connected with the performance of this Agreement shall collectively be limited to the Price as set out in Article 6.1 and in no event shall DFATD or CCC be liable for any special, indirect, incidental or consequential damages.

18. LIQUIDATED DAMAGES

- 18.1 Subject to Article 18.2, if the Supplier fails to deliver the Equipment within the time specified in Article 10.1, the Supplier shall pay CCC liquidated damages of 1.0% of the total Price per full week of delay up to a maximum of 5% of the Price.
- 18.2 If CCC terminates this Agreement in whole or in part under Article 19, the Supplier is liable for liquidated damages accruing until CCC reasonably obtains delivery of similar Equipment. These liquidated damages are in addition to Article 19.1(d) under the Termination clause.
- 18.3 The Supplier will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Supplier such that it constitutes an Excusable Delay as defined in Article 11.

19. TERMINATION FOR DEFAULT

- 19.1 Where the Supplier is in default under this Agreement, CCC may, after giving the Supplier notice in accordance with Article 28 below, and without prejudice to any other rights and remedies, exercise one or more of the following rights:
- (a) Obtain all or part of the undelivered Equipment from other sources;
 - (b) Refuse to sign the Acceptance Certificate;
 - (c) Terminate this Agreement;
 - (d) Claim damages resulting from the default, including any consequential damages, such as excess and/or additional cost of re-supplying the Equipment from other suppliers.
- 19.2 The following shall constitute default by the Supplier:
- (a) A breach of the terms of this Agreement; or
 - (b) Bankruptcy or insolvency of the Supplier.
- 19.3 CCC, shall notify the Supplier in writing of its intention to exercise any or some of the rights listed in Article 19.1. The Supplier shall have three (3) calendar days from the date of the notice to respond and explain how it proposes to remedy the default. If CCC receives no response within the three (3) calendar days, or if the response is not acceptable to CCC, CCC may immediately exercise its rights as of the date of such further notice.

20. TERMINATION FOR CONVENIENCE

- 20.1 Notwithstanding anything contained in this Agreement, CCC may, at any time prior to the delivery of the Equipment, by giving notice to the Supplier (in this Article sometimes referred to as a "Termination Notice"), terminate this Agreement as regards all or any part of the Equipment

not delivered. Upon a Termination Notice being given, the Supplier shall immediately cease work (including the manufacture and procuring of materials for the fulfilment of the Agreement) in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Equipment as are not affected by the termination. CCC may at any time or from time to time, give one or more additional Termination Notices with respect to any or all parts of the Equipment not terminated by any previous termination.

- 20.2 Any amount paid under this Agreement is subject to an appropriation of funds by the Parliament of Canada for the fiscal year in which any commitment would come due for payment. If payment cannot be made either in full or in part because the level of funding is changed by Parliament of Canada, CCC will notify the Supplier and CCC will negotiate an amendment with the Supplier or terminate the Agreement for convenience pursuant to Article 20.1.
- 20.3 In the event of a Termination Notice notified pursuant to Article 20.1, the Supplier shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Agreement and to the extent that the Supplier has not already been so paid or reimbursed by DFATD or CCC:
- (a) On the basis of the Agreement price, for all completed work that is inspected and accepted in accordance with the Agreement, whether completed before, or after and in compliance with the instructions contained in, the Termination Notice;
 - (b) The cost to the Supplier for all work terminated before completion; and
 - (c) All costs of and incidental to the termination of the Agreement or part thereof, including the cost of cancellation of obligations incurred by the Supplier with respect to the terminated work or part thereof, the cost of and incidental to the taking of an inventory of materials, components, work-in-process and finished work on hand related to the Agreement at the date of the termination.
- 20.4 Notwithstanding anything in Article 20.3, the total amounts to which the Supplier is entitled under subparagraphs 20.3 (a) to (c) inclusive, together with any amounts paid or due or becoming due to the Supplier under other provisions of the Agreement, shall not exceed the Price or the portion thereof that is applicable to the part of the Equipment that is terminated, and shall not exceed the proportion of the price quoted by the Supplier for all of the Equipment that is reasonably attributable to the proportion of the work performed to the effective date of the termination.
- 20.5 In the supply of materials and supplies required for the performance of the Agreement and in the subcontracting of any of the Equipment, the Supplier shall, unless otherwise authorised by CCC, place purchase orders and subcontracts on terms that will enable the Supplier to terminate the same upon terms and conditions similar in effect to those provided in this Article and, generally, the Supplier shall co-operate with CCC and do everything reasonably within its power at all times to minimise the amount of CCC's obligations in the event of a termination under this Article.
- 20.6 The Supplier shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or Termination Notice given by CCC under Article 20.1, except to the extent that Articles 20.2 to 20.4 expressly provide.

21. WARRANTY

- 21.1 The Supplier warrants all Equipment to be free from defects in material, workmanship and construction and that the Equipment will perform to applicable specifications for the manufacturer warranty period. The Supplier shall provide CCC a copy of the Manufacturer Warranty Certificate.
- 21.2 If examination by DFATD or CCC discloses that the Equipment has been defective, then the Supplier must at its own expense expeditiously repair or replace, at CCC's option, the defective Equipment or its components.

22. GST/HST (APPLICABLE TO CANADIAN COMPANIES ONLY)

- 22.1 The Equipment to be supplied under this Agreement is intended for export from Canada and as such should constitute a "zero-rated supply" as this expression is defined in Part IX of the *Excise Tax Act*. The CCC shall maintain evidence satisfactory to the Canada Revenue Agency that the Equipment has been exported by CCC and shall provide this information to the Canada Revenue Agency upon request of either the Supplier or the Canada Revenue Agency.

23. GOVERNING LAW

- 23.1 This Agreement shall be governed and interpreted in accordance with the laws in force in the province of Ontario, Canada.

24. DISPUTES UNDER THIS AGREEMENT

- 24.1 In the event of any dispute between the Supplier and DFATD or CCC under this Agreement, the Parties shall attempt to settle the matter amicably. In the event that the matter is not so settled and either Party wishes to pursue the matter further, it shall be referred to arbitration in Ottawa, Canada, in the English language, in accordance with the *Commercial Arbitration Act* (R.S.C.1985, c.17, 2nd Supp.). Any such arbitration decision shall be final and binding upon both Parties.

25. ENTIRE AGREEMENT

- 25.1 This Agreement, and its Annexes, constitutes the entire agreement between the Supplier and CCC pertaining to the subject matter of this Agreement and supersedes all previous negotiations and documents pertaining thereto.

26. CORRUPTION

- 26.1 The Supplier warrants that no bribe, gift or other inducement has been paid, promised or offered to any official or employee of DFATD, CCC Her Majesty in right of Canada or the Recipient for, or with a view to, the entering into this Agreement.

27. PROJECT MANAGER

- 27.1 The CCC project manager for this Agreement is:

XXXXXXXXXX

Canadian Commercial Corporation,

700 – 350 Albert Street
Ottawa, Ontario, K1A 0S6;
Telephone: XXXXXXXXX
Fax: XXXXXXXXX
Email: XXXXXXXXX@ccc.ca

28. NOTICES

- 28.1 Any notice to be given under this Agreement shall be given in the manner set forth below.
- 28.2 Any notice hereunder shall be effectively given if sent by letter or by telegram, postage prepaid or with charges prepaid as the case may be, by facsimile or by electronic mail with return receipt. Notices sent by facsimile shall be deemed to be received on the day they were sent. Notices sent by registered mail shall be deemed to be received on the fifth business day after the date of mailing. Notices sent by electronic mail with return receipt shall be deemed to be received on the date they were opened by the recipient.

28.3 Notices shall be sent to:

- (a) XXXXXXXXX
XXXXXXX
XXXXXXX
XXXXXXX
Attn: XXXXXXXXX
Telephone: XXXXXXXXX
Email: XXXXXXXXX
- (b) **DFATD c/o / or / Canadian Commercial Corporation**
700 – 350 Albert Street
Ottawa, Ontario, K1A 0S6
Attn: XXXXXXXXX
Telephone: XXXXXXXXX
Fax: XXXXXXXXX
Email: XXXXXXXXX

With a copy to General Counsel
50 O'Connor Street, 11th Floor
Ottawa, Ontario, K1A 0S6

28.4 The above names, addresses, contact numbers may be changed by Notice.

29. PROGRESS REPORTS

- 29.1 The Supplier shall communicate to DFATD/ CCC in writing on a bi-weekly basis, or more frequently if CCC so requires, describing its progress under the Agreement, including a full description of any actual or anticipated problems or delays and the proposed resolution thereof. CCC may specify to the Supplier the nature and content of these communications.

30. CONFIDENTIALITY AND ANNOUNCEMENTS

- 30.1 The Supplier shall treat this Agreement and all records and other information directly or indirectly related to this Agreement as confidential for an unlimited period of time and shall not be disclosed to any third parties unless CCC provides prior written consent to the disclosure.
- 30.2 CCC agrees not to disclose any information provided by the Supplier that the Supplier indicates clearly thereon is confidential in nature unless otherwise required by law.
- 30.3 The Parties understand that CCC will lead on announcements relating to this Agreement. The Supplier will not make any announcement of any kind, including press releases, in relation to the Agreement unless prior written consent is given by CCC.

31. AMENDMENTS

- 31.1 The Agreement may not be amended, or modified, nor shall any of its terms and conditions be waived, except by agreement in writing executed by both the Supplier and CCC.
- 31.2 It is intended that no part of this project is to be subjected to any government imposed costs or fees, taxes (including sales taxes), or excise duties in Jamaica. In the event that customs duties, taxes or other government imposed costs or fees are demanded of the Supplier by any governmental authority within Jamaica, CCC may request the Supplier, in writing, to pay the costs or fees. Supplier will submit, within five (5) calendar days following CCC's request, the estimated cost impact to be reviewed by DFATD and CCC. Upon CCC's written approval and confirmation to proceed, an amendment will be executed to incorporate the reimbursable costs or fees to this Agreement no later than fifteen (15) calendar days from the written confirmation. Payment of the reimbursable costs or fees shall be based upon actual tax receipts supplied by the Supplier.
- 31.3 In the event there is an extension of the project schedule for delays due to non-exempted taxes, duties or fees, the Supplier may also submit a Request to CCC for costs related to project schedule delays providing the cost impact to be reviewed and approved by CCC. Upon CCC's written approval, an amendment will be executed to incorporate the cost and impact on the completion date provided in Article 10 (Delivery Schedule) as a result of the delay no later than fifteen (15) calendar days from the written approval.

32. WAIVER

- 32.1 A waiver of the breach of any provision of the Agreement shall not be binding upon either Party, unless it is in writing and signed by the waiving Party and delivered to the other Party. A waiver by a Party of any provision of this Agreement shall not constitute a continuing waiver, or a waiver of one or any of the other provisions, unless such waiver shall specifically provide otherwise.
- 32.2 Payments to the Supplier shall not constitute evidence that the Supplier's related obligations under this Agreement have been performed.

33. INVALID PROVISIONS

- 33.1 If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but it shall be construed as if such invalid, illegal or unenforceable provision had never been contained in it.

34. IN-KIND CONTRIBUTION

- 34.1 The Parties acknowledge and agree that this Agreement constitutes an element of an in-kind contribution to a foreign recipient and is governmental assistance.

35. NO EMPLOYEE OR AGENCY RELATIONSHIP

- 34.1 Neither the Supplier, nor anyone else who is engaged by the Supplier to deliver any goods or services under this Agreement will be considered employees of DFATD or CCC. The Supplier also understands that nothing in this Agreement makes it a partner or agent of CCC or DFATD. The Supplier will not represent itself, and will ensure its employees, subcontractors and agents do not represent themselves, including in any agreement or arrangement with a third party, as a partner or agent of CCC or DFATD.

36. CONFLICT OF INTEREST

- 36.1 It is a term of this Agreement that:
- (a) no current or former public office holder or public servant who is not in compliance with the *Conflict of Interest Act*, Policy on Conflict of Interest and Post-Employment or the Canadian Values and Ethics Code for the Public Sector will derive a direct benefit from this Agreement;
 - (b) during the term of this Agreement any Canadian public office holder or public servant engaged in the course of carrying out this Agreement will conduct themselves in compliance with the *Conflict of Interest Act*, Policy on Conflict of Interest and Post-Employment and the Canadian Values and Ethics Code for the Public Sector. Should an interest be acquired during the life of this Agreement that would cause a conflict of interest or seem to cause a departure from principles espoused in the Codes referenced above, the Supplier will declare it immediately to CCC.

37. APPROPRIATION

- 37.1 In accordance with Section 40 of the *Financial Administration Act*, payment under the Agreement is subject to an appropriation from the Government of Canada for this particular Project for the fiscal year in which any commitment hereunder would come in course of payment. CCC will/may terminate the Agreement pursuant to Article 20 (Termination for Convenience in the eventuality that the appropriate is not available.

38. INTERNATIONAL SANCTIONS

- 38.1 From time to time, in compliance with United Nations obligations or other international agreements, Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under the

United Nations Act (UNA), R.S.C. 1985, c. U-2, the *Special Economic Measures Act* (SEMA), S.C. 1992, c. 17, or the *Export and Import Permits Act* (EIPA), R.S.C. 1985, c. E-19. The Supplier agrees that it will, in the performance of this Agreement, comply with any such regulations that are in force on the Effective Date of this Agreement, and will require such compliance by its subcontractors.

- 38.2 The Supplier agrees that CCC relies on the Supplier's undertaking in subsection 38.1 to enter into this Agreement, and that any breach of the undertaking shall entitle CCC to terminate this Agreement under the provisions of this Agreement relating to default by the Supplier, and therefore to recover damages from the Supplier, including re-procurement costs arising out of such a termination.
- 38.3 The countries or groups currently subject to Canadian Economic Sanctions are listed on the Foreign Affairs, Trade, and Development Canada site:
<http://www.international.gc.ca/sanctions/index.aspx>
- 38.4 The Supplier agrees that only the text as published in the Canada Gazette, Part II, is authoritative.
- 38.5 If the Agreement is executed prior to the imposition of a sanction as described in Article 38.1, CCC reserves the right to terminate the Agreement in accordance with Article 20.

39. ANTI-TERRORISM

- 39.1 Consistent with numerous United Nations Security Council resolutions, including S/RES/1267 (1999) concerning Al Qaida and the Taliban, and associated individuals and entities, both DFATD/CCC and the Supplier are firmly committed to the international fight against terrorism, and in particular, against the financing of terrorism.
- 39.2 The Supplier acknowledges and warrants that neither it, nor any of its employees, directors, or agents is an entity listed, in relation to terrorists groups and those who support them, under subsection 83.05 of the *Criminal Code* of Canada, and as identified thereto in a "List of Entities" which may be found at <http://laws.justice.gc.ca/eng/regulations/SOR-2002-284/20060322/P1TT3xt3.html>.
- 39.3 The Supplier acknowledges and warrants that it will not knowingly directly or indirectly collect, provide or make available funds or property intending that they be used, or knowing that they will be used, to carry out or facilitate terrorist activities, or knowing that the funds or property will be used or will benefit a terrorist entity as identified in the List of Entities referenced in subsection 39.2.
- 39.4 The Supplier will include this wording in any further funding arrangements, requiring further implementing parties/entities not to use the funding provided under the further funding arrangement to benefit terrorism.
- 39.5 The Supplier acknowledges that this Anti-Terrorism section forms an integral part of this Agreement, and that DFATD/CCC may terminate this Agreement or reduce or suspend any payments under it if the Supplier fails to honour these provisions.

40. INTENTIONALLY DELETED

41. AUDIT

41.1 Supplier shall establish and maintain a reasonable accounting system that enables CCC to readily identify Supplier's assets, expenses, costs of goods, and use of funds. CCC and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Supplier, including, but not limited to those kept by the Supplier, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

41.2 Supplier shall, at all times during the term of this Agreement and for a period of ten years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The Supplier shall at any time requested by CCC, whether during or after completion of this Agreement, and at Supplier's own expense make such records available for inspection and audit (including copies and extracts of records as required) by CCC. Such records shall be made available to CCC during normal business hours at the Supplier's office or place of business and without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for CCC.

42. SURVIVAL

42.1 The following Articles survive the termination and/or expiry of this Agreement:

- 42.1.1 Article 4 Supplier's General Obligations;
- 42.1.2 Article 17 Limitation of Liability;
- 42.1.3 Article 18 Liquidated Damages;
- 42.1.4 Article 21 Warranty;
- 42.1.5 Article 24 Disputes under this Agreement;
- 42.1.6 Article 30 Confidentiality and Announcements; and
- 42.1.7 Article 41 Audit.

43. COUNTERPART EXECUTION

This Agreement may be executed in any number of counterparts with the same effect as if the Parties had signed the same document. All counterparts shall be construed together, and shall constitute one and the same agreement. The Parties further agree that a faxed or PDF copy of the signature shall be deemed to be and shall have the same effect as an original signature.

IN WITNESS WHEREOF this Agreement has been executed by the duly authorised officers of the Parties.

CANADIAN COMMERCIAL CORPORATION:

Name:.....

Signature:.....

Date:.....

SUPPLIER FULL LEGAL NAME

Name:.....

Signature:.....

Date:.....

ANNEX “A” – Statement of Requirements

The Supplier will provide the Equipment as follows¹:

TO BE COMPLETED AT TIME OF AWARD

Item #	Qty	Part #	Description & Specs	Condition	Unit Price (CAD)	Total Price (CAD)
TOTAL PRICE (CAD)						

¹ Each item of Equipment must include the manufacturer’s technical manuals, such as operator instructions and maintenance instructions where applicable.

ANNEX “B” – Equipment Acceptance Certificate

Instructions:

- 1) This document is used for the acceptance of the Equipment demonstrating that the Equipment was supplied and delivered in the quality and quantities required and in accordance with the requirements in the Agreement.
- 2) This document must be completed in full and signed for payment to be authorised under the Agreement.
- 3) Any comments and/or reservations made on this document may result in non-payment until the comments/reservations are successfully addressed in the view of CCC.

TO BE COMPLETED AT TIME OF AWARD

Item #	Qty	Part #	Description & Specs	New Condition (Yes / No)	Comments (Be as specific as possible and include photographic evidence of damage when possible)

Submitted by SUPPLIER FULL LEGAL NAME:

Authorised Representative:

Name:.....

Signature:.....

Date:.....

Accepted by **INSERT NAME OF RECIPIENT HERE:**

Authorised Representative:

Name:.....

Signature:.....

Date:.....

Acknowledged by CANADIAN COMMERCIAL CORPORATION:

Authorised Representative:

Name:.....

Signature:.....

Date:.....

END OF SECTION 3