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**SOLICITATION AMENDMENT
MODIFICATION DE L'INVITATION**

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

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

Comments - Commentaires

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

Issuing Office - Bureau de distribution
Public Works and Government Services Canada - Pacific
Region
800 Burrard Street, Room 219
800, rue Burrard, pièce 219
Vancouver
British C
V6Z 0B9

Title - Sujet EGD South Jetty Reconstruction	
Solicitation No. - N° de l'invitation EZ899-172412/B	Amendment No. - N° modif. 011
Client Reference No. - N° de référence du client	Date 2017-07-28
GETS Reference No. - N° de référence de SEAG PW-\$PWY-026-8060	
File No. - N° de dossier PWY-6-39315 (026)	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2017-08-02	Time Zone Fuseau horaire Pacific Daylight Saving Time PDT
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: Yi (PWY), Patty	Buyer Id - Id de l'acheteur pwy026
Telephone No. - N° de téléphone (778) 919-2578 ()	FAX No. - N° de FAX (604) 775-6633
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction: PWGSC - South Jetty Reconstruction Esquimalt Graving Dock (EGD), Victoria, BC	

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

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Buyer ID - Id de l'acheteur

pw026

CCC No./N° CCC - FMS No./N° VME

Amendment No. 011 is raised to incorporate the following:

- 1 Updates to the RFP**
- 2 Questions, Responses and Clarifications**
- 3 Incorporate Addendum No. 005**

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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AMENDMENT 011

1. UPDATES to the RFP Document :
Please note the following changes:

1. APPENDIX 3: Set-aside Program for Aboriginal Business
ADD the attached document **How Compliance is Determined for a Contractual Joint Venture** to Appendix 3.

2. QUESTIONS, RESPONSES AND CLARIFICATIONS

Question 1:

Per Keystone Environmental Management Plan(2017) please confirm that full time environmental monitoring is required during all in water work. Andrew to respond

Answer 1:

Yes, per section 3.4 of the EMP the Contractors QEP will conduct full-time environmental monitoring during in-water works. Please refer to Addendum 008 – Question 4 and Answer 4 regarding the Contractors QEP responsibility for staff supervision.

Question 2:

From Section 31 61 13 Clause 3.14. Pile Testing, will the static load test be a creep test (48 hours duration) or a quick test (2 hours duration).

Answer 2:

The static load test will be a creep test (48 hours duration).

Question 3:

From Section 31 62 16.20 Clause 2.3.6, refers to “downhand welding” which is a procedure used mainly in pipeline welding. Will the contractor be permitted to use his own procedures provided they are allowed by CSA W59?

Answer 3:

Own procedures are allowed if CSA W59 certified.

Question 4:

From Section 31 62 16.20 Clause 2.3.7, refers to the use of backing rings. The clearance tolerance of some drilling equipment cannot accommodate a backing ring because they tend to interfere with the passage of the drill. Can open root welding procedures be used, providing that the procedures are in and the welders are certified to the procedures as per CSA W59?

Answer 4:

Backing rings required, note there are shear rings required as well.

Question 5:

From Appendix D4a Load Rating Layout Drawing SK2, we are not familiar with “Concentrated Load with Minimum Bearing Length”. What does, for instance, 5500kg/400mm mean in terms of load per unit area?

Answer 5:

Contractor should ask own engineer to interpret.

Question 6:

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From Section 31 62 16.20 Clause 2.3.11, refers to the use of external pile shoes at displacement control piles. Is it the intent of the specification to use external pile shoes for all rock socketed piles or will the contractor be allowed to select the shoe based on his selection of drilling equipment?

Answer 6:

Contractor can select shoe for review and approval by Departmental Representative.

Question 7:

For fenders, there is a requirement for the manufacturer to provide a Type Approval Certificate in accordance with PIANC 2002. Is this required for the foam fenders or just the rubber fenders?

Answer 7:

The Type Approval refers to Foam Filled Fenders.

Question 8:

For fenders, there is a requirement for welding of metal parts to be performed by a fabricator certified by the Canadian Welding Bureau. Is this required for metal parts that are embedded in the rubber/foam fender elements?

Answer 8:

Yes, all welding by certified companies.

Question 9:

Duct bank section SJZ has no fire alarm or emergency cable included yet it feeds HM#0 which has fire alarm and emergency on it. Please advise.

Answer 9:

Extend emergency and fire alarm pull and annunciation circuit to this location. Sheets E7 and E8 show system topography.

Question 10:

Drawing E42 Rev. 3. – Note 18 is shown on the emergency horn. Should this not be Note 20?

Answer 10:

Emergency alarm keynote should be 20.

Question 11:

Drawing S44 and S01 indicates a cast in place reinforced concrete Utility Trench complete with steel supports under the existing structure. We are unable to locate the measurement item to allow for the supply and install of this item. Please provide direction on where to allow for these costs.

Answer 11:

Item 90 has been added to the Price Table (See Amendment No 008).

Question 12:

Section 3 thru 6/S15 call up 15M splice to matching deck panel dowels.

'SDP1 thru SDP5-7 do not call up top reinforcing which must be matched in the closure pour.

'Please confirm top reinforcing in deck panels that must be matched

Answer 12:

Field lap bars are called up on SDP drawings, see elevation view.

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Question 13:

Section 3/S15 and 4/S15 show pile cap closure pour stirrups at 160 on center.

Section 1/S20 show pile cap closure pour stirrups at 100 on center.

Please confirm spacing of closure pour pile cap stirrups.

Answer 13:

Stirrups at 160o/c as per drawing S15. Revised S20 to be issued in addendum

Question 14:

Section 3/S15 and 4/S15 show stirrups in pile cap closure pour ending under C.I.P deck panel closure pour.

Section 1/S20 show the stirrups in the pile cap closure pour ending in the deck.

Please confirm where stirrups will end.

Answer 14:

Stirrups end under CIP deck per drawing S15. Revised S20 to be issued in addendum

Question 15:

Section 3/S15 and 4/S15 show 10-35M top.

Section S/20 shows 6-30M top.

Please confirm what top reinforcing to use.

Answer 15:

10-35M per drawing S15. Revised drawing S20 is issued in Addendum 5, with this amendment.

Question 16:

Luminaire 1 Strip Light– Intended length 2'? Colour temperature 3000k?

Answer 16:

Luminaire 1: Length should be ~400mm. Short enough to fit into kiosk sections.

3000-3500K is acceptable.

Question 17:

Luminaire 2 Yard Light – Post Top design or Flood style? Distribution as 2,3,4,5? Flood? Flood optics. Mounting style Arm or Bracket? Color finish on fixture Black, Grey Bronze?

A picture of the current lighting would be very helpful.

Answer 17:

Luminaire 2:

Mounting should be to top of post. Mounting hardware to suit number of lights indicated.

Distribution to be type 4, arm mounting, colour to be black or grey.

Colour on luminaire 2 and 3 to match.

Question 18:

Luminaire 3 - Mounting style Arm or Bracket? Color finish on fixture Black, Grey Bronze?

Answer 18:

Luminaire 3:

Arm mounting, locking adjustable up/down & left/right so fixture can be re-aimed as needed, color black or grey, flood style.

Colour on luminaire 2 and 3 to match.

Question 19

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If an Aboriginal Business and a Non-Aboriginal Business form a JV (Contractual Agreement) for the purpose of this opportunity as noted above, is this JV now considered for this opportunity to be an "Aboriginal Business"? Special Instruction SI 2.1 Indicates that only an Aboriginal Business can respond to this opportunity.

Answer 19

Yes, a Contractual Joint Venture (CJV) if compliant with the PSAB requirements is considered to be an "Aboriginal Business"

Question 20

What is the definition of "supplier" as it relates specifically to "Special Instruction SI 2.1", and "Appendix 3 Section 2.(b)"?

Answer 20

Supplier is an equivalent to bidder or contractor in this context

Question 21

The Answer #51 provided to Question # 51 in Amendment 007 does not answer the Question which was raised. Do the employees of the Non Aboriginal Business Partner in the Joint Venture count toward the employee total of 6 or more? This distinction between the partner companies is particularly important as it relates to the percentage of aboriginal employees available to perform the work.

Answer 21

No, only Aboriginal employees of Aboriginal member(s) count towards the criterion of Aboriginal employment. However, note that the Aboriginal member can second the non-Aboriginal member's employee(s) for all or any portion of the contract. A seconded employee would be considered to be employed by the Aboriginal member but a formal (signed) arrangement is required

Question 22

We have reviewed the Interpretation Bulletin you provided a link to in Amendment 007 Part 5 Answer #51, Appendix 3 – Set Aside Program for Aboriginal Business, and the definitions in GC 1.1.2 and seek further clarification on the "Aboriginal Content" requirement.

In a contractual joint venture between Aboriginal firm "A" and Non-Aboriginal firm "N", will supply items, such as materials purchases provided by "A", qualify towards the 33% of work that must be performed by an Aboriginal Business contractor?

Appendix 3 states that "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." Can materials directly purchased by a SUPPLIER (defined in GC1.1.2 as "a person having a direct contract with the Contractor to supply Plant or Material not customized for the Work") for the performance of the contract qualify towards the 33% of work that must be performed by an Aboriginal Business contractor?

Do the Aboriginal Content requirements change when applied to high-value contracts? As a hypothetical example: for a contract with a total value of \$60 million of which \$30 million is

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material cost and \$30 million is work, is it PWGSC's view that \$10 million of the work (i.e., 33% of \$30 million) must be performed by an Aboriginal Business contractor?

Answer 22

The CJV is not a legal entity and therefore, the JV does not account for income or loss, does not (cannot) employ people, cannot invoice or collect applicable taxes, cannot enter into contracts, and cannot sue or be sued. All of the aforementioned must be carried out at the level of the individual venturers. Monies flow between the entities via subcontracting and / or transfer pricing arrangements as follows: CJV ↔ A and CJV ↔ N. For all practical purposes the criterion of Aboriginal content is calculated as 33% of the total monetary value of the work contracted done by the Aboriginal member(s) of the CJV in combination with other PSAB registered Aboriginal businesses, and managerial and administrative costs incurred by the Aboriginal member(s) of the CJV in combination with other PSAB registered Aboriginal businesses. This includes contract management, recruiting (resources needed for the actual contract), resources pay (resources working on the actual contract), and administrative work (related to the actual contract) but excludes goods and material directly purchased by the contractor for the performance of the contract. The CJV itself cannot employ people and thus the criterion of Aboriginal employment applies only to its Aboriginal member(s).

For example if the Aboriginal firm (member of the CJV) needs 30 employees to provide 33% of the total monetary value of the work contracted, then at least 10 of them have to be Aboriginal.

Question 23

In Section 31 61 13 Part 3.13 it states, "The Contractor shall allow for the cost of providing assistance for PDA testing for up to thirty (30) selected piles as required by Departmental Representative" Please specify under which tender item this is to be included.

Answer 23

Measurement and payment for providing assistance for PDA testing for up to thirty (30) selected piles shall be as per Section 31 61 13 Clause 1.3.6: which states: "All costs associated with quality control and quality control testing (except as noted otherwise) will be considered as incidental to the Work".

Question 24

Please also specify under which tender item the costs associated with the Dynamic load test costs need to be included.

Answer 24

Measurement and payment for conducting the pile load test shall be as per Section 31 61 13 Clause 1.3.6: which states: "All costs associated with quality control and quality control testing (except as noted otherwise) will be considered as incidental to the Work".

Question 25:

As per Amendment 7, revisions to specifications, number 32, the contractor is to allow to Perform 1 tension pile load test and prepare reports in accordance with ASTM D3689. Please provide the testing load requirement and the general location of the pile that the test is performed on. It is understood that this is a Type 1 pile.

Answer 25:

Test load is 2MN. Departmental Representative to specify location prior to testing.

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Question 26:

Please provide the general location of the Type 2 pile that the static (compression) load test as described in section 31 61 13 Item 3.14. is performed on.

Answer 26:

Pile location to be determined by Departmental Representative.

Question 27:

In regards to Amendment 08, question 134 and the corresponding answer, we understand your response, but it means that the contractor has to design, install and leave in place temporary falsework/support system for the precast pile caps until the final installation of the precast deck panels/box girder and concrete closure pours between them, including sufficient curing time.

Only then the temporary falsework system can be removed. In short, the contractor is responsible for supporting the weight of the total concrete dock structure (i.e. Precast Pile Caps, Precast Deck Panels/Box Girders, and all Concrete Infill), except for deck topping.

Answer 27:

Revised response: Temporary supports are required to remain in place until the pile cap beam pile block-out closure pour and pile concrete fill have been poured and cured.

Question 28:

Can the Security Requirements required at bid closing for this project be waived or changed?

Answer 28:

No, the Security Requirements required at bid closing for this project cannot be waived or changed.

End of Questions, Responses and Clarifications

ADDENDUM No. 005

The following changes/clarifications in the tender documents are effective immediately. This addendum will form part of the contract documents.

REVISIONS TO DRAWING

1. OMIT drawing S20 Rev3 and REPLACE with drawing S20 Rev4.

END OF SECTION

How Compliance is Determined for a Contractual Joint Venture

Joint ventures [“JVs”] are for the most part not legal entities¹, but rather contractual arrangements entered into by two or more entities for a specific business pursuit or opportunity. For example, the Government of Canada would enter (or consider entering) into contract with “legal entity 1 (the Aboriginal member²) in joint venture with legal entity 2 (can be either another Aboriginal member or a non-Aboriginal member).” In this instance, both the JV and the Aboriginal business³ in the JV must be audited for PSAB compliance⁴.

For PSAB purposes when there is a JV that is not incorporated, and has not registered under a Provincial or Territorial Business Names Registration Act, i.e., they have a contractual arrangement⁵; the Aboriginal business being audited is the Aboriginal business in the JV.

In a joint venture, each joint-venturer contributes its own assets in the venture to achieve a goal, but keeps the complete ownership of its assets (although contracts will ensure that the assets are indeed used for the completion of the venture).

A joint-venture does not calculate then distribute its tax burden: the income or loss of the venture will be determined at the level of the individual venturers, rather than at the level of the venture. They will tax themselves at their respective marginal tax rate.

Liabilities in a joint venture are usually not shared among the venturers: assets are not transferred to the venture; therefore, each venturer is liable for its own actions.

The PSAB criterion related to Aboriginal ownership requires an Aboriginal person(s) and/or Aboriginal firm⁶(s) to have at least 51% ownership of the business. Ownership of an Aboriginal business has to include “beneficial ownership.” The Beneficial Owner is defined by [Investopedia](#) as “...*person who enjoys the benefits of ownership even if the shares or titles are in another name. Any individual or group of individuals that, either directly or indirectly, has the power to vote or influence the transaction decisions regarding a specific share, title, etc..*”.

¹ Duhaime's Law Dictionary defines a person as “*An entity recognized by the law as separate and independent, with legal rights and existence including the ability to sue and be sued, to sign contracts, to receive gifts, to appear in court either by themselves or by lawyer and, generally, other powers incidental to the full expression of the entity in law.*” Legal person refers to a non-human entity that is treated as a person for limited legal purposes ... there are many laws that give certain powers to ‘persons’ which, in almost all instances, includes business organizations that have been formally registered such as partnerships, corporations or associations.

² The term ‘member’ as a legal entity within a contractual joint venture [“CJV”] is interchangeable with the term ‘business’.

³ It must be emphasized that a CJV is not a business as it is not a ‘person’ in corporate law; rather it is a contractual arrangement. The Aboriginal business must be able to be registered as such in the Aboriginal Business Directory.

⁴ The audit procedures and interpretations for this document are based on the PSAB Audit Toolkit, a manual for use by INAC Officials and Third Party Auditors.

⁵ That is, the entity is a contract.

⁶ When referring to a CJV, the terms ‘firm’, ‘business’ and ‘member’ are interchangeable and are to be interpreted as meaning the ‘legal entity’.

How CJV Compliance is ...

The auditor must determine who the real owner of the business is. Ownership is verified through the number of shares (or partnership units) that the Aboriginal owner(s) own in comparison to the non-Aboriginal owner(s), and the treatment of equity transactions for corporations, partnerships, joint ventures, community organizations, cooperative, sole proprietorships, non-profit organizations, etc.

The Aboriginal business owner has to provide enough documents to prove a minimum 51% ownership of the business. For CJVs, the Aboriginal member in the JV needs to demonstrate majority interest⁷ in the JV. This is usually documented in the JV Agreement; however, other agreements that have an impact on beneficial ownership must be considered.

INAC must also audit ownership of the Aboriginal business in the JV for PSAB compliance.

Documents that can be reviewed to assess the percentage of ownership include: (i) JV agreement; (ii) subcontracting agreement; (iii) management agreement; (iv) franchise agreement; (v) banking documents; (vi) ownership information from the Aboriginal Business Directory ["ABD"] profile; and, (vii) any other agreements that may impact the beneficial ownership of the Aboriginal member.

To meet the criterion of Aboriginal control, the Aboriginal business in a CJV must be able to operate the CJV and make changes to the way the CJV is operated and organized, including "fundamental changes," as this term is used in the *Canada Business Corporations Act*, without the approval of non-Aboriginal owners, partners or shareholders.

The control is verified through day-to-day operation and decision making power that the Aboriginal owner(s) and executive(s) exercise. The control may be checked through voting control, through the number of Aboriginal people (or Aboriginal entities or businesses represented) on the Board of Directors, by the examination of the management positions held by Aboriginal people, or the list of the entity's account holders, meaning who can sign the cheques and allowed expenses, etc. Quorum clauses need to be checked to ensure that the Aboriginal Directors always have the ability to make fundamental changes without the approval of non-Aboriginal Directors.

⁷ In addition to amounts due from the percentage of ownership, the benefits (costs) of beneficial ownership must be determined.

How CJV Compliance is ...

Canada may consider a variety of factors to satisfy whether Aboriginal persons have true and effective control of an Aboriginal business. CPN⁸ 1996-6 provides examples of evidence that can be used to verify control for a joint venture: (i) payment of management or administrative fees; (ii) subcontracting arrangements and/or transfer pricing to/from non-Aboriginal party; (iii) allocation and distribution of net income; (iv) business plan; (v) management structure; guarantees made by either the Aboriginal business or the non-Aboriginal business; and, (vi) minutes of JV owners meetings.

Finally, it should be emphasized that the 51% *de facto* control can only be achieved if the Aboriginal member of the joint venture is able to operate the JV and make changes to the way the JV is operated and organized including “fundamental changes.”

Also, if in the pre-award audit the CJV was compliant with the criterion of Aboriginal control on the basis that the Aboriginal member had both 51% *de jure* and *de facto* control of the joint venture, then it is the responsibility of both members to ensure that the CJV remains compliant for the duration of any set-aside contract that is awarded.

The criterion of Aboriginal employment applies to an Aboriginal business, which has six or more full-time employees. When an Aboriginal business reaches this level at least one-third of the full-time employees have to be Aboriginal persons.

The date at which to verify Aboriginal employment depends on the type of audit being conducted. For post-award audits, the level and ratio at the time of bid submission must be maintained or exceeded throughout the contract duration. The ratio is tested at the time of bid submission or date of contract award, and several points thereafter (e.g., half way, and date of audit notification).

When the JV is a contractual arrangement, the JV itself cannot have any employees as a CJV cannot obtain a CRA business account for source deductions. Rather, each of the members is required to annually report the earnings of its employees (T4 summary) and issue a T4 to each employee.

While there are instances where employees can be seconded on a full-time basis from the firms within the JV, to the JV itself, it does not apply to a CJV for the reason cited above. Nevertheless, it is important to assess the Aboriginal employment of both the JV and the Aboriginal business within the JV to verify that policy is being followed.

To establish whether the policies are being adhered to, documentation would include the T4 of every employee employed for purposes of satisfying the set-aside contract undergoing a post-award audit as well as the annual T4 summaries for the period under audit. If the joint venture has a secondment agreement with its members, then signed copies of each secondment showing the period of the assignment would be required.

⁸ Contracting Policy Notice

How CJV Compliance is ...

It is the number of full-time employees on the payroll of the Aboriginal business that determines the ratio of Aboriginal to total employees of the Aboriginal business for the purpose of establishing eligibility under the PSAB. A full-time employee, for the purpose of the PSAB, 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.

This definition is somewhat restrictive and does not fit all employment conditions; therefore, other factors unique to the entity being audited are considered. In the post-award audits, the following factors are tested to determine which was most applicable:

- I. Part-time employees who work an average of 30 hours a week throughout the year (or the duration of their employment) should be treated as full-time;
- II. Seasonal employees who are on payroll and whose hours fluctuate from week to week but work an average of 30 hours a week during the season should be considered full-time;
- III. Employees who are on payroll and work at least 30 hours a week, each week, during the duration of the set-aside contract should be considered full-time;
- IV. Rotational workers who sign long-term employment contracts (e.g., no end date, or for multiple rotations), and who work an average of 30 hours a week throughout the year (or the duration of their employment) should be considered full-time; or,
- V. Rotational workers (e.g., paramedics, firefighters, oil and gas workers) who sign short-term employment contracts (e.g., duration of 1 rotation) are considered contract employees (not independent contractors), and should not be considered full-time.

Upon request by the Government of Canada, the Aboriginal business and the contractual joint venture has to immediately provide a completed *Employee Certification* form for each employee and additional documents to assess the employment criteria. This certification confirms the person's consent to the verification of the information submitted. Evidence as to whether an employee⁹ is or is not full-time and evidence as to the number of full-time employees may include:

- Payroll information maintained for the Canada Revenue Agency ["CRA"] purposes as well as information related to pension and other benefit plans;
- Written offers for employment;
- Remittances to CRA;

⁹ The CRA guide RC4110-16e states that the facts of the working relationship as a whole decide the employment status. In an employer-employee relationship, the payer is considered an employer and the worker is an employee. Employers are responsible for deducting CPP contributions, EI premiums, and income tax from remuneration or other amounts they pay to their employees. Employers must remit these deductions along with their share of CPP contributions and EI premiums to the CRA. Therefore, there is an employer-employee relationship when an individual is issued a T4 from an employer. The employee is the person whose name and SIN appear on the T4 and the employer is the legal entity that issued the T4 as confirmed by its CRA business account.

How CJV Compliance is ...

- List of employees indicating hire date, termination date (only relevant for post-award audits), employment status (full-time, part-time, contract-of-service¹⁰, contract-for-service¹¹) and Aboriginal status (Aboriginal, non-Aboriginal); and,
- The testing of each employee as whether full-time or not using the factors¹² cited above.

In a post-award audit, each employee will be evaluated by the auditor as to employment status, Aboriginal status, the employee's employer, and dates worked in the period under audit. It is the responsibility of all members of a CJV to submit the necessary documentation for the auditor's evaluation.

Failure to produce the requested documents or sufficient evidence to support claims could lead to the removal of either the CJV or the Aboriginal member from the ABD. Should this happen, the CJV and/or the Aboriginal member would not be able to participate in the solicitations for set-aside contracts under PSAB, and the existing set-aside contract with the Government of Canada held by the CJV could be terminated.

In addition, evidence of the Aboriginality of full-time employees must be verified. Documents that can prove the Aboriginality are the same as those used to verify Aboriginal status of the business' owner(s). Evidence of residency in Canada must also be verified. Documents that can prove Canadian residency are the same as those used to verify the Canadian residency of the business' owner(s).

The criterion of Aboriginal content means at least 33% of the total value of the work to be performed under a contract is performed by an Aboriginal business (as defined by PSAB) contractor or by a combination of that contractor and other PSAB registered Aboriginal businesses¹³.

The Aboriginal content requirement is distinct from the Aboriginal employment requirement.

The INAC Interpretation Bulletin notes that: *"The Aboriginal content requirement should not be interpreted to apply to the 'status' of the employees of an Aboriginal business working on a contract"*. Rather the Aboriginal content requirement is about ensuring that at least 33% of the value of the work is done by the Aboriginal business, whether the business uses its Aboriginal employees or its non-Aboriginal employees for the

¹⁰ The CRA guide RC4110-16e defines contract-of-service as an employer-employee relationship.

¹¹ The CRA guide RC4110-16e defines contract-for-service as a business relationship.

¹² There are indicators for each factor that show which factor is most appropriate in determining which applies in classifying an employee as full-time or not.

¹³ This applies only on contracts that are PSAB set-aside contracts. See: Aboriginal Business Procurement Policy and Incentives - Contracting Policy Notice 1996-2. This document is referred to as CPN 1996-2.

How CJV Compliance is ...

contract. INAC does not have to check if 33% of the work is done by Aboriginal individuals but must only check that the work is done by the Aboriginal business.

The Aboriginal content is applied when two businesses, one Aboriginal and the other non-Aboriginal, are working together on a single contract issued under the PSAB via a CJV.

No more than 2/3 (67%) of the total monetary value of the work contracted can be performed by the non-Aboriginal firm.

The Aboriginal firm in the contractual joint venture must demonstrate that either alone or together with PSAB eligible subcontractors, that the combination of PSAB eligible businesses performed at least 33% of the value of work.

