



**RETURN BIDS TO:**

**RETOURNER LES SOUMISSIONS À:**

Bid Receiving PWGSC/TPSGC reception des soumissions

Victory Building/Édifice Victory

Room 310/pièce 310

269 Main Street/269 rue Main

Winnipeg

Manitoba

R3C 1B3

Bid Fax: (418) 566-6167

**REQUEST FOR PROPOSAL  
DEMANDE DE PROPOSITION**

**Proposal To: Public Works and Government Services Canada**

We hereby offer to sell to Her Majesty the Queen in right of Canada, in accordance with the terms and conditions set out herein, referred to herein or attached hereto, the goods, services, and construction listed herein and on any attached sheets at the price(s) set out therefor.

**Proposition aux: Travaux Publics et Services Gouvernementaux Canada**

Nous offrons par la présente de vendre à Sa Majesté la Reine du chef du Canada, aux conditions énoncées ou incluses par référence dans la présente et aux annexes ci-jointes, les biens, services et construction énumérés ici sur toute feuille ci-annexée, au(x) prix indiqué(s).

**Comments - Commentaires**

<b>Title - Sujet</b> Design-Build Replacement of Elevators	
<b>Solicitation No. - N° de l'invitation</b> EW038-221455/A	<b>Date</b> 2021-12-02
<b>Client Reference No. - N° de référence du client</b> NRC EW038-221455	
<b>GETS Reference No. - N° de référence de SEAG</b> PW-\$PWZ-050-11286	
<b>File No. - N° de dossier</b> PWZ-1-44035 (050)	<b>CCC No./N° CCC - FMS No./N° VME</b>
<b>Solicitation Closes - L'invitation prend fin</b> <b>at - à 02:00 PM</b> Central Standard Time CST <b>on - le 2022-01-11</b> Heure Normale du Centre HNC	
<b>F.O.B. - F.A.B.</b> <b>Plant-Usine:</b> <input type="checkbox"/> <b>Destination:</b> <input type="checkbox"/> <b>Other-Autre:</b> <input type="checkbox"/>	
<b>Address Enquiries to: - Adresser toutes questions à:</b> McRuer, Daniel	<b>Buyer Id - Id de l'acheteur</b> pwz050
<b>Telephone No. - N° de téléphone</b> (204) 295-6634 ( )	<b>FAX No. - N° de FAX</b> (418) 566-6167
<b>Destination - of Goods, Services, and Construction:</b> <b>Destination - des biens, services et construction:</b> SEE HERE-IN	

**Instructions: See Herein**

**Instructions: Voir aux présentes**

**Vendor/Firm Name and Address**

**Raison sociale et adresse du**

**fournisseur/de l'entrepreneur**

**Issuing Office - Bureau de distribution**

Public Works and Government Services Canada - Western Region

Victory Building/Édifice Victory

Room 310/pièce 310

269 Main Street/269 rue Main

Winnipeg

Manitoba

R3C 1B3

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

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## **REQUEST FOR PROPOSAL (RFP)**

### **DESIGN-BUILD SERVICES**

**Natural Resources Canada (NRCAN) Northern Forestry Centre, Edmonton, Alberta,  
Design-Build Replacement of Elevators**

#### **IMPORTANT NOTICE TO BIDDERS**

**Note to Bidders, there will no Public Opening for the purposes of this solicitation.**

Due to the impacts of the COVID-19 pandemic and to encourage physical distancing, the bid receiving unit in Winnipeg will remain open but with limited staff and limited hours: Monday, Wednesday, Thursday and Friday, 9 am to 11 am, and Tuesday, 9 am to 2 pm (local time). Please monitor [buyandsell.gc.ca](http://buyandsell.gc.ca) closely as changes to bid closing dates may be necessary.

SI02 Optional Site Visit has changed

SI03 COVID-19 Vaccination Requirement and Certification has been added

SC05 Compliance with on-site measures, standing orders, policies, and rules has been added

APPENDIX 2 - COVID-19 Vaccination Requirement Certification has been added

**CONTRACTING AUTHORITY EMAIL:**

[dan.mcruer@pwgsc-tpsgc.gc.ca](mailto:dan.mcruer@pwgsc-tpsgc.gc.ca)

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## SPECIAL INSTRUCTIONS TO BIDDERS (SI)

### SI01 INTEGRITY PROVISIONS – DECLARATION OF CONVICTED OFFENCES

In accordance with the Ineligibility and Suspension Policy (<http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>), the Proponent must provide **with its bid, as applicable**, to be given further consideration in the procurement process, the required documentation as per Instructions to Bidders (IB02), Integrity Provisions – Bid, section 3b.

### SI02 OPTIONAL SITE VISIT

1. There will be a site visit on December 13, 2021 at 10:00 am (local time). Interested bidders are to meet at the main entrance of the Northern Forestry Centre, 5320 122 Street NW, Edmonton, AB.
2. This site visit is subject to the COVID-19 Vaccination Policy for Supplier Personnel. The person(s) who attend must be fully vaccinated against COVID-19, or, for personnel that are unable to be vaccinated due to a certified medical contraindication, religion or other prohibited grounds of discrimination under the *Canadian Human Rights Act*, subject to accommodation and mitigation measures that have been presented to and approved by Canada.

Bidders must communicate with the Contracting Authority no later than December 13, 2021 at 9:00 am (MST) to confirm attendance and provide the name(s) of the person(s) who will attend. Bidders must also complete and submit the following certification:

I, \_\_\_\_\_ (first and last name), as the representative of  
\_\_\_\_\_ (name of business) pursuant to  
\_\_\_\_\_ (insert solicitation number), warrant and certify that all personnel that  
will attend this site visit on the business' behalf are:

(a) fully vaccinated against COVID-19; or

(b) for personnel that are unable to be vaccinated due to a certified medical contraindication, religion or other prohibited grounds of discrimination under the *Canadian Human Rights Act*, subject to accommodation and mitigation measures that have been presented to and approved by Canada.

I certify that all personnel that will attend on behalf of \_\_\_\_\_ (name of business) have been notified of the vaccination requirements of the Government of Canada's COVID-19 Vaccination Policy for Supplier Personnel, and that the \_\_\_\_\_ (name of business) has certified to their compliance with this requirement.

I certify that the information provided is true as of the date indicated below and will continue to be true for the duration of the site visit. I understand that the certifications provided to Canada are subject to verification at all times. Canada reserves the right to request additional information to verify the certifications at all times. I also understand that Canada will declare a bid non-responsive or a contractor in default, if a certification is found to be untrue, whether made knowingly or unknowingly.

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

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

Information you provide on this Certification Form and in accordance with the Government of Canada's COVID-19 Vaccination Policy for Supplier Personnel will be protected, used, stored and disclosed in accordance with the Privacy Act. Please note that you have a right to access and correct any information on your file, and you have a right to file a complaint with the Office of the Privacy Commissioner regarding the handling of your personal information. These rights also apply to all individuals who are deemed to be personnel for the purpose of the Contract and who require access to federal government workplaces where they may come into contact with public servants.

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Bidders who do not confirm attendance, provide the name(s) of the person(s) who will attend, or who do not complete and submit the above certification as required will not be allowed access to the site. Bidders will be required to sign an attendance sheet. Bidders should confirm in their bid that they have attended the site visit. Bidders who do not attend the site visit or do not send a representative will not be given an alternative appointment. Any clarifications or changes to the bid solicitation resulting from the site visit will be included as an amendment to the bid solicitation.

**CONTRACTING AUTHORITY EMAIL:**

[dan.mcruer@pwgsc-tpsgc.gc.ca](mailto:dan.mcruer@pwgsc-tpsgc.gc.ca)

All bidders are to follow COVID-19 provincial and federal guidelines. Due to COVID-19, social distancing and wearing a self-supplied mask will be mandatory during the site visit.

**SI03 COVID-19 VACCINATION REQUIREMENT AND CERTIFICATION**

This requirement is subject to the COVID-19 Vaccination Policy for Supplier Personnel. All Bidders must provide with their bid, the COVID-19 Vaccination Requirement Certification attached to this bid solicitation (Appendix 2),

This Certification incorporated into the bid solicitation on its closing date is incorporated into, and forms a binding part of any resulting Contract. Failure to complete and provide the COVID-19 Vaccination Requirement Certification as part of the bid will render the bid non-responsive.

**SI04 OPENING OF BIDS**

1. There will be no public opening at bid closing time.

**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.

**SI06 WEB SITES**

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

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

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\\_eng.pdf](http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/505_eng.pdf)

Labour and Material Payment Bond (form PWGWSC-TPSGC 506)



**SI07 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](http://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 3) 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 3.

If you accept fill out and sign Appendix 3

*\* The journey-person-apprentice ratio is defined as the number of qualified/certified journeypersons 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.*

**SI08 MANDATORY HEALTH AND SAFETY****WCB AND SAFETY PROGRAM**

1. The recommended Bidder shall provide to the Contracting Authority, prior to Contract award:
  - 1.1 a Workers Compensation Board Premium Rate Statement - Alberta, or equivalent documentation from another jurisdiction;
  - 1.2 a Workers Compensation Board letter of good standing, also listing covered Directors, Principals, Proprietor(s) or Partners who will be or who are anticipated to be present on the work site(s), or equivalent documentation from another jurisdiction; and
  - 1.3 a Certificate of Recognition (COR) or Registered Safety Plan (RSP). A health and safety policy and program, as required by other provincial/territorial Occupational Health and Safety Acts, will be acceptable in lieu of a COR or RSP.
- 2 The recommended Bidder shall deliver all of the above documents to the Contracting Authority on or before the date stated (usually 3-5 days after notification) by the Contracting Authority. Failure to comply with the request may result in the bid being declared non-compliant.

## INTRODUCTION

Public Works and Government Services Canada (PWGSC) is inviting qualified Design-Build (D-B) bidders to deliver the Natural Resources Canada (NRCAN) Northern Forestry Centre, Edmonton, Alberta, Design-Build Replacement of Elevators.

The objective of this RFP is to retain an individual Contractor or Joint Venture to provide the complete design-build work. Utilizing a D-B service delivery methodology, a full range of professional consultant and contractor services will be required during both the design and demolition phases of the project. The work for this project will include, but is not limited to, the following: development of engineered plans and specifications for all project related work; removal and/or disposal and/or salvage of the existing equipment; procurement and installation of the new elevator equipment; integration of the new elevators into existing building mechanical/electrical systems; as more fully described in the Terms of Reference.

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

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

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

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

Bid Price envelopes are then opened for the bids declared responsive. The Total Bid Price will be divided by the Technical Evaluation Criterion points achieved to determine a price per point. The lowest price per point compliant bid will be recommended for award of Contract. In the event of a tie, the bidder that achieved the highest technical score will be selected.

This bid solicitation allows and encourages proponents to use the epost Connect service provided by Canada Post Corporation to transmit their proposals electronically (see IB06 Submission of Bid).

## INSTRUCTIONS TO BIDDERS

### Glossary of Terms:

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

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

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

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

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

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

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

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

## **IB01 BID DOCUMENTS**

1) The following are the bid documents:

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

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

## **IB02 INTEGRITY PROVISIONS – BID**

1. The *Ineligibility and Suspension Policy* (the “Policy”) in effect on the date the Bid Solicitation is issued, and all related Directives in effect on that date, are incorporated by reference into, and form a binding part of the bid solicitation. The Bidder must comply with the Policy and Directives, which can be found at *Ineligibility and Suspension Policy*.
2. Under the Policy, charges and convictions of certain offences against a Bidder, its affiliates or first tier subcontractors, and other circumstances, will or may result in a determination by Public Works and Government Services Canada (PWGSC) that the Bidder is ineligible to enter, or is suspended from entering into a contract with Canada. The list of ineligible and suspended Suppliers is contained in PWGSC’s Integrity Database. The Policy describes how enquiries can be made regarding the ineligibility or suspension of Suppliers
3. In addition to all other information required in the bid solicitation, the Proponent must provide the following:
  - a. by the time stated in the Policy, all information required by the Policy described under the heading “Information to be Provided when Bidding, Contracting or Entering into a Real Property Agreement”; and
  - b. with its bid, a complete list of all foreign criminal charges and convictions pertaining to itself, its affiliates and its proposed first tier subcontractors that, to the best of its knowledge and belief, may be similar to one of the listed offences in the Policy. The list of foreign criminal charges and convictions must be submitted using an Integrity Declaration Form, which can be found at Declaration form for procurement
4. Subject to subsection 5, by submitting a bid in response to this bid solicitation, the Bidder certifies that:
  - a. it has read and understands the Ineligibility and Suspension Policy;
  - b. it understands that certain domestic and foreign criminal charges and convictions, and other circumstances, as described in the Policy, will or may result in a determination of ineligibility or suspension under the Policy;
  - c. it is aware that Canada may request additional information, certifications, and validations from the Proponent or a third party for purposes of making a determination of ineligibility or suspension;

- d. it has provided with its bid a complete list of all foreign criminal charges and convictions pertaining to itself, its affiliates and its proposed first tier subcontractors that, to the best of its knowledge and belief, may be similar to one of the listed offences in the Policy;
  - e. none of the domestic criminal offences, and other circumstances, described in the Policy that will or may result in a determination of ineligibility or suspension, apply to it, its affiliates and its proposed first tier subcontractors; and
  - f. it is not aware of a determination of ineligibility or suspension issued by PWGSC that applies to it.
5. Where a Bidder is unable to provide any of the certifications required by subsection 4, it must submit with its bid a completed Integrity Declaration Form, which can be found at [Declaration form for procurement](#) .
  6. Canada will declare non-responsive any bid in respect of which the information requested is incomplete or inaccurate, or in respect of which the information contained in a certification or declaration is found by Canada to be false or misleading in any respect. If Canada establishes after award of the Contract that the Bidder provided a false or misleading certification or declaration, Canada may terminate the Contract for default. Pursuant to the Policy, Canada may also determine the Bidder to be ineligible for award of a contract for providing a false or misleading certification or declaration.

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

1. In order to protect the integrity of the procurement process, bidders are advised that Canada may reject a bid in the following circumstances:
  - a. if the Bidder, any of its subcontractors, any of their respective employees or former employees was involved in any manner in the preparation of the bid solicitation or in any situation of conflict of interest or appearance of conflict of interest;
  - b. if the Bidder, any of its subcontractors, any of their respective employees or former employees had access to information related to the bid solicitation that was not available to other bidders and that would, in Canada's opinion, give or appear to give the Bidder an unfair advantage.
2. The experience acquired by a bidder who is providing or has provided the goods and services described in the bid solicitation (or similar goods or services) will not, in itself, be considered by Canada as conferring an unfair advantage or creating a conflict of interest. This bidder remains however subject to the criteria established above.
3. Where Canada intends to reject a bid under this section, the Contracting Authority will inform the Bidder and provide the Bidder an opportunity to make representations before making a final decision. Bidders who are in doubt about a particular situation should contact the Contracting Authority before bid closing. By submitting a bid, the Bidder represents that it does not consider itself to be in conflict of interest nor to have an unfair advantage. The Bidder acknowledges that it is within Canada's sole discretion to determine whether a conflict of interest, unfair advantage or an appearance of conflict of interest or unfair advantage exists.

### **IB04 COMPLETION OF BID**

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

- i) the bid security as specified herein; and
  - ii) any other document or documents specified elsewhere in the solicitation where it is stipulated that said documents are to accompany the bid.
2. Any alteration to the preprinted or pre-typed sections of the Bid Form, or any condition or qualification placed upon the bid shall be direct cause for disqualification. Alterations, corrections, changes or erasures made to statements or figures entered on the Bid Form by the Bidder shall be initialed by the person or persons signing the bid. Initials shall be original(s). Alterations, corrections, changes or erasures that are not initialed shall be deemed void and without effect.
3. Unless otherwise noted elsewhere in the Bid Documents, facsimile copies of bids are not acceptable.
4. Canada will make available Notices of Proposed Procurement (NPP), bid solicitations and related documents for download through the Government Electronic Tendering Service (GETS). Canada is not responsible and will not assume any liabilities whatsoever for the information found on websites of third parties. In the event an NPP, bid solicitation or related documentation would be amended, Canada will not be sending notifications. Canada will post all amendments, including significant enquiries received and their replies, using GETS. It is the sole responsibility of the Bidder to regularly consult GETS for the most up-to-date information. Canada will not be liable for any oversight on the Bidder's part nor for notification services offered by a third party.

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

1. In order to confirm the authority of the person or persons signing the bid or to establish the legal capacity under which the Bidder proposes to enter into Contract, any Bidder who carries on business in other than its own personal name shall, if requested by Canada, provide satisfactory proof of
  - (a) such signing authority; and
  - (b) the legal capacity under which it carries on business;

prior to contract award. Proof of signing authority may be in the form of a certified copy of a resolution naming the signatory(ies) that is (are) authorized to sign this bid on behalf of the corporation or partnership. Proof of legal capacity may be in the form of a copy of the articles of incorporation or the registration of the business name of a sole proprietor or partnership

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

1. Bids are submitted following a "two envelope" procedure, in which bidders submit the "technical" components of their bid in one envelope and the proposed price, including bid security, in a second envelope. The Bid shall be addressed and submitted to the office designated on the Front Page of the "Request for Proposals" for the receipt of bids. The bid must be received on or before the date and time set for solicitation closing.
2. Unless otherwise specified in the Special Instructions to Bidders
  - a. the bid shall be in Canadian currency;
  - b. the requirement does not offer exchange rate fluctuation risk mitigation. Requests for exchange rate fluctuation risk mitigation will not be considered. All bids including such provision will render the bid non-responsive.
3. Prior to submitting the bid, the Bidder shall ensure that the following information is clearly printed or typed in the appropriate spaces on the face of the bid return envelope:
  - a. Solicitation Number
  - b. Description/Location
  - c. Name of Bidder
  - d. Closing Time/Date

4. Timely and correct delivery of bids is the sole responsibility of the Bidder.

- \* To be considered responsive, a bid must meet all of the mandatory requirements set out in the RFP. No further consideration in the selection procedure will be given to a Bidder submitting a non-responsive bid.

#### 5. **Electronic Bid Submission by epost Connect service**

- a. Unless specified otherwise in the bid solicitation, bids may be submitted by using the [epost Connect service](#) provided by Canada Post Corporation.
- b. The only acceptable email address to use with epost Connect for responses to bid solicitations issued by PWGSC is:

Western Region: [ROReceptionSoumissions.WRBidReceiving@tpsgc-pwgsc.gc.ca](mailto:ROReceptionSoumissions.WRBidReceiving@tpsgc-pwgsc.gc.ca)

**Note:** Bids emailed directly to this email address will be rejected and deemed non-compliant. This email address is to be used to open an epost Connect conversation, as detailed in c., or to send proposals through an epost Connect message if the Bidder is using its own licensing agreement for epost Connect.

- c. To submit a bid using epost Connect service, the Bidder must either:
- i. send directly its bid only to the specified PWGSC Bid Receiving Unit, using its own licensing agreement for epost Connect provided by Canada Post Corporation; or
  - ii. send as early as possible, and in any case, at least six business days prior to the solicitation closing date and time, (in order to ensure a response), an email that includes the bid solicitation number to the specified PWGSC Bid Receiving Unit requesting to open an epost Connect conversation. Requests to open an epost Connect conversation received after that time may not be answered.
- d. If the Bidder sends an email requesting epost Connect service to the specified Bid Receiving Unit in the bid solicitation, an officer of the Bid Receiving Unit will then initiate an epost Connect conversation. The epost Connect conversation will create an email notification from Canada Post Corporation prompting the Bidder to access and action the message within the conversation. The Bidder will then be able to transmit its bid afterward at any time prior to the solicitation closing date and time.
- e. If the Bidder is using its own licensing agreement to send its bid, the Bidder must keep the epost Connect conversation open until at least thirty (30) business days after the solicitation closing date and time.
- f. The bid solicitation number should be identified in the epost Connect message field of all electronic transfers.
- g. It should be noted that the use of epost Connect service requires a Canadian mailing address. Should a bidder not have a Canadian mailing address, they may use the Bid Receiving Unit address specified in the solicitation in order to register for the epost Connect service.
- h. For bids transmitted by epost Connect service, Canada will not be responsible for any failure attributable to the transmission or receipt of the bid including, but not limited to, the following:
- i. receipt of a garbled, corrupted or incomplete bid;
  - ii. availability or condition of the epost Connect service;
  - iii. incompatibility between the sending and receiving equipment;
  - iv. delay in transmission or receipt of the bid;
  - v. failure of the Bidder to properly identify the bid;
  - vi. illegibility of the bid;

- vii. security of bid data; or,
- viii. inability to create an electronic conversation through the epost Connect service.
- i. The Bid Receiving Unit will send an acknowledgement of the receipt of bid document(s) via the epost Connect conversation, regardless of whether the conversation was initiated by the supplier using its own license or the Bid Receiving Unit. This acknowledgement will confirm only the receipt of bid document(s) and will not confirm if the attachments may be opened nor if the content is readable.
- j. Bidders must ensure that they are using the correct email address for the Bid Receiving Unit when initiating a conversation in epost Connect or communicating with the Bid Receiving Unit and should not rely on the accuracy of copying and pasting the email address into the epost Connect system.
- k. A bid transmitted by epost Connect service constitutes the formal bid of the Bidder.

### **IB07 REVISION OF BIDS**

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

**Facsimile # 1-418-566-6167**

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

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

### **IB09 PRICE**

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

### **IB10 LICENSING REQUIREMENTS**

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

**IB11 COMPOSITION OF TEAM**

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

**IB12 LISTING OF SUBCONTRACTOR AND SUPPLIERS**

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

**IB13 FINANCIAL STATEMENTS**

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

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

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

**IB15 REJECTION OF BID**

1. Canada may accept any bid, whether it is the lowest or not, or may reject any or all bids.
2. Without limiting the generality of paragraph 1) of GI11, Canada may reject a bid if any of the following circumstances is present:
  - a. the Bidder's bidding privileges are suspended or are in the process of being suspended;
  - b. the bidding privileges of any employee or subcontractor included as part of the bid are suspended or are in the process of being suspended, which suspension or pending suspension would render that employee or subcontractor ineligible to bid on the Work, or the portion of the Work the employee or subcontractor is to perform;
  - c. the Bidder is bankrupt, or where for whatever reason, its activities are rendered inoperable for an extended period;
  - d. evidence, satisfactory to Canada, of fraud, bribery, fraudulent misrepresentation or failure to comply with any law protecting individuals against any manner of discrimination, has been received with respect to the Bidder, any of its employees or any subcontractor included as part of its bid;
  - e. evidence satisfactory to Canada that based on past conduct or behavior, the Bidder, a sub-contractor or a person who is to perform the Work is unsuitable or has conducted himself/herself improperly;
  - f. with respect to current or prior transactions with Canada

- i. Canada has exercised, or intends to exercise, the contractual remedy of taking the work out of the contractor's hands with respect to a contract with the Bidder, any of its employees or any subcontractor included as part of its bid; or
  - ii. Canada determines that the Bidder's performance on other contracts is sufficiently poor to jeopardize the successful completion of the requirement being bid on.
3. In assessing the Bidder's performance on other contracts pursuant to subparagraph 2)(f)(ii) of GI11, Canada may consider, but not be limited to, such matters as:
  - a. the quality of workmanship in performing the Work;
  - b. the timeliness of completion of the Work;
  - c. the overall management of the Work and its effect on the level of effort demanded of the department and its representative; and
  - d. the completeness and effectiveness of the Contractor's safety program during the performance of the Work.
4. Without limiting the generality of paragraphs 1), 2) and 3) of GI11, Canada may reject any bid based on an unfavourable assessment of the
  - a. adequacy of the bid price to permit the work to be carried out and, in the case of a bid providing prices per unit, whether each such price reasonably reflects the cost of performing the part of the work to which that price applies;
  - b. Bidder's ability to provide the necessary management structure, skilled personnel, experience and equipment to perform competently the work under the Contract; and
  - c. Bidder's performance on other contracts.
5. Where Canada intends to reject a bid pursuant to a provision of paragraphs 1), 2), 3) or 4) of GI11, other than subparagraph 2)(a) of GI11, the contracting Authority will inform the Bidder and provide the Bidder ten (10) days within which to make representations, before making a final decision on the bid rejection.
6. Canada may waive informalities and minor irregularities in bids received if Canada determines that the variation of the bid from the exact requirements set out in the Bid Documents can be corrected or waived without being prejudicial to other Bidders.

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

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

## **IB17 BID SECURITY REQUIREMENTS**

1. The Bidder shall submit bid security with the bid in the form of a bid bond or a security deposit in an amount that is equal to not less than 10 percent of the bid amount. Applicable Taxes shall not be included when calculating the amount of any bid security that may be required. The maximum amount of bid security required with any bid is \$2,000,000.
2. A bid bond (form PWGSC-TPSGC 504) shall be in an approved form, properly completed, with valid and enforceable signatures and sealed by the approved bonding company whose bonds are acceptable to

Canada either at the time of solicitation closing or as identified in Treasury Board Appendix L, Acceptable Bonding Companies.

2.1 A bid bond may be submitted in an electronic format (Electronic Bonding (E-Bond)) if it meets the following criteria:

- a. The version submitted by the Bidder must be an electronic encrypted file with embedded digital certificate verifiable by Canada with respect to the totality and wholeness of the bond form, including: the content; all digital signatures; all digital seals; with the Surety Company, or an approved verification service provider of the Surety Company.
- b. The version submitted must be viewable, printable and storable in standard electronic file formats compatible with Canada, and in a single file, allowable format pdf.
- c. The verification may be conducted by Canada immediately or at any time during the life of the Bond and at the discretion of Canada.
- d. The results of the verification must provide a clear, immediate and printable indication of pass or fail regarding Item 2.1.a.
- e. Submitting copies (**non-original, non-verifiable or scanned**) of signed and sealed bid bond are not acceptable. Failure to submit an original or verifiable bond will render the bid non-compliant. Non-compliant bids will be given no further consideration. A scanned copy of a bond does not constitute a digital bond.

2.2 Bonds failing the verification process will NOT be considered to be valid.

2.3 Bonds passing the verification process will be treated as original and authentic.

3. A security deposit shall be an original, properly completed, signed where required and be either

- a. a bill of exchange, bank draft or money order made payable to the Receiver General for Canada and certified by an approved financial institution or drawn by an approved financial institution on itself; or
- b. bonds of, or unconditionally guaranteed as to principal and interest by, the Government of Canada.

4. For the purposes of subparagraph 3. a. of IB17

- a. a bill of exchange is an unconditional order in writing signed by the Bidder and addressed to an approved financial institution, requiring the said institution to pay, on demand, at a fixed or determinable future time a sum certain of money to, or to the order of, the Receiver General for Canada;
- b. if a bill of exchange, bank draft or money order is certified by or drawn on an institution or corporation other than a chartered bank, it must be accompanied by proof that the said institution or corporation meets at least one of the criteria described in subparagraph 4.c. of IB17, either by letter or by a stamped certification on the bill of exchange, bank draft or money; and

c. An approved financial institution is

- i. a corporation or institution that is a member of the Canadian Payments Association as defined in the Canadian Payments Act;
- ii. a corporation that accepts deposits that are insured, to the maximum permitted by law, by the Canada Deposit Insurance Corporation or the "Autorité des marchés financiers";
- iii. a corporation that accepts deposits from the public if repayment of the deposit is guaranteed by Her Majesty the Queen in right of a province;
- iv. a corporation, association or federation incorporated or organized as a credit union or co-operative credit society that conforms to the requirements of a credit union which are more particularly described in paragraph 137(6) of the Income Tax Act; or
- v. Canada Post Corporation.

5. Bonds referred to in subparagraph 3. b. of IB17 shall be provided on the basis of their market value current at the date of solicitation closing, and shall be

- a. payable to bearer;
  - b. accompanied by a duly executed instrument of transfer of the bonds to the Receiver General for Canada in the form prescribed by the Domestic Bonds of Canada Regulations; or
  - c. registered as to principal or as to principal and interest in the name of the Receiver General for Canada pursuant to the Domestic Bonds of Canada Regulations.
6. As an alternative to a security deposit an irrevocable standby letter of credit is acceptable to Canada and the amount shall be determined in the same manner as a security deposit referred to above.
7. An irrevocable standby letter of credit referred to in paragraph 8) of IB17 shall
- a. be an arrangement, however named or described, whereby a financial institution (the "Issuer") acting at the request and on the instructions of a customer (the "Applicant") or on its own behalf,
    - i. is to make a payment to, or to the order of, the Receiver General for Canada as the beneficiary;
    - ii. is to accept and pay bills of exchange drawn by the Receiver General for Canada;
    - iii. authorizes another financial institution to effect such payment or accept and pay such bills of exchange; or
    - iv. authorizes another financial institution to negotiate against written demand(s) for payment provided that the terms and conditions of the letter of credit are complied with;
  - b. state the face amount which may be drawn against it;
  - c. state its expiry date;
  - d. provide for sight payment to the Receiver General for Canada by way of the financial institution's draft against presentation of a written demand for payment signed by the Departmental Representative identified in the letter of credit by his/her office;
  - e. provide that more than one written demand for payment may be presented subject to the sum of those demands not exceeding the face value of the letter of credit;
  - f. provide that it is subject to the International Chamber of Commerce (ICC) *Uniform Customs and Practice (UCP) for Documentary Credits, 2007 Revision*, ICC Publication No. 600, Pursuant to the ICC UCP, a credit is irrevocable even if there is no indication to that effect; and
  - g. be issued or confirmed, in either official language, by a financial institution which is a member of the Canadian Payments Association and is on the letterhead of the Issuer or Confirmer. The format is left to the discretion of the Issuer or Confirmer.
8. Bid security shall lapse or be returned as soon as practical following
- a. the solicitation closing date, for those Bidders submitting non-compliant bids; and
  - b. the administrative bid review, for those Bidders submitting compliant bids ranked fourth to last on the schedule of bids; and
  - c. the award of contract, for those Bidders submitting the second and third ranked bids; and
  - d. the receipt of contract security, for the successful Bidder; or
  - e. the cancellation of the solicitation, for all Bidders.
9. Notwithstanding the provisions of paragraph 8 of IB17 and provided more than three compliant bids have been received, if one or more of the bids ranked third to first is withdrawn or rejected for whatever reason then Canada reserves the right to hold the security of the next highest ranked compliant bid in order to retain the bid security of at least three valid and compliant bids.

## IB18 CONTRACT SECURITY REQUIREMENTS

1. The successful Bidder shall be required to provide Contract security in accordance with R2890 - Contract Security listed in the Terms of Agreement - A1 Contract Documents, within 14 days after receipt of a notice in writing that the bid was accepted by Canada.

**IB19 APPLICABLE TAXES**

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

**IB20 COMPLIANCE WITH APPLICABLE LAWS**

1. By submission of a bid, the Bidder certifies that the Bidder has the legal capacity to enter into a contract and is in possession of all valid licenses, permits, registrations, certificates, declarations, filings, or other authorizations necessary to comply with all federal, provincial and municipal laws and regulations applicable to the submission of the bid and entry into any ensuing contract for the performance of the work.
2. For the purpose of validating the certification in paragraph 20.1, a Bidder shall, if requested, provide a copy of every valid licence, permit, registration, certificate, declaration, filing or other authorization listed in the request, and shall provide such documentation within the time limit(s) set out in the request.
3. Failure to comply with the requirements of paragraph 20.2 shall result in disqualification of the bid.

**IB21 PERFORMANCE EVALUATION**

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

The form PWGSC-TPSGC 2913 (<http://www.tpsgc-pwgsc.gc.ca/app-acq/forms/documents/2913.pdf>), SELECT- Contractor Performance Evaluation report form, is used to record the performance.

**IB22 BID COSTS**

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

**IB23 PROCUREMENT BUSINESS NUMBERS**

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

**IB24 BID VALIDITY PERIOD**

1. Canada reserves the right to seek an extension to the bid validity period beyond the **60 days** referred to therein. Upon notification in writing from Canada, the Bidders shall have the option to either accept or reject the proposed extension.
2. If the extension referred to in 24.1 is accepted, in writing, by all those who submitted responsive bids, then Canada shall continue immediately with the evaluation of the bids and its approvals processes.
3. If the extension referred to in 24.1 is not accepted, in writing, by all those who submitted responsive bids then Canada shall, at its sole discretion, either
  - a) continue to evaluate the bids of those who have accepted the proposed extension and seek the necessary approvals; or
  - b) cancel the RFP.

Solicitation No. - N° de l'invitation

EW038-221455/A

Client Ref. No. - N° de réf. du client

NRC EW038-221455

Amd. No. - N° de la modif.

File No. - N° du dossier

PWZ-1-44035

Buyer ID - Id de l'acheteur

pwz050

CCC No./N° CCC - FMS No./N° VME

4. The provisions expressed herein do not in any manner limit Canada's rights in law or under Section 15 of the Instructions to Bidders.

**IB25 NOTIFICATION**

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

**IB26 DEBRIEFING**

1. A debriefing will be provided, on request, only following entry by Canada into a contractual arrangement with the successful Bidder. Should a Bidder desire a debriefing, the Bidder should contact the person identified on the front page of the RFP within 15 working days of the notification of the results of the solicitation. The debriefing will include an outline of the strengths and weaknesses of the submission, referring to the evaluation criteria. The confidentiality of information relating to other submissions will be protected. The debriefing may be provided in writing, by telephone or in person.

## Submission Requirements and Evaluation (SRE's)

### SECTION 1 BID FORM AND CONTENT REQUIREMENTS

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

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

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

Must contain all the material necessary to fully represent the technical content of the bid called for in the Request for Proposal document (including the Terms of Reference), in a concise, comprehensive manner. It is to be organized under the Technical Evaluation Criteria detailed in the Submission Requirements and Evaluation (SRE) section of the Request for Proposal. These criteria are meant to permit a connected, logical presentation of the bid. While the Submission Requirements describe in general terms the intent and the information to be included under each criterion, they are not necessarily exhaustive. Bidders are responsible for fully presenting their bid.

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

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

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

### Proposal via Epost Connect service

This bid solicitation allows and encourages proponents to use the epost Connect service provided by Canada Post Corporation to transmit their proposal electronically.

If the Bidder chooses to submit its proposal electronically through epost Connect service, Canada requests that the Bidder submits its proposal in accordance with section IB06 SUBMISSION OF BID. The epost Connect system has a limit of 1GB per single message posted and a limit of 20GB per conversation.

Canada requests that the proposal be gathered per separate electronic document (attachment) as follows:

**Section I: Technical Portion;**

**Section II: Bid Price Portion**

The electronic attachment should be labelled with the name of the section and the Solicitation Number.

If the Proponent is simultaneously providing copies of its proposal using multiple acceptable delivery methods, and if there is a discrepancy between the wording of any of these copies and the electronic copy provided through epost Connect service, the wording of the electronic copy provided through epost Connect service will take precedence over the wording of the other copies.

### Proposal in Hard Copies

If the Bidder chooses to submit its proposal in hard copies, Canada requests that the Bidder submits its proposal in separately bound sections as follows:

**Section I:** Technical Portion (submit one (1) bound original)

**Section II:** Bid Price Portion (submit one (1) bound original) in a separate sealed envelope.)

Double-sided submissions are preferred.

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

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

**The maximum number of pages (including text and graphics) for the Technical Portion is thirty (30) pages. Double-sided submissions are preferred. The following format should be implemented when preparing the bid.**

One (1) 'page' means one side of a sheet of paper

Paper size - 8.5"x11" (metric equivalent A4)

Font size - minimum 10 pt. Times New Roman or equal on all documents including charts etc.

Margin widths - minimum 12 mm

11"x17" fold-out sheets for spreadsheets, schedules, Gantt Charts, WBS, organization charts etc. will be counted as two pages.

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

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

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

## **SECTION 2: BASIS OF SELECTION – LOWEST PRICE PER POINT**

### **2.1 General**

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

- a) Compliance with the terms and conditions of this solicitation;
- b) The price per point representing best value for a technically compliant bid to Canada for the Work;
- c) Assessment of all documentation and information for compliance with the Technical Evaluation Criterion;

**To be declared responsive, a bid must:**

- a) Comply with all the requirements of the bid solicitation;
- b) Meet all mandatory technical evaluation criteria; and
- c) Obtain the required **minimum 50 percent** for each of the three (3) Technical Evaluation Criterion categories and achieve a minimum **60 percent (60/100)** overall of the points for the Technical Evaluation Criteria which are subject to point rating. The technical rating is performed on a scale of 100 points.

Bids not meeting (a) or (b) or (c) will be declared non-responsive. Neither the responsive bid that receives the highest number of points nor the one that proposed the lowest price will necessarily be accepted. The responsive bid with the lowest evaluated price per point will be recommended for award of a contract.

### **2.2 Financial Evaluation**

The evaluated price will be as identified in "Annex A Bid Price Form" at Sub-clause 1.3

**SECTION 3: TECHNICAL****Point Rated Criteria:**

The *Part 1 – Technical Portion* parts of the bid will be evaluated by the Evaluation Board under the Technical Evaluation Criterion listed in the Evaluation Criteria Table and as further explained in the Submission Requirements.

The information will be rated from 1 to 10 for each Technical Evaluation Criterion element. The rating is then multiplied by the weight factor shown in the Evaluation Criteria Table to produce a weighted rating. The Technical score is obtained by adding the sum of the weighted ratings.

**EVALUATION CRITERIA TABLE**

Technical Evaluation Criterion	Weight Factor	Rating	Technical Points Rating
<b>1. Design-Build Capability and Experience</b>			
1.1 Experience of Design-Build Contractor	1	0-10	0-10
1.2 Experience of Design-Build Consultant Team	1	0-10	0-10
1.3 Team Organization and Experience	2	0-10	0-20
<b>2. Project Delivery Management</b>			
2.1. Schedule	1	0-10	0-10
2.2. Management of Services and Work	1	0-10	0-10
<b>3. Design Proposal</b>			
3.1 Design Services	2.5	0-10	0-25
3.2 Contractor Services	1.5	0-10	0-15
Total Technical Evaluation Rating	10		0-100

<b>Total Technical Evaluation Criterion Points Rating</b>	<b>10.0</b>		<b>0-100</b>
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## Submission Requirements

### Category 1 - Design-Build Capability and Experience

#### 1.1 Experience of Design-Build Contractor

1. Describe accomplishments, achievements and experience as the Design-Build Contractor on **three (3) similar elevator replacement** projects completed in the last **ten (10) years** in terms of:

- a) Relevance to this project (scope, size and location)
- b) Budget management
- c) Schedule management
- d) Quality Management

Only the first (3) three projects listed will receive consideration and any others will receive none as though not included.

2. Provide client contact information including phone numbers for the above project. The Evaluation Board reserves the right to contact the references.

#### 1.2 Experience of Design-Build Consultant team

1. Describe the accomplishments, achievements and experience of the Consultant team on **three (3) similar elevator replacement** projects completed in the last **ten (10) years** in terms of:

- a) Relevance to this project (scope, size and location)
- b) Budget management
- c) Schedule management
- d) Quality Management

Only the first three (3) projects listed will receive consideration and any others will receive none as though not included.

2. Provide client contact information including phone numbers for the above project. The Evaluation Board reserves the right to contact the references. As referenced in the ToR, conveyancing design and installation experience must be confirmed and approved by elevator systems manufacturer.

#### 1.3 Team Organization and Experience

Describe the team organization and experience, including at least the following information:

1. Description of overall team and structure, roles and responsibilities, reporting relationships (chart)
2. A single example of a past approach or experience which has a similar proposed team structure and process, including any prior experience that the proposed Key Team Members have had working together
3. Identification and one page CV, including Certification or Professional Accreditation for each of the following key team personnel:
  - a) Project Manager
  - b) Site Superintendent
  - c) Conveyancing Designer
  - d) Structural Engineer
  - e) Electrical Engineer

## Category 2 - Project Delivery Management

### 2.1. Schedule

1. Provide a Gantt Chart Schedule showing the phases of the overall project i.e. design, construction, post-construction, sequence of main activities and deliverables (detailed schedule, design stages, permits, inspections, warranty etc.). Include submission review times by PWGSC and Authorities Having Jurisdiction (AHJ).
2. Indicate project milestones.

### 2.2. Management of Services

1. Describe the methods/processes that will be used in providing the following services:
  - a) Scope control services
  - b) Schedule control services
  - c) Cost control services
  - d) Quality control services
  - e) Risk Management services
  - f) Safety Management services
  - g) Communication protocols and response times

## Category 3 - Design Proposal

**Proposal must satisfy all requirements included in the ToR and as a minimum provide systems/components described in the ToR.** Include descriptions of the following:

### 3.1 Design Service

Describe design concepts for main components, including the following:

- a) Confirmation of integrity of applicable existing building infrastructure
- b) Ensuring a complete design
- c) Integration of new components and systems with existing.
- d) Description of any advanced systems and technologies to support contemporary operating requirements with capacity for growth and change
- e) Integration of innovative universal design and accessibility
- f) Quality Control during construction

### 3.2 Construction Services

Describe the concept for cradle to grave handling of the following material:

- a) Ensuring safe environment for duration of all project work.
- b) Minimizing disruption for building occupants during project work.
- c) Quality assurance during construction.

**Generic Technical Evaluation Table**

PWGSC Evaluation Board members will evaluate the strengths and weaknesses of the Bidder's response to the evaluation criteria and will rate each criterion with even numbers (0, 2, 4, 6, 8 or 10) using the generic evaluation table below:

	<b>INADEQUATE</b>	<b>WEAK</b>	<b>ADEQUATE</b>	<b>FULLY SATISFACTORY</b>	<b>STRONG</b>
<b>0 point</b>	<b>2 points</b>	<b>4 points</b>	<b>6 points</b>	<b>8 points</b>	<b>10 points</b>
Did not submit information which could be evaluated	Lacks complete or almost complete understanding of the requirements.	Has some understanding of the requirements but lacks adequate understanding in some areas of the requirements.	Demonstrates a good understanding of the requirements.	Demonstrates a very good understanding of the requirements.	Demonstrates an excellent understanding of the requirements.
	Weaknesses cannot be corrected	Generally doubtful that weaknesses can be corrected	Weaknesses can be corrected	No significant weaknesses	No apparent weaknesses
	Proponent do not possess qualifications and experience	Proponent lacks qualifications and experience	Proponent has an acceptable level of qualifications and experience	Proponent is qualified and experienced	Proponent is highly qualified and experienced
	Team proposed is not likely able to meet requirements	Team does not cover all components or overall experience is weak	Team covers most components and will likely meet requirements	Team covers all components - some members have worked successfully together	Strong team - has worked successfully together on comparable projects
	Sample projects not related to this requirement	Sample projects generally not related to this requirement	Sample projects generally related to this requirement	Sample projects directly related to this requirement	Leads in sample projects directly related to this requirement
	Extremely poor, insufficient to meet performance requirements	Little capability to meet performance requirements	Acceptable capability, should ensure adequate results	Satisfactory capability, should ensure effective results	Superior capability, should ensure very effective results

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

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

1. Submit the bid to the Bid Receiving Unit prior to the closing date and time indicated on the front page of the solicitation document;
2. Complete and submit signed Bid Price Form (Annex A);
3. Provide Bid Security per IB17 of the Instructions to Bidders.
4. All Bidders must provide with their bid, the COVID-19 Vaccination Requirement Certification attached to this bid solicitation (Appendix 2),

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**ANNEX A: BID PRICE FORM**

This Bid Price Form, duly completed, the signed front page of the RFP, and the requisite bid security shall be submitted in accordance with the instructions in this solicitation.

1.1 Project Identification

Project Name: Natural Resources Canada (NRCAN) Northern Forestry Centre, Edmonton, Alberta, Design-Build Replacement of Elevators

Solicitation Number: EW038-221455/A

1.2 Business Name and Address of Bidder

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

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

\_\_\_\_\_

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

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

1.3 Offer

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

\$ \_\_\_\_\_ excluding applicable tax(es)

which consists of

.1 an Amount of \$ \_\_\_\_\_ excluding applicable tax(es),  
for the design portion of the Work; +

.2 an Amount of \$ \_\_\_\_\_ excluding applicable tax(es),  
for the construction portion of the Work.

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1.5 Team Identification

The Contractor and other members of the Design-Build Team shall be, or be eligible to be, licensed, certified or otherwise authorized to provide the necessary professional services to the full extent that may be required by provincial or territorial law.

Bidder (Design-Builder):

Name:

\_\_\_\_\_

Key Individuals and provincial/territorial professional licensing status:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Key Subcontractors / Sub-consultants / Specialists:

Name:

\_\_\_\_\_

Key Individuals and provincial/territorial professional licensing status:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Key Subcontractors / Sub-consultants / Specialists:

Name:

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Key Individuals and provincial/territorial professional licensing status:

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Key Subcontractors / Sub-consultants / Specialists:

Name:

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Key Individuals and provincial/territorial professional licensing status:

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Key Subcontractors / Sub-consultants / Specialists:

Name:

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Key Individuals and provincial/territorial professional licensing status:

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Key Individuals and provincial/territorial professional licensing status:

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Key Subcontractors / Sub-consultants / Specialists:

Name:

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Key Individuals and provincial/territorial professional licensing status:

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Key Subcontractors / Sub-consultants / Specialists:

Name:

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Key Individuals and provincial/territorial professional licensing status:

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**END OF BID PRICE FORM**



**APPENDIX 2 - COVID-19 VACCINATION REQUIREMENT CERTIFICATION**

I, \_\_\_\_\_ (first and last name), as the representative of  
\_\_\_\_\_ (name of business) pursuant to  
\_\_\_\_\_ (insert solicitation number), warrant and certify that all personnel that  
\_\_\_\_\_ (name of business) will provide on this Contract who access federal  
government workplaces within Canada where they may come into contact with public servants will be:

(a) fully vaccinated against COVID-19 with Health Canada-approved COVID-19 vaccine(s); or

(b) for personnel that are unable to be vaccinated due to a certified medical contraindication, religion or other prohibited grounds of discrimination under the Canadian Human Rights Act, subject to accommodation and mitigation measures that have been presented to and approved by Canada;

until such time that Canada indicates that the mandatory vaccination requirements of the Mandatory Vaccination Policy for Supplier Personnel are no longer in effect.

I certify that all personnel provided by \_\_\_\_\_ (name of business) have been notified of the vaccination requirements of the Government of Canada's COVID-19 Vaccination Policy for Supplier Personnel, and that the \_\_\_\_\_ (name of business) has certified to their compliance with this requirement.

I certify that the information provided is true as of the date indicated below and will continue to be true for the duration of the Contract. I understand that the certifications provided to Canada are subject to verification at all times. I also understand that Canada will declare a contractor in default, if a certification is found to be untrue, whether made knowingly or unknowingly, during the bid or contract period. Canada reserves the right to ask for additional information to verify the certifications. Failure to comply with any request or requirement imposed by Canada will constitute a default under the Contract.

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

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

**Optional**

For data purposes only, initial below if your business already has its own mandatory vaccination policy or requirements for employees in place. Initialing below is not a substitute for completing the mandatory certification above.

Initials: \_\_\_\_\_

Information you provide on this Certification Form and in accordance with the Government of Canada's COVID-19 Vaccination Policy for Supplier Personnel will be protected, used, stored and disclosed in accordance with the Privacy Act. Please note that you have a right to access and correct any information on your file, and you have a right to file a complaint with the Office of the Privacy Commissioner regarding the handling of your personal information. These rights also apply to all individuals who are deemed to be personnel for the purpose for the Contract and who require access to federal government workplaces where they may come into contact with public servants.

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### APPENDIX 3 - 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:

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## **ANNEX B: TERMS AND CONDITIONS**

### **TERMS OF AGREEMENT**

A1 Contract Documents

A2 The Work

### **GENERAL CONDITIONS**

#### **GC1 GENERAL PROVISIONS**

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

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

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

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

- GC3.1 Progress Schedule
- GC3.2 Project Design and Role of the Designer
- GC3.3 Construction Safety
- GC3.4 Execution of the Work
- GC3.5 Material
- GC3.6 Subcontracting
- GC3.7 Construction by Other Contractors or Workers
- GC3.8 Labour and Fair wages
- GC3.9 Material, Plant and Real Property become Property of Canada
- GC3.10 Defective Work
- GC3.11 Use of the Work and Cleanup of Site
- GC3.12 Warranty and Rectification of Defects in Work

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

**GC5** **TERMS OF PAYMENT**

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

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

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

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

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

***Conditions incorporated by reference:***

**GC8** **DISPUTE RESOLUTION**

**GC9** **CONTRACT SECURITY**

**GC10** **INSURANCE**

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

**SUPPLEMENTARY CONDITIONS**

- SC01 Payment for Design Changes and Revisions
- SC02 Professional Liability Insurance Requirements
- SC03 Insurance Terms
- SC04 Workplace Safety and Health
- SC05 Compliance With On-Site Measures, Standing Orders, Policies, And Rules
- SC06 Types and Amounts of Contract Security

## TERMS OF AGREEMENT

### A1 CONTRACT DOCUMENTS

- 1) The Contractor understands and agrees that, upon acceptance of the offer by Canada
    - (a) a binding Contract shall be formed between Canada and the Contractor; and
    - (b) the contract documents forming the Contract shall be the following:
      - (i) the Front Page and these Terms of Agreement;
      - (ii) the Request for Proposal;
      - (iii) the Terms of Reference;
      - (iv) the terms, conditions, and clauses as amended, identified as:
        - a) the General Conditions;
        - b) the Supplementary Conditions, if any;
        - c) documents incorporated by reference as follows:
          - R2840D (2008-05-12) - (GC4) Protective Measures
          - R2880D (2019-11-28) - (GC8) Dispute Resolution – 100K to 5M – Construction Services
          - R2890D (2018-06-21) - (GC9) Contract Security
          - R2900D (2008-05-12) - (GC10) Insurance
          - R2950D (2015-02-25) - Allowable costs for contract changes under GC6.4.1
      - (v) the submission;
      - (vi) the Construction Documents;
      - (vii) any amendment incorporated into the solicitation documents before the date of the Contract; and
      - (viii) any amendment or variation of the contract documents that is made in accordance with the General Conditions.
    - (c) The documents identified by title, number and date above are incorporated by reference and are set out in the Standard Acquisition Clauses and Conditions (SACC) Manual, issued by Public Works and Government Services Canada (PWGSC). The SACC Manual is available on the PWGSC Website: <http://buyandsell.gc.ca/policy-and-guidelines/standard-acquisition-clauses-and-conditions-manual/5/R>
- 2) The Contract documents shall be in the same official language (English or French) as the language of the bid submitted.

### A2 THE WORK

- 1) The Design-Builder agrees
  - (a) to substantial completion within 23 weeks for the first elevator and 29 weeks for the second elevator from the date of notification of acceptance of its proposal.

## GENERAL CONDITIONS

### GC1 GENERAL PROVISIONS

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

The following is an interpretation of heading and references.

##### GC1.1.1 Headings and References

- 1) The headings in the contract documents form no part of the *Contract* but are inserted for convenience of reference only.
- 2) A reference made to a part of the *Contract* by means of numbers preceded by letters is a reference to the particular part of the *Contract* that is identified by that combination of letters and numbers and to any other part of the *Contract* referred to therein.
- 3) A reference to a paragraph or subparagraph followed by an identifying number is, unless specifically stated otherwise, a reference to the paragraph or subparagraph that forms part of the clause within which the reference is made.

##### GC1.1.2 Terminology

In the Contract, unless the context otherwise requires:

"Administrative Agreement"

is a negotiated agreement with the Minister of PWGS as provided for in the *Ineligibility and Suspension Policy*.

"Affiliate" is a person, including, but not limited to, organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies or subsidiaries, whether partly or wholly-owned, as well as individuals, directors, officers and key employees if:

- i. one controls or has the power to control the other, or
- ii. a third party has the power to control both.

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

"Canada", "Crown" or "Her Majesty" means Her Majesty the Queen in right of Canada;

"Construction" means the performing or furnishing of all labour, Plant, Material, and other means of construction, other than Design Services, to complete the performance of the Work as required by the contract documents;

"Construction Documents" means the plans, drawings and specifications for Construction of the Work prepared by or on behalf of the Contractor and that are accepted and signed by Canada and the Contractor after the execution of the Contract;

"Contract" means the contract documents referred to as such therein and every other document specified or referred to in any of them as forming part of the contract, all as amended by agreement of the parties;

"Contract Amount" means the amount stipulated in the Contract;

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

"Contractor" means the person or entity contracting with Canada to provide or furnish all designs, professional services, Construction Documents, labour, Material and Plant for the execution of the Work, and includes the Contractor's authorized representative as designated in writing to the Departmental Representative;

"Certificate of Completion" means the certificate issued by Canada when the Work reaches Completion;

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

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

"Control"

means:

- a. direct control, such as where:
  - i. a person controls a body corporate if securities of the body corporate to which are attached more than 50 percent of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
  - ii. a person controls a corporation that is organized on a cooperative basis if the person and all of the entities controlled by the person have the right to exercise more than 50 percent of the votes that may be cast at an annual meeting or to elect the majority of the directors of the corporation;
  - iii. a person controls an unincorporated entity, other than a limited partnership, if more than 50 percent of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;
  - iv. the general partner of a limited partnership controls the limited partnership; and
  - v. a person controls an entity if the person has any direct or indirect influence that, if exercised, would result in control in fact of the entity.
- b. deemed control, such as where:
 

a person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity
- c. indirect control, such as where:
 

a person is deemed to control, within the meaning of paragraph (a) or (b), an entity where the aggregate of:

  - i. any securities of the entity that are beneficially owned by that person, and
  - ii. any securities of the entity that are beneficially owned by any entity controlled by that person

is such that, if that person and all of the entities referred to in paragraph (c)(ii) that beneficially own securities of the entity were one person, that person would control the entity.

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

"Design Services" means the professional services for design and construction administration performed by the Designer, or consultants coordinated by the Designer, under the terms of the Contract;

"Designer" means the Architect, Professional Engineer or entity, licensed to practice in the province or territory of the Work, and forming the professional component of the Contractor to provide the Design Services and other services required under the terms of the Contract, and includes the Contractor's authorized representative as designated to Canada in writing.

"herein", "hereby", "hereof", "hereunder" and similar expressions refer to the Contract as a whole and not to any particular section or part thereof;

"Ineligibility" means a person not eligible to contract with Canada;

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"Lump Sum Arrangement" means that part of the Contract that prescribes a lump sum as payment for performance of the work to which it relates;

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

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

"Plant" means all tools, implements, machinery, vehicles, structures, equipment, articles and things, other than Material or consumed in the performance of the Contract and tools customarily provided by a tradesperson in practicing a trade, that are necessary for the Construction of the Work;

"Project" means the total design and Construction for which the Contractor is responsible, including all Design Services and the Completion of the Work;

"Project Requirements" means the statement included in the Request for Proposal detailing the technical and other requirements of Canada which are to be met by the successful Bidder, and which are to be addressed in the Bid;

"Bid" means the bid of the Contractor submitted in response to a Request for Proposal:

"Request for Proposal" means the documentation issued by Canada requesting the submission of bids and detailing the Project Requirements;

"Subcontractor" means a person or entity, other than the Designer, having a direct Contract with the Contractor, subject to GC3.6 SUBCONTRACTING, to perform a part or parts of the Work, or to supply Material worked to a special design for the Work;

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

"Supplementary Conditions" means the part of the contract documents which amends or supplements the General Conditions;

"Supplier" means a person or entity having a direct Contract with the Contractor to supply Plant or Material not worked to a special design for the Work;

"Suspension" means a determination of temporary ineligibility by the Minister of PWGS;

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

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

"Unit Price Table" means the table set out in the Articles of Contract;

"Work" means, subject only to any express stipulation in the Contract to the contrary, everything that is necessary to be done, furnished or delivered by the Contractor to complete the Design Services, Construction and other services required under the Contract in accordance with the contract documents; and

"Working Day" means a day other than a Saturday, Sunday, or a holiday which is observed by the construction industry in the area of the place of the Work.

**GC1.1.3 Application of Certain Provisions**

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

**GC1.1.4 Substantial Performance**

- 1) The *Work* will be considered to have reached Substantial Performance when,
  - (a) the *Work* or a substantial part thereof has passed inspection and testing and is, in the opinion of Canada, ready for use by *Canada* or is being used for the intended purposes; and
  - (b) when the *Work* is, in the opinion of Canada, capable of completion or correction at a cost of not more than
    - (i) 3% of the first \$500,000, and
    - (ii) 2% of the next \$500,000, and
    - (iii) 1% of the balance
 of the value of the *Contract* at the time this cost is calculated.
- 2) Where the *Work* or a substantial part thereof is ready for use or is being used for the purposes intended and
  - (a) the remainder of the *Work* or a part thereof cannot be completed by the time specified in the *Contract*, or as amended by GC6.5 DELAYS AND EXTENSION OF TIME, for reasons beyond the control of the *Contractor*, or
  - (b) *Canada* and the *Contractor* agree not to complete a part of the *Work* within the specified time;
 the cost of that part of the *Work* that was either beyond the control of the *Contractor* to complete or *Canada* and the *Contractor* have agreed not to complete by the time specified, shall be deducted from the value of the *Contract* referred to in paragraph 1)(b) of GC1.1.4, and the said cost shall not form part of the cost of the work remaining to be done in determining Substantial Performance.

**GC1.1.5 Completion**

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

**GC1.2 CONTRACT DOCUMENTS****GC1.2.1 General**

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

**GC1.2.2 Order of Precedence**

- 1) In the event of any discrepancy or conflict in the contents of the following documents, such documents shall take precedence and govern in the following order:
  - a) any amendments or variation of the contract documents that is made in accordance with the General Conditions
  - b) any amendment issued prior to bid closing ,
  - c) *Supplementary Conditions*,
  - d) General Conditions,
  - e) the *Request for Proposal*,
  - f) the duly completed *Bid Price Form & Proposal* when accepted.

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

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

**GC1.2.3 Security and Protection of Documents and Work**

- 1) The Contractor shall guard and protect contract documents, drawings, information, models and copies thereof, whether supplied by Canada or the Contractor, against loss or damage from any cause.
- 2) The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, and all information developed by the Contractor as part of the Work, and shall not disclose any such information to any person without the written permission of Canada, except that the Contractor may disclose to a subcontractor, authorized in accordance with the Contract, information necessary to the performance of a subcontract. This section does not apply to any information that
  - a) is publicly available from a source other than the Contractor; or
  - b) is or becomes known to the Contractor from a source other than Canada, except any source that is known to the Contractor to be under an obligation to Canada not to disclose the information.
- 3) When the Contract, the Work, or any information referred to in paragraph 2) is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada, the Contractor shall, at all times, take all measures reasonably necessary for the safeguarding of the material so identified, including such measures as may be further specified elsewhere in the Contract or provided, in writing, from time to time by Canada.
- 4) Without limiting the generality of paragraphs 2) and 3) of GC1.2.3, when the Contract, the Work, or any information referred to in paragraph 2) is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada, Canada shall be entitled to inspect the Contractor's premises and the premises of its subcontractors or suppliers and any other person at any tier, for security purposes at any time during the term of the Contract, and the Contractor shall comply with, and ensure that any such subcontractors or suppliers comply with all written instructions issued by Canada dealing with the material so identified, including any requirement that employees of the Contractor and its subcontractors and suppliers and any other person at any tier execute and deliver declarations relating to reliability screenings, security clearances and other procedures.
- 5) The Contractor shall safeguard the Work and the Contract, the specifications, drawings and any other information provided by Canada to the Contractor, and shall be liable to Canada for any loss or damage from any causes.

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

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

**GC1.3 STATUS OF THE CONTRACTOR**

- 1) The *Contractor* is engaged under the *contract* as an independent contractor.
- 2) The *Contractor*, *its subcontractors*, employees, designers, suppliers and any other persons at any tier are not engaged by the *Contract* as employees, servants or agents of *Canada*.
- 3) For the purposes of the *contract* the *Contractor* shall be solely responsible for any and all payments and deductions required to be made by law including those required for *Canada* or Quebec Pension Plans, Employment Insurance, Worker's Compensation, provincial health or insurance plans, and Income Tax.

**GC1.4 RIGHTS AND REMEDIES**

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

**GC1.5 TIME OF THE ESSENCE**

- 1) Time is of the essence of the *Contract*.

**GC1.6 INDEMNIFICATION BY THE CONTRACTOR**

- 1) The *Contractor* shall pay all royalties and patent fees required for the performance of the *Contract* and, at the *Contractor's* expense, shall defend all claims, actions or proceedings against *Canada* charging or claiming that the services or any part thereof provided or furnished by the *Contractor* to *Canada* infringe any patent, industrial design, copyright trademark, trade secret or other proprietary right enforceable in *Canada*.
- 2) The *Contractor* shall indemnify and save *Canada* harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by any third party, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the *Contractor*, the *Designer*, servants, agents, *Subcontractors* and suppliers and any other person at any tier, in performing the *Work*.
- 3) For the purposes of paragraph 2) of GC1.6, "activities" means any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

**GC1.7 INDEMNIFICATION BY CANADA**

- 1) Subject to the Crown Liability and Proceedings Act, the Patent Act, and any other law that affects *Canada's* rights, powers, privileges or obligations, *Canada* shall indemnify and save the *Contractor* harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of the *Contractor's* activities under the *Contract* that are directly attributable to:
  - a) lack of or a defect in *Canada's* title to the *Work* site if owned by *Canada*, whether real or alleged; or
  - b) an infringement or an alleged infringement by the *Contractor* of any patent of invention or any other kind of intellectual property occurring while the *Contractor* was performing any act for the purposes of the

*Contract employing a model, plan or design or any other thing related to the Work that was supplied by Canada to the Contractor.*

### **GC1.8 LAWS, PERMITS AND TAXES**

1. The Contractor shall comply with all federal, provincial and municipal laws and regulations applicable to the performance of the Work or any part thereof including, without limitation, all laws concerning health and labour conditions and the protection of the environment, and shall require compliance therewith by all of its subcontractors and suppliers at any tier as if the Work were being performed for an owner other than Canada. The Contractor shall furnish evidence of compliance with such laws and regulations to Canada at such times as Canada may reasonably request.
2. Unless stipulated otherwise in the Contract, the Contractor shall obtain and maintain all permits, certificates, licences, registrations and authorizations required for the lawful performance of the Work.
3. Prior to the commencement of the Work at the site, the Contractor shall tender to a municipal authority an amount equal to all fees and charges that would be lawfully payable to that municipal authority in respect of building permits as if the Work were being performed for an owner other than Canada.
4. Within 10 days of making a tender pursuant to paragraph 3) of GC1.8, the Contractor shall notify Canada of the amount properly tendered and whether or not the municipal authority has accepted that amount.
5. If the municipal authority has not accepted the amount tendered, the Contractor shall pay that amount to Canada within 6 days after the time stipulated in paragraph 4) of GC1.8.
6. For the purposes of this clause, "municipal authority" means any authority that would have jurisdiction respecting permission to perform the Work if the owner were not Canada.
7. Notwithstanding the residency of the Contractor, the Contractor shall pay any applicable tax arising from or related to the performance of the Work under the Contract.
8. In accordance with the Statutory Declaration referred to in paragraph 4) of GC5.5, "Substantial Performance of the Work", a Contractor who has neither residence nor place of business in the province or territory in which work under the Contract is being performed shall provide Canada with proof of registration with the provincial sales tax authorities in the said province.
9. For the purpose of the payment of any Applicable Taxes or the furnishing of security for the payment of any Applicable Taxes arising from or related to the performance of the Work, and notwithstanding the provision that all Material, Plant and interest of the Contractor in all real property, licences, powers and privileges, become the property of Canada after the time of purchase in accordance with GC3.10, "Material Plant and Real Property Become Property of Canada", the Contractor shall be liable, as a user or consumer, for the payment or for the furnishing of security for the payment of any Applicable Taxes payable, at the time of the use or consumption of that Material, Plant or interest of the Contractor in accordance with the relevant legislation.
10. Federal government departments and agencies are required to pay Applicable Taxes.
11. Applicable Taxes will be paid by Canada as provided in the request for payment. It is the sole responsibility of the Contractor to charge Applicable Taxes at the correct rate in accordance with applicable legislation. The Contractor agrees to remit to appropriate tax authorities any amounts of Applicable Taxes paid or due.
12. The Contractor is not entitled to use Canada's exemptions from any tax, such as provincial sales taxes, unless otherwise specified by law. The Contractor must pay applicable provincial sales tax, ancillary taxes, and any commodity tax, on taxable goods or services used or consumed in the performance of the Contract (in accordance with applicable legislation), including for material incorporated into real property.
13. In those cases where Applicable Taxes, customs duties, and excise taxes are included in the Contract Amount, the Contract Amount will be adjusted to reflect any increase, or decrease, of Applicable Taxes, customs duties, and excise taxes that will have occurred between bid submission and contract award. However, there will be no adjustment for any change to increase the Contract Amount if public notice of the change was given before bid submission date in sufficient detail to have permitted the Contractor to calculate the effect of the change.
14. Tax Withholding of 15 Percent – Canada Revenue Agency

Pursuant to the *Income Tax Act*, 1985, c. 1 (5th Supp.) and the *Income Tax Regulations*, Canada must withhold 15 percent of the amount to be paid to the Contractor in respect of services provided in Canada if the Contractor is not a resident of Canada, unless the Contractor obtains a valid waiver from the Canada Revenue Agency. The amount withheld will be held on account for the Contractor in respect to any tax liability which may be owed to Canada.

### GC1.9 WORKERS' COMPENSATION

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

### GC1.10 NATIONAL SECURITY

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

### GC1.11 PUBLIC CEREMONIES AND SIGNS

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

### GC1.12 CONFLICT OF INTEREST

- 1) It is a term of the *Contract* that no individual, for whom the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Service apply, shall derive a direct benefit from the *Contract* unless that individual is in compliance with the applicable post-employment provisions.

### GC1.13 INTERNATIONAL SANCTIONS

- 1) Persons and companies in Canada, and Canadians outside of Canada are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions. Details on existing sanctions can be found at:  
[Http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp](http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp).
- 2) It is a condition of the *Contract* that the *Contractor* not supply to the Government of Canada any goods or services which are subject to economic sanctions.

- 3) By law, the *Contractor* must comply with changes to the regulations imposed during the life of the Contract. During the performance of the Contract should the imposition of sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Contractor, the Contractor may request that the Contract be terminated in accordance with GC7.3 TERMINATION OF CONTRACT.

#### GC1.14 CERTIFICATION - CONTINGENCY FEES

- 1) In this clause:
- (a) "contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a Government Contract or negotiating the whole or any part of its terms;
  - (b) "employee" means a person with whom the *Contractor* has an employer/employee relationship;
  - (c) "person" includes an individual or a group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbying Act R.S. 1985 c.44 (4th Supplement) as the same may be amended from time to time.
- 2) The *Contractor* certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay or agree to pay a contingency fee for the solicitation, negotiation or obtaining of the *Contract* to any person other than an employee acting in the normal course of the employee's duties.
- 3) All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the *Contract* shall be subject to the accounts and audit provisions of the *Contract*.
- 4) If the *Contractor* certifies falsely under this section or is in default of the obligations contained therein, *Canada* may either take the *Work* out of the *Contractor's* hands in accordance with the provisions of the *Contract* or recover from the *Contractor* by way of reduction to the *Contract Amount* or otherwise the full amount of the contingency fee.

#### GC1.15 AGREEMENTS AND AMENDMENTS

- 1) The Contract constitutes the entire and sole agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.
- 2) The failure of either party at any time to require performance by the other party of any provision hereof shall not affect the right thereafter to enforce such provision. Nor shall the waiver by either party of any breach of any covenant, term or condition hereof be taken to be held to be a waiver of any further breach of the same covenant, term or condition.
- 3) The *Contract* may be amended only as provided for in the Contract.

#### GC1.16 UNSUITABLE WORKERS

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

#### GC1.17 ASSIGNMENT

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

- 2) An assignment of the Contract without such consent shall not relieve the Contractor or the assignee from any obligation under the contract, or impose any liability upon Canada.

## GC1.18 RIGHTS TO INTELLECTUAL PROPERTY

### 1) Definitions

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

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

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

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

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

### 2. Identification and Disclosure of Foreground

The Contractor shall:

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

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

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

### 3. IP Rights Vest with Contractor

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

### 4. Ownership Rights in Deliverables

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

#### 5. Licence to Foreground

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

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

#### 6. Licence to Foreground for Other Projects

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

#### 7. Licence to Background

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

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

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

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

## 9. Contractor's Right to Grant Licence

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

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

## 10. Trade Secrets and Confidential Information

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

## 11. Canada Supplied Information

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

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

## 12. Transfer of IP Rights

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

from the sale or assignment of the IP Rights in that Foreground or, in the case of a sale or assignment was not at arm's length, the fair market value of the IP Rights in that Foreground, in each case including the value of future royalties or licence fees.

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

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

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

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

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

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

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

#### **GC1.21 Integrity Provisions – Contract (2016-04-04)**

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

#### **GC1.22 PERFORMANCE EVALUATION: CONTRACT (2017-08-17)**

1. The performance of the Contractor during and upon completion of the services will be evaluated by Canada. The evaluation includes all or some of the following criteria:
  - a. quality of workmanship
  - b. time
  - c. project management
  - d. contract management
  - e. health and safety
2. A weighting factor of 20 points will be assigned to each of the five criteria as follows:
  - a. unacceptable: 0 to 5 points
  - b. not satisfactory: 6 to 10 points
  - c. satisfactory: 11 to 16 points
  - d. superior: 17 to 20 points
3. The consequences resulting from the performance evaluation are as follows:

- a. For an overall rating of 85% or higher, a congratulation letter is sent to the Contractor.
- b. For an overall rating of between 51% and 84%, a standard "meets expectations", letter is sent to the Contractor.
- c. For an overall rating of between 30% and 50%, a warning letter is sent to the Contractor indicating that if, within the next two years from the date of the letter, they receive 50% or less on another evaluation, the Contractor may be suspended from any new Public Works and Government Services Canada (PWGSC) solicitations for construction services, architectural and engineering services or facility maintenance services, of real property projects, for a period of one year.
- d. For an overall rating of less than 30%, a suspension letter is sent to the Contractor indicating that the Contractor is suspended from any new PWGSC solicitations for construction services, architectural and engineering services or facility maintenance services, of real property projects, for a period of one year from the date of the letter.
- e. When general average is between 30% and 50% and one of the ratings is of 5 points or less on any one criterion, a suspension letter is sent to the Contractor indicating that the Contractor is suspended from any new PWGSC solicitations for construction services, architectural and engineering services or facility maintenance services, of real property projects, for a period of one year from the date of the letter.

The form [PWGSC-TPSGC 2913](#), Select - Contractor Performance Evaluation Report (CPERF), is used to record the performance.

## **GC2 ADMINISTRATION OF THE CONTRACT – CONSTRUCTION SERVICES**

### **GC2.1 DEPARTMENTAL REPRESENTATIVES AUTHORITY (2016-01-28)**

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

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

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

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

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

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

- 1) If, at any time before Canada has issued a Certificate of Completion, any question arises between the parties about whether anything has been done as required by the Contract or about what the Contractor is required by the Contract to do, and in particular but without limiting the generality of the foregoing, about
  - (a) the meaning of anything in the Terms of Reference;
  - (b) the meaning to be given to the Terms of Reference in case of any error therein, omission therefrom, or obscurity or discrepancy in their wording or intention;
  - (c) whether or not the quality or quantity of any Material or workmanship supplied or proposed to be supplied by the Contractor meets the requirements of the Contract;

- (d) whether or not the labour, Plant or Material performed, used and supplied by the Contractor for performing the Work and carrying out the Contract are adequate to ensure that the Work shall be performed in accordance with the Contract and that the Contract shall be carried out in accordance with its terms;
- (e) what quantity of any of the Work has been completed by the Contractor; or
- (f) the timing and scheduling of the various phases of the performance of the Work as specified in the Contract;

the question shall be decided, subject to the provisions of GC8, " Dispute Resolution", by Canada.

- 2) The Contractor shall perform the Work in accordance with any decisions of Canada that are made under paragraph 1) of GC2.2 and in accordance with any consequential directions given by Canada.
- 3) If the Contractor fails to comply with any instruction or direction issued by Canada pursuant to the Contract, Canada may employ such methods as Canada deems advisable to do what the Contractor failed to do, and the Contractor shall, on demand, pay Canada an amount that is equal to the aggregate of all costs, expenses and damages incurred or sustained by Canada by reason of the Contractor's failure to comply with such instruction or direction, including the cost of any methods employed by Canada in doing what the Contractor failed to do.

### **GC2.3 NOTICES**

- 1) Subject to paragraph 3) of GC2.3, any notice, order or other communication may be given in any manner, and if required to be in writing, shall be addressed to the party to whom it is intended at the address in the Contract or at the last address of which the sender has received written notice in accordance with this section.
- 2) Any notice, order or other communication given in writing in accordance with paragraph 1 of GC2.3 shall be deemed to have been received by either party
  - (a) if delivered personally, on the day that it was delivered;
  - (b) if forwarded by mail, on the earlier of the day it was received or the sixth day after it was mailed; and
  - (c) if forwarded by facsimile or electronic mail, 24 hours after it was transmitted.
- 3. A notice given under GC7.1, "Taking the Work out of the Contractor's Hands", GC7.2, "Suspension of Work" and GC7.3, "Termination of Contract", shall be given in writing and, if delivered personally, shall be delivered, if the Contractor is a sole proprietor, to the Contractor or, if the Contractor is a partnership or corporation, to an officer thereof.

### **GC2.4 SITE MEETINGS (2015-02-25)**

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

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

- 1) Canada shall review the Work to determine if it is proceeding in conformity with the Contract and to record the necessary data to make an assessment of the value of Work completed. Canada shall measure and record the quantities of labour, Plant and Material performed, used or supplied by the Contractor in performing the Work or any part thereof that is subject to a Unit Price Arrangement and, on request, shall inform the Contractor of those measurements, and permit the Contractor to inspect any records pertaining thereto.

- 2) Canada shall reject Work or Material which in Canada's opinion does not conform to the requirements of the Contract, and shall require inspection or testing of Work, whether or not such Work is fabricated, installed, or completed. If such Work is not in accordance with the requirements of the Contract, the Contractor shall correct the Work and shall pay Canada, on demand, all reasonable costs and expenses that were incurred by Canada in having the examination performed.
- 3) The Contractor shall provide Canada with access to the Work and its site at all times, and at all times shall provide sufficient, safe, and proper facilities for the review and inspection of the Work by persons authorized by Canada and any representatives of those authorities having jurisdiction. If parts of the Work are in preparation at locations other than the site of the Work, Canada shall be given access to such Work whenever it is in progress.
- 4) The Contractor shall furnish Canada with such information respecting the performance of the Contract as Canada may require, and render every possible assistance to enable Canada to verify that the Work is performed in accordance with the Contract, carry out any other duties and exercise any powers in accordance with the Contract.
- 5) If Work is designated for tests, inspections, or approvals in the Contract or by Canada's instructions, or by laws or ordinances of the place of the Work, the Contractor shall give Canada reasonable notice of when such Work shall be ready for review and inspection. The Contractor shall arrange for and shall give Canada reasonable notice of the date and time of inspections, tests or approvals.
- 6) If the Contractor covers, or permits to be covered, Work that has been designated for tests, inspections or approvals before such tests, inspections or approvals are made, completed or given, the Contractor shall, if so directed by Canada, uncover such Work, have the inspections, tests or approvals satisfactorily made, completed or given and make good the covering of the Work at the Contractor's expense.

## **GC2.6 SUPERINTENDENT**

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

## **GC2.7 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT OF LABOUR**

- 1) For the purposes of this clause, "persons" include the Contractor, its subcontractors and suppliers at any tier and their respective employees, agents, licensees or invitees and any other individual involved in the performance of the Work or granted access to the Work site. A "person" includes any partnership, proprietorship, firm, joint venture, consortium and corporation.
- 2) Without restricting the provisions of paragraph 3) of GC2.6, "Superintendent", the Contractor shall not refuse to employ and shall not discriminate in any manner against any person because

(a) of that person's race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, disability, conviction for which a pardon has been granted, or family status;

(b) of the race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, disability, conviction for which a pardon has been granted, or family status of any person having a relationship or association with that person, or

(c) a complaint has been made or information has been given in respect of that person relating to an alleged failure by the Contractor to comply with subparagraph (a) or (b).

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

## GC2.8 ACCOUNTS AND AUDITS

- 1) The Contractor shall, in addition to the requirements expressed in paragraph 6) of GC3.4, "Execution of the Work", maintain full records of the Contractor's estimated and actual cost of the Work together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, and shall make them available on request to audit and inspection by Canada and the Deputy Receiver General for Canada or by persons designated to act on behalf of either or both of them.
- 2) The Contractor shall allow any of the persons referred to in paragraph 1) of GC2.8 to make copies of and take extracts from any of the records and material, and shall furnish such persons or entities with any information those persons or entities may require from time to time in connection with such records and material.
- 3) The Contractor shall maintain and keep the records intact until the expiration of six (6) years after the date that a Certificate of Completion has been issued or until the expiration of such other period of time as Canada may direct.
- 4) The Contractor shall cause all subcontractors at any tier and all other persons directly or indirectly controlled by or affiliated with the Contractor and all persons directly or indirectly having control of the Contractor to comply with the requirements of this clause as if they were the Contractor.

### GC3 EXECUTION AND CONTROL OF THE WORK

#### GC3.1 PROGRESS SCHEDULE (2015-02-25)

The *Contractor* shall:

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

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

- 1) The *Contractor* shall report promptly to Canada any error, inconsistency, or omission the *Contractor* may discover when reviewing the contract documents provided by Canada. In making a review, the *Contractor* does not assume any responsibility to Canada or Canada for the accuracy of the review. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies, or omissions in the contract documents prepared by or on behalf of Canada which the *Contractor* did not discover.
- 2) The *Contractor* shall employ or otherwise engage the architects, professional engineers and other consultants required to provide the *Design Services* to be performed by the *Designer* under the *Contract*.
- 3) The *Contractor* shall perform or furnish all necessary architectural services and structural, electrical, mechanical and other engineering services, and shall complete the design of the *Work* and prepare *Construction Documents* to permit the *Construction* and completion of the *Work*, all in accordance with the *Contract*.
- 4) The *Contractor* shall provide the co-ordination required to integrate all parts of the *Design Services*, and shall review with Canada reasonable alternative approaches to completion of the design of the *Work*.

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

### GC3.3 CONSTRUCTION SAFETY

- 1) Subject to GC3.7, "Construction by Other Contractors or Workers", the Contractor shall be solely responsible for construction safety at the place of the Work and for initiating, maintaining and supervising all safety precautions

and programs in connection with the performance of the Work. In any emergency, the Contractor shall either stop the Work, make changes or order extra work to ensure the safety of life and the protection of the Work and neighbouring property.

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

### GC3.4 EXECUTION OF THE WORK

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

### GC3.5 MATERIAL

- 1) Unless otherwise specified in the *Contract*, all *Material* incorporated in the *Work* shall be new.
- 2) Subject to paragraph 3) of GC3.5, if a specified reused, refurbished, or recycled item of *Material* is not available, the *Contractor* shall apply to *Canada* to substitute a similar item for the one specified.

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

### GC3.6 SUBCONTRACTING

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

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

- 1) Canada reserves the right to send other contractors or workers, with or without *Plant* and *Material*, onto the site of the *Work*.
- 2) When other contractors or workers are sent on to the site of the *Work*, Canada shall:
  - (a) to the extent it is possible, enter into separate contracts with the other contractors under conditions of *Contract* that are compatible with the conditions of the *Contract*;
  - (b) ensure that the insurance coverage provided by the other contractors is coordinated with the insurance coverage of the *Contractor* as it affects the *Work*; and

- (c) take all reasonable precautions to avoid labour disputes or other disputes arising from the work of the other contractors or workers.
- 3) When other contractors or workers are sent on to the site of the Work, the *Contractor* shall:
- (a) cooperate with them in the carrying out of their duties and obligations;
- (b) coordinate and schedule the *Work* with the work of the other contractors and workers;
- (c) participate with other contractors and workers in reviewing their construction schedules when directed to do so;
- (d) where part of the *Work* is affected by or depends upon for its proper execution the work of other contractors or workers, promptly report to *Canada* in writing and prior to proceeding with that part of the *Work*, any apparent deficiencies in such work. Failure by the *Contractor* to so report shall invalidate any claims against *Canada* by reason of the deficiencies in the work of other contractors or workers except those deficiencies not then reasonably discoverable; and
- (e) when designated as being responsible for construction safety at the place of the work in accordance with the applicable provincial or territorial laws, carry out its duties in that role and in accordance with those laws.
- 4) If, when entering into the *Contract*, the *Contractor* could not have reasonably foreseen nor anticipated the sending of other contractors or workers on to the site of the Work and provided the Contractor.
- (a) incurs extra expense in complying with the requirements of paragraph 3) of GC3.7, and
- (b) gives *Canada* written notice of a claim for that extra expense within thirty (30) days of the date that the other contractors or workers were sent onto the site of the Work

*Canada* shall pay the *Contractor* the cost of the extra labour, *Plant* and *Material* that was necessarily incurred, calculated in accordance with GC6.4 DETERMINATION OF PRICE.

### **GC3.8 LABOUR**

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

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

- 1) Subject to paragraph 9) of GC1.8 LAWS PERMITS AND TAXES, all *Material* and *Plant* and the interest of the *Contractor* in all real property, licences, powers and privileges purchased, used or consumed by the *Contractor* for the *Construction* of the *Work* shall immediately after the time of their purchase, use or consumption be the property of *Canada* for the purposes of the *Work* and they shall continue to be the property of *Canada*
  - (a) in the case of *Material*, until *Canada* indicates that the materials shall not be required for the *Work*, and
  - (b) in the case of *Plant*, real property, licences, powers and privileges, until *Canada* indicates that the interest vested in *Canada* therein is no longer required for the purposes of the *Work*.

- 2) *Material* or *Plant* that is the property of *Canada* by virtue of paragraph 1) of GC3.9 shall not be taken away from the site of the *Work* nor used or disposed of except for the purposes of the *Work* without the written consent of the *Canada*.
- 3) *Canada* is not liable for loss of nor damage from any cause to the *Material* or *Plant* referred to in paragraph 1) of GC3.9, and the *Contractor* is liable for such loss or damage notwithstanding that the *Material* or *Plant* is the property of *Canada*.

### GC3.10 DEFECTIVE WORK

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

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

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

### GC3.12 WARRANTY AND RECTIFICATION OF DEFECTS IN WORK

- 1) Without restricting any warranty or guarantee implied or imposed by law or contained in the Contract, the *Contractor* shall, at the *Contractor's* expense
  - (a) rectify and make good any defect or fault that appears in the *Work* or comes to the attention of *Canada* with respect to those parts of the *Work* accepted in connection with the *Certificate of Substantial Performance* within 12 months from the date of *Substantial Performance*;

- (b) rectify and make good any defect or fault that appears in or comes to the attention of *Canada* in connection with those parts of the *Work* described in the *Certificate of Substantial Performance* within 12 months from the date of the *Certificate of Completion*;
  - (c) transfer and assign, to *Canada*, any subcontractor, manufacturer or supplier extended warranties or guarantees implied or imposed by law or contained in the *Contract* covering periods beyond the 12 months stipulated above. Extended warranties or guarantees referred to herein shall not extend the 12-month period whereby the *Contractor*, except as may be provided elsewhere in the *Contract*, must rectify and make good any defect or fault that appears in the *Work* or comes to the attention of *Canada*; and
  - (d) provide, to *Canada* prior to the issuance of the *Certificate of Completion*, a list of all extended warranties and guarantees referred to in paragraph (c) of GC3.12.
- 2) *Canada* may direct the *Contractor* to rectify and make good any defect or fault referred to in paragraph 1) of GC3.12 or covered by any other expressed or implied warranty or guarantee, and the *Contractor* shall rectify and make good such defect within the time stipulated in the direction.
- 3) A direction referred to in paragraph 2) of GC3.12 shall be in writing and shall be given to the *Contractor* in accordance with GC2.3 NOTICES.

## GC5 TERMS OF PAYMENT – CONSTRUCTION SERVICES

### GC5.1 INTERPRETATION

In these Terms of Payment

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

### GC5.2 AMOUNT PAYABLE

- 1) Subject to any other provisions of the *Contract*, *Canada* shall pay the *Contractor*, at the times and in the manner hereinafter set out, the amount by which the amounts payable by *Canada* to the *Contractor* in accordance with the *Contract* exceed the amounts payable by the *Contractor* to *Canada*, and the *Contractor* shall accept that amount as payment in full satisfaction for everything furnished and done by the *Contractor* in respect of the work to which the payment relates.
- 2) When making any payment to the *Contractor*, the failure of *Canada* to deduct an amount payable to *Canada* by the *Contractor* shall not constitute a waiver of the right to do so, or an admission of lack of entitlement to do so in any subsequent payment to the *Contractor*.

- 3) Should any payment be made by Canada in excess of what is owed to the Contractor for the actual work performed, the Contractor will reimburse Canada the excess immediately, with or without demand, and any amounts outstanding shall bear simple interest at the Average Bank rate plus 3 percent per annum from the date of overpayment until the day prior to the date of repayment by the Contractor.
- 4) No payment other than a payment that is expressly stipulated in the Contract, shall be made by Canada to the Contractor for any extra expense or any loss or damage incurred or sustained by the Contractor.

### GC5.3 INCREASED OR DECREASED COSTS

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

### GC5.4 PROGRESS PAYMENT

- 1) On the expiration of a payment period, the *Contractor* shall deliver to Canada
  - (a) a written progress claim in a form acceptable to Canada, and certified by the *Designer*, that fully describes any part of the *Work* that has been completed, and any *Material* that was delivered to the *Work* site but not incorporated into the *Work*, during that payment period, and
  - (b) a completed and signed statutory declaration containing a declaration that up to the date of the progress claim, the *Contractor* has complied with all lawful obligations with respect to the Labour Conditions and that, in respect of the *Work*, all lawful obligations of the *Contractor* to its *Subcontractors*, *Suppliers* and the *Designer* (referred to collectively in the declaration as "subcontractors and suppliers") have been fully discharged.
- 2) Within 10 days of receipt of a progress claim and statutory declaration from the *Contractor*, Canada shall inspect, or cause to have inspected, the part of the *Work* and the *Material* described in the progress claim, and shall issue a progress report to the *Contractor*, that indicates the value of the part of the *Work* and the *Material* described in the progress claim that, in the opinion of *Canada*

- (a) is in accordance with the *Contract*, and
  - (b) was not included in any other progress report relating to the *Contract*.
- 3) Subject to GC5.2 AMOUNT PAYABLE and paragraph 5) of GC5.4, *Canada* shall pay the *Contractor* an amount that is equal to 100% of the value that is indicated in *Canada's* progress report with respect to the provision of the *Design Services*, together with an amount that is equal to
- (a) 95% of the value that is indicated in *Canada's* progress report with respect to the *Construction*, if a labour and material payment bond has been furnished by the *Contractor*, or
  - (b) 90% of the value that is indicated in the progress report with respect to the *Construction*, if a labour and material payment bond has not been furnished by the *Contractor*.
- 4) *Canada* shall pay the amount referred to in paragraph 3) of GC5.4 not later than
- (a) 30 days after the receipt by *Canada* of a progress claim and statutory declaration referred to in paragraph 1) of GC5.4, or
  - (b) 15 days after the *Contractor* has submitted to *Canada* a progress schedule or updated progress schedule in accordance with GC3.1 PROGRESS SCHEDULE,
- whichever is later.
- 5) In the case of the *Contractor's* first progress claim, it is a condition precedent to *Canada's* obligation under paragraph 3) of GC5.4 that the *Contractor* has provided all necessary documentation required by the Contract for the first progress claim.

#### **GC5.5 SUBSTANTIAL PERFORMANCE OF THE WORK**

- 1) If, at any time before the issuance of a *Certificate of Completion*, *Canada* determines that the *Work* has reached Substantial Performance as described in subparagraph 1) (b) of GC1.1.4 SUBSTANTIAL PERFORMANCE, *Canada* shall request the *Contractor* to provide a written declaration prepared and signed by the *Designer* in accordance with subparagraph 9)(e) of GC3.2 PROJECT DESIGN AND ROLE OF THE DESIGNER. Following receipt of the declaration, *Canada* shall inspect the *Work*, and if satisfied that the *Work* has reached Substantial Performance, shall issue a *Certificate of Substantial Performance* to the *Contractor*. The *Certificate of Substantial Performance* shall state the date of Substantial Performance and shall describe the parts of the *Work* not completed to the satisfaction of *Canada*, and all things that must be done by the *Contractor* before a *Certificate of Completion* is issued, and before the 12-month warranty period referred to in GC3.12 WARRANTY AND RECTIFICATION OF DEFECTS IN WORK shall commence for the said parts and all the said things.
- 2) The issuance of a *Certificate of Substantial Performance* does not relieve the *Contractor* from the *Contractor's* obligations under GC3.10 DEFECTIVE WORK.
- 3) Subject to GC5.2 AMOUNT PAYABLE and paragraph 4) of GC5.5, *Canada* shall pay the *Contractor* the amount referred to in paragraph 1) of GC5.2 AMOUNT PAYABLE less the aggregate of
  - (a) the sum of all payments that were made pursuant to GC5.4 PROGRESS PAYMENT;
  - (b) an amount that is equal to *Canada's* estimate of the cost to *Canada* of rectifying defects described in the *Certificate of Substantial Performance* ; and
  - (c) an amount that is equal to *Canada's* estimate of the cost to *Canada* of completing the parts of the *Work* described in the *Certificate of Substantial Performance* , other than defects listed therein.
- 4) *Canada* shall pay the amount referred to in paragraph 3) of GC5.5, not later than

- (a) 30 days after the date of issue of a Certificate of Substantial Performance, or
- (b) 15 days after the *Contractor* has delivered to Canada
  - (i) a statutory declaration containing a declaration by the *Contractor* that up to the date of the Certificate of Substantial Performance, the *Contractor* has complied with all lawful obligations with respect to the Labour Conditions, discharged all its lawful obligations to its *Subcontractors*, *Suppliers* and the *Designer* in respect of the work under the *Contract*, and discharged its lawful obligations referred to in GC1.8 LAWS, PERMITS AND TAXES, and
  - (ii) evidence of compliance with workers' compensation legislation in accordance with GC1.9 WORKERS' COMPENSATION, and
  - (iii) an update of the progress schedule in accordance with the requirements of GC3.1 PROGRESS SCHEDULE

whichever is later.

#### GC5.6 FINAL COMPLETION

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

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

- (ii) evidence of compliance with workers' compensation legislation in accordance with GC1.9  
WORKERS' COMPENSATION

whichever is later.

#### GC5.7 PAYMENT NOT BINDING ON CANADA (2015-02-25)

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

#### GC5.8 CLAIMS AND OBLIGATIONS

- 1) The *Contractor* shall discharge all the *Contractor's* lawful obligations and shall satisfy all lawful claims against the *Contractor* arising out of the performance of the *Work* at least as often as the *Contract* requires *Canada* to pay the *Contractor*.
- 2) Whenever requested to do so by *Canada*, the *Contractor* shall make a statutory declaration declaring to the existence and condition of any obligations and claims against the *Contractor* arising out of the performance of the *Work*.
- 3) In order to discharge lawful obligations of and satisfy lawful claims against the *Contractor*, or its *Designers* or *Subcontractors* arising out of the performance of the *Contract*, *Canada* may pay an amount that is due and payable to the *Contractor* directly to the claimant. Such payment is, to the extent of the payment, a discharge of *Canada's* liability to the *Contractor* under the *Contract* and may be deducted from any amount payable to the *Contractor* under the *Contract*.
- 4) For the purposes of paragraph 3) of GC5.8, and subject to paragraph 6) of GC5.8, a claim or obligation shall be considered lawful when it is so determined by
  - (a) a court of legal jurisdiction, or
  - (b) an arbitrator duly appointed to arbitrate the claim, or
  - (c) the written consent of the *Contractor* authorizing payment of the claim or obligation.
- 5) If a claim or obligation would have been subject to the provisions of Provincial or Territorial lien legislation or, in the Province of Quebec, the law relating to legal hypothecs had the *Contractor* been performing the *Work* for a entity other than *Canada*:
  - (a) such amount as may be paid by *Canada* pursuant to paragraphs 3) and 4) of GC5.8 shall not exceed the amount which the *Contractor* would have been obliged to pay had the provisions of such legislation or law been applicable to the *Work*;
  - (b) a claimant need not comply with the provisions of such legislation setting out the steps by way of notice, registration or otherwise as might have been necessary to preserve or perfect any claim for lien or privilege which the claimant might have had, and
  - (c) for the purposes of determining the entitlement of a claimant, the notice required by paragraph 8) of GC5.8 shall be deemed to replace the registration or provision of notice after the performance of work as required by any applicable legislation and no claim shall be deemed to have expired, become void or unenforceable by reason of the claimant not commencing any action within the time prescribed by such legislation.
- 6) The *Contractor*, shall at the request of any claimant, submit to binding arbitration, those questions that need be answered to establish any entitlement of the claimant to payment. The arbitration shall have as parties to it any *Designer*, *Subcontractor*, or suppliers to whom the claimant supplied *Material*, performed work or rented

equipment should such *Subcontractor, Designer, or supplier* wish to be adjoined, and *Canada* shall not be a party to such arbitration. Subject to any agreement between the *Contractor* and the claimant, the arbitration shall be conducted in accordance with the governing Provincial or Territorial legislation applicable to the site of the *Work*.

- 7) Paragraph 3) of GC5.8 shall apply only to claims and obligations
- (a) the notification of which has set forth the amount claimed to be owing and the person or entity who by contract is primarily liable and has been received by *Canada* in writing before final payment is made to the *Contractor* pursuant to GC5.6 FINAL COMPLETION, and within 120 days of the date on which the claimant
    - (i) should have been paid in full under the claimant's contract with the *Contractor, its Designer, Subcontractor or Supplier*, if the claim is for money that was lawfully required to be held back from the claimant; or
    - (ii) performed the last of the services, work, labour, or furnished the last of the *Material* pursuant to the claimant's Contract with the *Contractor, its Designer, Subcontractor, or Supplier* where the claim is for money not lawfully required to be held back from the claimant, and
  - (b) the proceedings to determine the right to payment of which, pursuant to paragraph 5) of GC5.8, shall have commenced within one year from the date that the notification required by subparagraph 7)(a) of GC5.8 was received by *Canada*.
- 8) Upon receipt of a notice of claim, *Canada* may withhold from any amount that is due and payable to the *Contractor* pursuant to the *Contract*, the full amount of the claim or any portion thereof.
- 9) *Canada* shall notify the *Contractor* in writing in a timely manner of receipt of any claim and of the intention of *Canada* to withhold funds. At any time thereafter and until payment is made to the claimant, the *Contractor* may be entitled to post, with *Canada*, security in a form acceptable to *Canada* in an amount equal to the value of the claim, and upon receipt of such security *Canada* shall release to the *Contractor* any funds which would be otherwise payable to the *Contractor*, that were withheld pursuant to the provisions of this clause in respect of the claim of any claimant for whom the security stands.

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

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

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

- 1) For the purposes of this clause
- (a) the *Work* shall be deemed to be completed on the date of *Certificate of Completion*, and
  - (b) the "period of delay" means the number of days commencing on the day fixed for completion of the *Work* and ending on the day immediately preceding the day on which the *Work* is completed but does not include any day within a period of extension granted pursuant to GC6.5 DELAYS AND EXTENSION OF

TIME, and any other day on which, in the opinion of Canada, completion of the *Work* was delayed for reasons beyond the control of the *Contractor*.

- 2) If the *Contractor* does not complete the *Work* by the day fixed for its completion but completes it thereafter, the *Contractor* shall pay *Canada* an amount equal to the aggregate of
  - (a) all salaries, wages and traveling expenses incurred by *Canada* in respect of persons overseeing the performance of the *Work* during the period of delay;
  - (b) the cost incurred by *Canada* as a result of the inability to use the completed *Work* for the period of delay; and
  - (c) all other expenses and damages incurred or sustained by *Canada* during the period of delay as a result of the *Work* not being completed by the day fixed for its completion.
- 3) *Canada* may waive the right of *Canada* to the whole or any part of the amount payable by the *Contractor* pursuant to paragraph 2) of GC5.10 if, in the opinion of *Canada*, it is in the public interest to do so.

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

- 1) Notwithstanding GC1.5 TIME OF THE ESSENCE, any delay by *Canada* in making any payment when it is due pursuant to GC5 shall not be a breach of the *Contract* by *Canada*.
- 2) Subject to paragraph 3) of GC5.11, *Canada* shall pay to the *Contractor* simple interest at the Average Bank Rate plus 3 percent per annum on any amount which is overdue pursuant to paragraph 3) of GC5.1 INTERPRETATION, and the interest shall apply from and include the day such amount became overdue until the day prior to the date of payment.
- 3) Interest shall be paid without demand by the *Contractor* except that
  - (a) in respect of amounts that are less than 15 days overdue, no interest shall be paid in respect of payment made within such 15 days unless the *Contractor* so demands after such amounts have become due and payable, and
  - (b) interest shall not be payable or paid on overdue advance payments, if any.

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

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

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

- 1) After a *Certificate of Substantial Performance* has been issued, and if the *Contractor* is not in breach of nor in default under the *Contract*, *Canada* shall return to the *Contractor* all or any part of a Security Deposit that, in the opinion of *Canada*, is not required for the purposes of the *Contract*.

- 2) After a *Certificate of Completion* has been issued, *Canada* shall return to the *Contractor* the remainder of any security deposit unless the *Contract* stipulates otherwise.
- 3) If the security deposit was paid into the Consolidated Revenue Fund of *Canada*, *Canada* shall pay interest thereon to the *Contractor* at a rate established from time to time pursuant to section 21(2) of the Financial Administration Act.

## **GC6 DELAYS AND CHANGES IN THE WORK –CONSTRUCTION SERVICES**

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

- 1) At any time before issuing a *Certificate of Completion*, *Canada* may issue orders for additions, deletions or other changes to the *Work*, or changes in the location or position of the whole or any part of the *Work*, if the addition, deletion, change or other revision is deemed by *Canada* to be, consistent with the general intent of the *Contract*.
- 2) An order referred to in paragraph 1) of GC6.1 shall be in writing and given to the *Contractor* in accordance with GC2.3 NOTICES.
- 3) Upon receipt of an order, the *Contractor* shall promptly perform the work in accordance with the order as if the order had appeared in and been part of the original *Contract*.
- 4) If anything done or omitted by the *Contractor* pursuant to an order increases or decreases the cost of the *Work* to the *Contractor*, payment for the work shall be made in accordance with GC6.4 DETERMINATION OF PRICE.

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

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

of GC6.2 within the times stipulated, an extra payment shall not be made to the Contractor in respect of the occurrence.

- 8) Canada does not warrant the content expressed in any subsurface report available for the perusal of the Contractor that does not form part of the Request for proposal and contract documents.

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

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

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

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

- 1) If a Lump Sum Arrangement applies to the Contract or a part thereof, the price of any change shall be the aggregate estimated cost of labour, Plant and Material that is required for the change as agreed upon in

writing by the Contractor and Canada plus an allowance for supervision, co-ordination, administration, overhead, margin and the risk of undertaking the work within the stipulated amount, which allowance shall be equal to

- (a) 20 percent of the aggregate costs referred to herein for that portion of the Work done by the Contractor's own forces, if the aggregate cost of the Work does not exceed \$50,000;
  - (b) 15 percent of the aggregate costs referred to herein for that portion of the Work that is done by subcontract, if the aggregate cost of the Work does not exceed \$50,000; or
  - (c) a negotiated percentage of the aggregate costs referred to herein or a negotiated amount
    - (i) if the aggregate cost of the Work exceeds \$50,000; or
    - (ii) if the Contractor and Canada agree in writing.
- 2) If a Unit Price Arrangement applies to the Contract or a part thereof, the Contractor and Canada may, by agreement in writing, add items, units of measurement, estimated quantities and prices per unit to the Unit Price Table.
- 3) A price per unit referred to in paragraph 2) of GC6.4.1 shall be determined on the basis of the aggregate estimated cost of labour, Plant and Material that is required for the additional item as agreed upon by the Contractor and Canada, plus an allowance determined in accordance with paragraph 1) of GC6.4.1.
- 4) To facilitate approval of the price of the change or the additional price per unit as applicable, the Contractor shall submit a cost estimate breakdown identifying, as a minimum, the estimated cost of labour, Plant, Material, each subcontract amount, and the amount of the allowance.
- 5) If no agreement is reached as contemplated in paragraph 1) of GC6.4.1, the price shall be determined in accordance with GC6.4.2.
- 6) If no agreement is reached, as contemplated in paragraphs 2) and 3) of GC6.4.1, Canada shall determine the class and the unit of measurement of the item of labour, Plant or Material and the price per unit shall be determined in accordance with GC6.4.2.

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

- 1) If it is not possible to predetermine, or if there is failure to agree upon the price of a change in the Work, the price of the change shall be equal to the aggregate of
- (a) all reasonable and proper amounts actually expended or legally payable by the Contractor in respect of the labour, Plant and Material that fall within one of the classes of expenditure described in paragraph 2) of GC6.4.2, that are directly attributable to the performance of the Contract;
  - (b) an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, in an amount that is equal to 10% of the sum of the expenses referred to in subparagraph 1)(a) of GC6.4.2; and
  - (c) interest on the amounts determined under subparagraphs 1)(a) and 1)(b) of GC6.4.2 calculated in accordance with GC5.12, "Interest on Settled Claims";
- 2) The cost of labour, Plant and Material referred to in subparagraph 1)(a) of GC6.4.2 shall be limited to the following categories of expenditure:
- (a) payments to Subcontractors and Suppliers;
  - (b) wages, salaries, bonuses and, if applicable, travel and lodging expenses of employees of the Contractor located at the site of the Work and that portion of wages, salaries, bonuses and, if applicable, travel and

lodging expenses of personnel of the Contractor generally employed at the head office or at a general office of the Contractor provided they are actually and properly engaged on the Work under the Contract;

- (c) assessments payable under any statutory authority relating to workers' compensation, employment insurance, pension plan or holidays with pay, provincial health or insurance plans, environmental reviews, and Applicable Taxes collection costs;
- (d) rent that is paid for Plant, or an amount equivalent to the said rent if the Plant is owned by the Contractor, that is necessary for and used in the performance of the Work, if the rent or the equivalent amount is reasonable and use of that Plant has been approved by Canada;
- (e) payments for maintaining and operating Plant necessary for and used in the performance of the Work, and payments for effecting repairs thereto that, in the opinion of Canada, are necessary for the proper performance of the Contract, other than payments for any repairs to the Plant arising out of defects existing before its allocation to the Work;
- (f) payments for Material that is necessary for and incorporated in the Work, or that is necessary for and consumed in the performance of the Contract;
- (g) payments for preparation, delivery, handling, erection, installation, inspection, protection and removal of the Plant and Material necessary for and used in the performance of the Contract; and
- (h) any other payments made by the Contractor with the approval of Canada that are necessary for the performance of the Contract in accordance with the contract documents.

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

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

- 1) Except as provided in paragraphs 2), 3), 4) and 5) of GC6.4.3, if it appears that the final quantity of labour, Plant and Material under a price per unit item shall exceed or be less than the estimated tendered quantity, the Contractor shall perform the Work or supply the Plant and Material required to complete the item and payment shall be made for the actual Work performed or Plant and Material supplied at the price per unit set out in the Contract.
- 2) If the final quantity of the price per unit item exceeds the estimated tendered quantity by more than 15 percent, either party to the Contract may make a written request to the other party negotiate an amended price per unit for that portion of the item which exceeds 115 percent of the estimated tendered quantity, and to facilitate approval of any amended price per unit, the Contractor shall, on request, provide Canada with
  - (a) detailed records of the actual cost to the Contractor of performing or supplying the tendered quantity for the price per unit item up to the time the negotiation was requested, and
  - (b) the estimated unit cost of labour, Plant and Material required for the portion of the item that is in excess of 115 percent of the tendered quantity.
- 3) If agreement is not reached as contemplated in paragraph 2) of GC6.4.3, the price per unit shall be determined in accordance with GC6.4.2.
- 4) If it appears that the final quantity of labour, Plant and Material under a price per unit item shall be less than 85 percent of the estimated tendered quantity, either party to the Contract may make a written request to the other party to negotiate a change to the price per unit for the item if
  - (a) there is a demonstrable difference between the unit cost to the Contractor of performing or supplying the estimated tendered quantity and the unit cost to the Contractor for performing or supplying the final quantity; and
  - (b) the difference in unit cost is due solely to the decrease in quantity and not to any other cause.

- 5) For the purposes of the negotiation referred to in paragraph 4) of GC6.4.3
- (a) the onus of establishing, justifying and quantifying a proposed change lies with the party making the request for negotiation; and
- (b) in no event shall the total price for an item that has been amended as a result of a reduction in quantity pursuant to paragraph 4) of GC6.4.3 exceed the amount that would have been payable to the Contractor had 85 percent of the tendered quantity actually been performed or supplied.

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

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

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

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

- 1) By giving notice in writing to the Contractor in accordance with GC2.3, "Notices", Canada, without any other authorization, may take all or any part of the Work out of the Contractor's hands, and may employ such means as Canada sees fit to have the Work completed if the Contractor

- (a) fails to remedy any delay in the commencement or default in the diligent performance of the Work to the satisfaction of Canada within 6 days of Canada giving notice to the Contractor in writing in accordance with GC2.3, "Notices";
  - (b) defaults in the completion of any part of the Work within the time fixed for its completion by the Contract;
  - (c) becomes insolvent, or has committed an act of bankruptcy, and has neither made a proposal to its creditors nor filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act;
  - (d) abandons the work;
  - (e) makes an assignment of the Contract without the consent required by GC1.17, "Assignment", or
  - (f) otherwise fails to observe or perform any of the provisions of the Contract.
- 2) If the whole or any part of the Work is taken out of the Contractor's hands, the Contractor's right to any further payment that is due or accruing due under the Contract is, subject only to paragraph 3) of GC7.1, extinguished, and the Contractor is liable to pay Canada, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by Canada in respect of the Contractor's failure to complete the Work.
  - 3) If the whole or any part of the Work that is taken out of the Contractor's hands is completed by Canada, Canada may pay the Contractor the amount, if any, of the holdback or a progress claim as determined by Canada that had accrued and was due prior to the date on which the Work was taken out of the Contractor's hands and that is not required for the purposes of having the Work performed or of compensating Canada for any other loss or damage incurred or sustained by reason of the Contractor's default.
  - 4) The taking of the Work or any part thereof out of the Contractor's hands does not relieve the Contractor from any obligation under the Contract or imposed by law except the obligation to complete the performance of that part of the Work that was taken out of the Contractor's hands.
  - 5) If the Work or any part thereof is taken out of the Contractor's hands, all Plant and Material and the interest of the Contractor, or its suppliers or subcontractors at any tier, in all real property, licences, powers and privileges acquired, used or provided by the Contractor, or its suppliers or subcontractors at any tier, under the Contract shall continue to be the property of Canada without compensation.
  - 6) When Canada certifies that any Plant, Material, or any interest of the Contractor is no longer required for the purposes of the Work, or that it is not in the interests of Canada to retain that Plant, Material, or interest, it shall revert to the Contractor.
  - 7) If the Contractor has become insolvent or has committed an act of bankruptcy, and has either made a proposal to its creditors or filed a notice of intention to make such a proposal, pursuant to the Bankruptcy and Insolvency Act, the Contractor shall immediately forward a copy of the proposal or the notice of intention to Canada.

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

- 1) When, in Canada's opinion, it is in the public interest to do so, Canada may require the Contractor to suspend performance of the Work either for a specified or an unspecified period, by giving a notice of suspension in writing to the Contractor in accordance with GC2.3, "Notices".
- 2) When a notice of suspension is received by the Contractor, the Contractor shall suspend all operations in respect of the Work except those that Canada determines are necessary for the care and preservation of the Work, Plant and Material.
- 3) During a period of suspension, the Contractor shall not remove any part of the Work, Plant or Material from its site without the consent of Canada.

- 4) If a period of suspension is 60 days or less, the Contractor shall resume the performance of the Work on the expiration of that period, and the Contractor is entitled to be paid the extra costs necessarily incurred by the Contractor as a result of the suspension, determined in accordance with GC6.4, "Determination of Price".
- 5) If a period of suspension is more than 60 days, Canada and the Contractor may agree that the performance of the Work shall be continued by the Contractor, and the Contractor shall resume performance of the Work subject to any terms and conditions agreed upon by Canada and the Contractor. If Canada and the Contractor do not agree that performance of the Work shall be continued by the Contractor, or upon the terms and conditions under which the Contractor shall continue the Work, the notice of suspension shall be deemed to be a notice of termination pursuant to GC7.3, "Termination of Contract".

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

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

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

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

## SUPPLEMENTARY CONDITIONS

### SC01 PAYMENT FOR DESIGN CHANGES AND REVISIONS

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

The following costs shall be included in the bid Price required to deliver the Work and shall not be reimbursed separately;

  - (a) Standard office expenses such as any photocopying, computer costs, Internet, long distance telephone and fax, including that between the Contractor's main office and branch offices or between the Contractor's offices and other team members offices;
  - (b) Travel time;
  - (c) Travel expenses; and
  - (d) Local project office.
  - (e) Deliverables identified in Design-Build Services and Specifications.

**SC02 PROFESSIONAL LIABILITY INSURANCE REQUIREMENTS:**

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

**SC03 INSURANCE TERMS**

- 1) Insurance Contracts
  - (a) The Contractor must, at the Contractor's expense, obtain and maintain insurance contracts in accordance with the requirements of the Certificate of Insurance. Coverage must be placed with an Insurer licensed to carry out business in Canada.
  - (b) Compliance with the insurance requirements does not release the Contractor from or reduce its liability under the Contract. The Contractor is responsible for deciding if additional insurance coverage is necessary to fulfill its obligation under the Contract and to ensure compliance with any applicable law. Any additional insurance coverage is at the Contractor's expense, and for its own benefit and protection.
- 2) Period of Insurance
  - (a) The policies required in the Certificate of Insurance must be in force from the date of contract award and be maintained throughout the duration of the Contract.
  - (b) The Contractor must be responsible to provide and maintain coverage for Products/Completed Operations hazards on its Commercial General Liability insurance policy, for a period of six (6) years beyond the date of the Certificate of Substantial Performance.
- 3) Proof of Insurance
  - (a) Before commencement of the Work, and no later than thirty (30) days after acceptance of its bid, the Contractor must deposit with Canada a Certificate of Insurance on the form attached herein.
  - (b) Upon request by Canada, the Contractor must provide originals or certified true copies of all contracts of insurance maintained by the Contractor pursuant to the Certificate of Insurance.
- 4) Insurance Proceeds
 

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

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

**SC04 WORKPLACE SAFETY AND HEALTH****1. EMPLOYER/PRIME CONTRACTOR**

- 1.1 The Contractor shall, for the purposes of the Occupational Health and Safety Act, Alberta, and for the duration of the Work:
  - 1.1.1 act as the Employer, where there is only one employer on the work site, in accordance with the Authority Having Jurisdiction;
  - 1.1.2 accept the role of Prime Contractor, where there are two or more employers involved in work at the same time and space at the work site, in accordance with the Authority Having Jurisdiction; and

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1.1.3 agree, in the event of two or more Contractors working at the same time and space at the work site, without limiting the General Conditions, to Canada's order \* to:

1.1.3.1 accept, as the Prime Contractor, the responsibility for Canada's other Contractor(s); or

1.1.3.2 accept that Canada's other Contractor is Prime Contractor and conform to that Contractor's Site Specific Health and Safety Plan.

\* "order" definition: after contract award, Contractor is ordered by a Change Order

## 2. SUBMITTALS

2.1 The Contractor shall provide to Canada:

2.1.1 prior to the pre-construction meeting, a transmittal and copy of a completed Notice of Project form PWGSC - TPSGC 458 (form will be provided to the proposed contractor prior to award), as sent to the Authority Having Jurisdiction (AHJ); and

2.1.2 prior to commencement of work and without limiting the terms of the General Conditions:

2.1.2.1 copies of all other necessary permits, notifications and related documents as called for in the scope of work/specifications and/or by the AHJ; and

2.1.2.2 a site specific Health and Safety Plan as requested.

*NOTE: Please do not include any forms that include personal 3rd party information such as the names of the contractor's employees and their related claims information.*

## 3. LABOUR AUTHORITY CONTACT:

*The contact below represents the Labour Authority in the jurisdiction (AHJ). They are not representatives of the Workers Compensation.*

Do not contact the people referenced below for issues pertaining to WCB or WCB Clearances. Those queries must be directed specifically to the WCB, and where the WCB has both a Labour and Compensation component, WCB issues must be directed to the Compensation/Employer Services sections.

### **ALBERTA North**

Alberta Human Resources and Employment  
Workplace Health and Safety  
10th Floor, 7th Street Plaza  
10030-107 Street  
Edmonton, Alberta, T5J 3E4

Telephone: 1(866) 415-8690

Facsimile: (780) 427-0999

All submissions are to be scanned and emailed to

[whs@gov.ab.ca](mailto:whs@gov.ab.ca)

**SC05 COMPLIANCE WITH ON-SITE MEASURES, STANDING ORDERS, POLICIES, AND RULES**

The Contractor must comply and ensure that its employees and subcontractors comply with all security measures, standing orders, policies or other rules in force at the site where the Work is performed.

**SC06 TYPES AND AMOUNTS OF CONTRACT SECURITY**

Remove and Replace GC9.2.2. with the following

A performance bond (form PWGSC-TPSGC 505) and a labour and material payment bond (form PWGSC-TPSGC 506) referred to in subparagraph 1)(a) of GC9.2 shall be in a form and be issued by a bonding or surety company (see Treasury Board Appendix L, Acceptable Bonding Companies) that is approved by Canada. They can be in the form of Signed and Sealed paper version OR electronic digital version.

Electronic digital versions must meet the following;

1. A performance bond and a labour and material payment bond may be submitted in an electronic or digital format if it meets the following criteria:
  - 1.1. The versions submitted by the Contractor must be verifiable by Canada with respect to the totality and wholeness of the bonds form, including: the content; all digital signatures; all digital seals; with the Surety Company, or an approved verification service provider of the Surety Company.
  - 1.2. The versions submitted must be viewable, printable and storable in standard electronic file formats compatible with Canada, and in a single file. Allowable formats include pdf.
  - 1.3. The verification may be conducted by Canada immediately or at any time during the life of the bonds and at the discretion of Canada with no requirement for passwords or fees.
  - 1.4. The results of the verification must provide a clear, immediate and printable indication of pass or fail regarding Item 1.1.
2. Bonds failing the verification process will NOT be considered to be valid.



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**ANNEX D - CERTIFICATE OF INSURANCE FORM (ATTACHED)**

**ANNEX E - TERMS OF REFERENCE (ATTACHED AS ATT A001.PDF)**

**ANNEX F – DOING BUSINESS WITH PWGSC DOCUMENTATION AND DELIVERABLES MANUAL  
(ATTACHED AS ATT A002.PDF)**

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

**CERTIFICATE OF INSURANCE**



Description and Location of Work Natural Resources Canada (NRCAN) Northern Forestry Centre, Edmonton, Alberta, Design-Build Replacement of Elevators	Contract No. EW038-221455/001/PWZ
	Project No. R.117146.001

Name of Insurer, Broker or Agent	Address (No., Street)	City	Province	Postal Code
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Name of Insured (Contractor)	Address (No., Street)	City	Province	Postal Code
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Additional Insured

*Her Majesty the Queen in Right of Canada as represented by the Minister of Public Works and Government Services*

Type of Insurance	Insurer Name and Policy Number	Inception Date D / M / Y	Expiry Date D / M / Y	Limits of Liability		
				Per Occurrence	Annual General Aggregate	Completed Operations Aggregate
<b>Commercial General Liability</b> <b>Umbrella/Excess Liability</b>				\$	\$	\$
				\$	\$	\$
<b>Builder's Risk / Installation Floater</b>				\$		

I certify that the above policies were issued by insurers in the course of their Insurance business in Canada, are currently in force and include the applicable insurance coverage's stated on page 2 of this Certificate of Insurance, including advance notice of cancellation / reduction in coverage.

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

Telephone number

Signature

Date D / M / Y

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## CERTIFICATE OF INSURANCE

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### 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 Policy shall be endorsed to provide the Owner with not less than 30 days' notice in writing in advance of any cancellation or change or amendment restricting 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>).