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SOLICITATION AMENDMENT

MODIFICATION DE L'INVITATION

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

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

Comments - Commentaires

Vendor/Firm Name and Address

**Raison sociale et adresse du
fournisseur/de l'entrepreneur**

Issuing Office - Bureau de distribution

Information Security and Electronic Warfare Major
Proj/Division de la sécurité de l'information et de la
guerre

11 Laurier St. / 11, rue Laurier

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K1A 0S5

Title - Sujet Information Technology Infrastructu Infrastructure de technologie de l'information à l'appui du commandement et du c	
Solicitation No. - N° de l'invitation W8474-18IT01/C	Amendment No. - N° modif. 012
Client Reference No. - N° de référence du client W8474-18IT01	Date 2024-03-20
GETS Reference No. - N° de référence de SEAG PW-\$\$QE-061-29203	
File No. - N° de dossier 061qe.W8474-18IT01	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM Eastern Daylight Saving Time EDT on - le 2024-03-25 Heure Avancée de l'Est HAE	
F.O.B. - F.A.B.	
Plant-Usine: <input type="checkbox"/> Destination: <input checked="" type="checkbox"/> Other-Autre: <input type="checkbox"/>	
Address Enquiries to: - Adresser toutes questions à: Abela, Aaron	Buyer Id - Id de l'acheteur 061qe
Telephone No. - N° de téléphone () - ()	FAX No. - N° de FAX () -
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction: Specified Herein	

Instructions: See Herein

Instructions: Voir aux présentes

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

ITQ AMENDMENT 012

ITQ Amendment No. 012 is being issued to address the following:

- A) Publish Questions and Answers submitted by Respondents during the ITQ publication.**
- B) Amend PART 7 – RESULTING CONTRACT CLAUSES, Section 7.1 – Statement of Work, Defined Terms:**
- C) Amend PART 7 – RESULTING CONTRACT CLAUSES, Section 7.2.1 – General Conditions**
- D) Amend PART 2 – RESPONDENT INSTRUCTIONS, Section 2.10 – Basis for Canada’s Ownership of Intellectual Property**

A) Questions and Answers

Question Number	Question	Answer
082	Request to delete PART 7 – Resulting Contract Clauses, Section 7.2.2 - Supplemental General Conditions, SACC 4007 (Canada to Own Intellectual Property Rights in Foreground Information); in its entirety.	Reference Invitation to Qualify (ITQ) Amendment No. 008, Sections B) and C) for further information.
083	<p>As a foundational principle of the cloud business model, providers of commercially available cloud services are unable to give up ownership to their work product. They must have the ability to maintain and enhance their products and, ultimately, reuse their know-how for the benefit of all end users. Including Supplemental General Condition (SGC) 4007 in the Invitation to Qualify (ITQ) will limit the ability for cloud service providers to participate in the activities contemplated in the ITQ, as giving up ownership to IP in anything conceived, developed, or reduced to practice as part of a client engagement is incompatible with being in the business of developing and selling commercially available cloud services. There are circumstances where a Cloud Service Provider (CSP) may be able to agree that certain deliverables will be owned by Canada, but such agreement cannot be assessed until such time that the specific scope of work and related deliverables are known. Ultimately, any agreement that the intellectual property in any deliverable would be owned by Canada would need to be identified in a Statement of Work or Task Authorization. The confidentiality and security requirements in the ITQ protect and restrict use of information that will be disclosed to Respondents.</p> <p>Removing 4007 from the ITQ will in no way undermine Canada’s ability to achieve its objectives for the ITQ, the Funded Engagements or subsequent procurement of cloud services. With the above in mind, we ask that:</p>	Reference Invitation to Qualify (ITQ) Amendment No. 008, Sections B) and C) for further information.

	<p>a. Canada remove Supplemental General Condition 4007 from the ITQ, including in Sections 7.2.2 and 7.13, and</p> <p>b. Canada agrees to discuss appropriate terms and conditions, including in respect of IP ownership, for each Funded Engagement on a case-by-case basis prior to the Funded Engagement, based on the scope of services and deliverables to be provided.</p>	
<p>084</p>	<p>PART 7 – Resulting Contract Clauses, Section 7.2.2 and 7.13 - Supplemental General Conditions, SACC 4007 (Canada to Own Intellectual Property Rights in Foreground Information) - As per section 1.2 (Summary), the main objective of the Funded Engagement (FE) is to support the finalization of the Statement of Requirement (SOR), system specifications, and other relevant documentation. It is intended as a vehicle to exchange comprehensive information generally focusing on what would be considered a Cloud Service Providers (CSP’s) Background Information on its commercial cloud technology, as highlighted in Question and Answer #022. Further, most of the Foreground Information would be developed on the basis of a CSP’s Background Information.</p> <p>A CSP’s commercial Cloud technology is protected by copyright and other intellectual property rights laws and international treaties. PSPC’s Principles for the management of intellectual property in defence and marine procurement acknowledge “industry’s interests in the protection of privately developed Intellectual Property IP as valuable assets that are critical to the financial strength of businesses” and reflect that the starting default position is for the contractor to own IP in the foreground information.</p> <p>Supplemental General Condition 4007 provides that all IP rights in the Foreground Information belong to Canada as soon as they come into existence. This is unworkable for CSPs, whose business model is predicated on making commercial off the shelf (i.e., standardized) services to all of their customers. This means that CSPs must have the ability to maintain and enhance their products and, ultimately, reuse their know-how for the benefit of all end users. The scope of the license to IP rights in Background Information under Supplemental General Conditions (SGC) 4007 is also unworkable. Among other things, it would grant to Canada the right to reproduce, modify and improve the CSP’s Background Information, including</p>	<p>Reference Invitation to Qualify (ITQ) Amendment No. 008, Sections B) and C) for further information.</p>

	<p>source code. In addition to undermining a CSP's competitive position, disclosure of source code to the software that underlies its cloud services could undermine the security and resilience of the services themselves.</p> <p>As it stands, the inclusion of SGC 4007 will substantially, if not completely, prevent a CSP from participating in the FE. Even if a CSP were to refuse to participate in a task authorization that required the development of Foreground Information, the license to Background Information (including the obligation to provide source code), in and of itself, creates a barrier to participation for which there is no work around.</p> <p style="padding-left: 40px;">a. With the above in mind, we ask that Canada remove Supplemental General Condition 4007 from the ITQ, including in Sections 7.2.2 and 7.13.</p>	
<p>085</p>	<p>Reference Q&A 022, ITQ Amd006 (Part 2 – Section 2.10; Part 7 – Section 7.2.2 SACC 4007 & Section 7.14 SACC A9006C:</p> <p>Canada has indicated an unwillingness to address concerns raised in Question 022 in a meaningful way. However, based on Response 022, we understand that Canada's intended use for the Background and Foreground Information does not require nor justify the inclusion of Supplemental General Conditions (SGC) 4007. Dissemination will be limited, and the ultimate requirements developed as a result of the Funded Engagement (FE) Contract will aim at remaining generic and competitive, an approach in line with the procurement of a non-proprietary solution. The confidentiality and security requirements in the Invitation to Qualify (ITQ) already protect and restrict use of information that will be disclosed to Respondents by Canada, and an industry standard license to the Work granted by Cloud Service Providers (CSPs) would be sufficient to allow Canada to meet its needs for the FE. With the above in mind, we ask that:</p> <p style="padding-left: 40px;">a. Canada confirm that the FE Contractor will retain ownership in the Work (both Background and Foreground Information), and</p> <p style="padding-left: 40px;">b. Canada include a provision whereby either:</p> <p style="padding-left: 80px;">i. The Contractor grants Canada a non-exclusive, non-transferable, perpetual license</p>	<p>Reference Invitation to Qualify (ITQ) Amendment No. 008, Sections B) and C) for further information.</p>

	<p>to reproduce, use and modify the Work solely for Canada's internal business purposes for this procurement, except as otherwise agreed to in a specific Task Authorization; or</p> <p>Appropriate terms and conditions, including in respect of IP ownership, will be discussed for each Funded Engagement on a case-by-case basis prior to the Funded Engagement, based on the scope of services and deliverables to be provided.</p>	
<p>086</p>	<p>We note that while Canada deleted section 7.2.2 (SACC 4007 - Canada to Own Intellectual Property Rights in Foreground Information), Canada did not delete section 2.10 (Basis for Canada's Ownership of Intellectual Property), SACC 2035 (19) (Ownership) or SACC A9006C (2012-07-16), Defence Contract, and that Canada will amend SACC 2035 (20) (Copyright) in a future amendment.</p> <p>Could Canada please confirm that:</p> <ul style="list-style-type: none"> a) Section 2.10 (Basis for Canada's Ownership of Intellectual Property), b) SACC 2035 (19) (Ownership), and c) SACC A9006C (2012-07-16), Defence Contract will be deleted from the ITQ. 	<p>The amended Copyright clause provision can be found in Section C) below. For clarification, paragraph 2(d) refers to contractors engaged by DND to provide specialized expertise, advice, services and ongoing support to meet ITI in Sp of C2 project objectives. Tasks under these contracts may include, but are not limited to, assisting with the requirement definition, RFP design and quality assurance. These authorized contractors will not include other Qualified Suppliers resulting from this Invitation to Qualify.</p> <ul style="list-style-type: none"> a) Please see section D) for further information. b) <i>SACC Manual</i> Clause 2035 19 (2008-05-12) Ownership, remains unchanged. Canada owns deliverables, and ownership in deliverables is distinct from ownership of Intellectual Property. c) <i>SACC Manual</i> clause <u>A9006C</u> (2012-07-16), Defence Contract – Remains unchanged. This clause speaks to the title of the Work and does not address Intellectual Property. Under the Defence Production Act (DPA), this is a Defence Contract.
<p>087</p>	<p>Canada notes it will be revising SACC 2035 (20) (copyright) in a future amendment. Under section 2.4 (Enquiries – ITQ) the window for submitting questions closed on March 8th prior to this amendment 008 being released.</p> <p>Could Canada please confirm that following the release of any future amendment, the closing date for</p>	<p>The scheduled ITQ closing date will take into account any anticipated ITQ Amendments and allow industry reasonable time to absorb responses to any questions or changes to other sections of the ITQ. This will be decided upon on a case to case basis. Canada will be vigilant in monitoring the schedule and making any necessary changes.</p>

	<p>submissions will be extended so that Respondents will have a reasonable period of time to consider future amendments and Canada will agree to respond to questions submitted by Respondents.</p>	<p>The revision to the Copyright clause will only apply to the Funded Engagement (FE) contract phase. Qualified Suppliers will have the opportunity to provide feedback and engage in further discussions regarding the topic of intellectual property during the draft Request for Proposal (RFP) stage.</p>
<p>088</p>	<p>We are requesting confirmation of our interpretation of Amendment 001 to the ITQ.</p> <p>In Amendment 001, PSPC clarified that a Respondent can rely on a company affiliate's experience in order to demonstrate compliance with the mandatory technical evaluation criteria. These criteria are set out Annex G of the ITQ (Evaluation Criteria) and Section 4.1.2.1 of the ITQ (Mandatory Technical Criteria).</p> <p>The clarification provided by PSPC through Amendment 001 was set out in the response to a question (Question 002) that explicitly mentions that bidders may need to rely on the experience of affiliates to meet the mandatory technical criteria. Accordingly, it is clear that Answer 002 amends the ITQ such that a Respondent can rely on a company affiliate's experience to demonstrate compliance with any or all of the mandatory technical evaluation criteria, including the criteria set out in Annex 6 and Section 4.1.2.1.</p> <p>Please confirm that PSPC concurs with this interpretation of the ITQ as we have relied on Amendment 001 to prepare our response. Although we are of the view that the ITQ (as amended) is not capable of any other reasonable interpretation, we want to be 100% certain that we will not be disqualified on the basis that we rely on the experience and references of affiliates to demonstrate compliance with the evaluation criteria.</p>	<p>Yes, a Respondent can rely on a company affiliate's experience to demonstrate compliance with any or all of the mandatory technical evaluation criteria, including the criteria set out in Annex G – Evaluation Criteria, and PART 4 – Evaluation Procedures and Basis of Selection, Section 4.1.2.1 – Mandatory Technical Criteria.</p>

B) PART 7 – RESULTING CONTRACT CLAUSES, Section 7.1 – Statement of Work, Defined Terms:

Delete:

Defined Terms: Words and expressions defined in the General Conditions or Supplemental General Conditions and used in the Contract have the meanings given to them in the General Conditions or Supplemental General Conditions.

Insert:

Defined Terms: Words and expressions defined in the General Conditions and used in the Contract have the meanings given to them in the General Conditions.

C) At PART 7 – RESULTING CONTRACT CLAUSES, Section 7.2.1 – General Conditions

Subsection 20 – Copyright, is amended as follows:

Delete in its entirety;

Insert:

Section 20 – Copyright, is amended as follows:

Delete in its entirety;

Insert:

1. In this section, "*Material*" means anything that is created by the Contractor as part of the Work under the Contract that is required by the Contract to be delivered to Canada and in which copyright subsists. "*Material*" does not include anything created by the Contractor before the date of the Contract.
2. The Contractor grants to Canada a non-exclusive, perpetual, irrevocable, world-wide, fully-paid and royalty-free license to exercise all rights comprised in the copyright in the Material, for the sole purpose of defining and developing the requirements for the ITI in SP of C2 Project ("Purpose"). For clarity, this license includes the right for Canada or Department of National Defence (DND) to disclose the Material with the following entities, for the Purpose:
 - (a) Communications Security Establishment
 - (b) Shared Services Canada
 - (c) Five Eyes (FVEYS) countries
 - (d) Authorized contractors
3. Notwithstanding the foregoing, any disclosure of the Material, or extract thereof, by Canada to a third party, as permitted herein, is subject to Canada requiring the third party to agree in writing to use the Material solely for the Purpose.
4. Upon the completion or termination of the Purpose or at any time during the ITI in Sp of C2 project, Canada may request that the third party return or destroy, at the option of Canada, the Material.

5. Copyright in any translation of the Material made by or for Canada belongs to Canada. Canada agrees that any translation must include the Contractor's copyright notice and any proprietary right notice that was part of the original, if any. Canada acknowledges that the Contractor is not responsible for any technical errors or other problems that may arise as a result of the translation.
6. No restrictions other than those set out in this section must apply to Canada's use of the Material or of translated versions of the Material.
7. The Contractor, during the performance of the Contract *until after the Request for Proposal (RFP) for ITI in Sp of C2 project results in a Contract Award*, must keep confidential and must not publish or otherwise disclose to any person any Materials or information therefrom, except as may be necessary to perform the Work under the Contract. *Prior authorization from DND is also mandatory before proceeding*. The Contractor must impose the same obligation of confidentiality on any person to whom the information is disclosed to perform the Work.

D) At PART 2 – RESPONDENT INSTRUCTIONS, Section 2.10 – Basis for Canada's Ownership of Intellectual Property

Delete:

2.10 Basis for Canada's Ownership of Intellectual Property

The Department of National Defence has determined that any intellectual property rights arising from the performance of the Work under the resulting contract will belong to Canada, on the grounds of National Security and that the main purpose of the Funded Engagement contract, or of the deliverables contracted for, is to generate knowledge and information for public dissemination.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED