



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Instructions to Bidders - Construction

Dated: 8 YW~~a~~ VYf *, 2011

Canada 

INSTRUCTIONS TO BIDDERS - CONSTRUCTION - DECEMBER 6, 2011

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GI01 Code of Conduct for Procurement

1. To comply with the [Code of Conduct for Procurement](#) bidders must respond to bid solicitations in an honest, fair and comprehensive manner, accurately reflect their capacity to satisfy the requirements stipulated in the bid solicitation and resulting contract, submit bids and enter into contracts only if they will fulfil all obligations of the Contract. To ensure fairness, openness and transparency in the bidding process, the following activities are prohibited:

(a) payment of a contingency fee by any party to a contract to a person to whom the *Lobbying Act* (1985, c. 44 (4th Supp.)) applies;

(b) corruption, collusion, bid-rigging or any other anti-competitive activity in the bidding process for contracts for the provision of goods or services.

2. By submitting a bid, the Bidder certifies that neither the Bidder nor any of the Bidder's Affiliates has ever been convicted of a criminal offence in respect of the activities stated in (a) or (b) above or is the subject of outstanding criminal charges in respect of such activities filed subsequent to September 1, 2010.

3. Bidders further understand that the commission of certain offences will render them ineligible to be awarded a contract. By submitting a bid, the Bidder certifies that neither the Bidder nor any of the Bidder's Affiliates has ever been convicted or is the subject of outstanding criminal charges in respect of an offence under any of the following provisions:

Section 121 (*Frauds on the government and Contractor subscribing to*

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election fund), Section 124 (Selling or Purchasing Office), Section 380 (Fraud committed against Her Majesty) or Section 418 (Selling defective stores to Her Majesty) of the Criminal Code of Canada, or under paragraph 80(1)(d) (False entry, certificate or return) subsection 80(2) (Fraud against Her Majesty) or Section 154.01 (Fraud against Her Majesty) of the Financial Administration Act.

4. For the purpose of this section, business concerns, organizations or individuals are Bidder's Affiliates if, directly or indirectly, 1) either one controls or has the power to control the other, or 2) a third party has the power to control both. Indicia of control, include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity created following the charges or convictions contemplated in this section which has the same or similar management, ownership, or principal employees as the Bidder that is charged or convicted, as the case may be.
5. Except in the limited circumstances set out in subsection 6 below, the Contracting Authority will declare non-responsive any bid in respect of which the information contained in the certifications contemplated above is determined to be untrue in any respect by the Contracting Authority.
6. Subsection 5 has no application in the circumstances where a bidder has pled guilty of an offence contemplated in Section 01, 1. (b) and the Bidder has provided with its bid an assurance from the Competition Bureau of Canada indicating that the Bidder has been granted leniency, or in the circumstances where the Bidder provides documentation from the National Parole Board that the Bidder has obtained a criminal pardon in relation to such offence.
7. The Bidder acknowledges and agrees that the certifications contemplated must remain valid during the period of any resulting contract arising from this bid solicitation.

GI02 COMPLETION OF BID & COMMUNICATION DURING SOLICITATION PERIOD

- 1) The bid shall be
 - (a) submitted on the Construction Tender Form – FP-5155E, provided through the Government Electronic Tendering Service (GETS) or as otherwise directed by Fisheries and Oceans Canada;
 - (b) based on the Tender Documents listed on the Tender Form;
 - (c) correctly completed in all respects;
 - (d) signed by a duly authorized representative of the Bidder; and
 - (e) accompanied by
 - (i) bid security as specified in GI09; and

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(ii) any other document or documents specified elsewhere in the solicitation where it is stipulated that said documents are to accompany the bid.

2) Subject to paragraph 6) of GI12, any alteration to the pre-printed or pre-typed sections of the Construction Tender Form – FP-5155E, or any condition or qualification placed upon the bid shall be cause for disqualification. Alterations, corrections, changes or erasures made to statements or figures entered on the Construction Tender Form shall be initialled by the person or persons signing the bid. Initials shall be original(s). Alterations, corrections, changes or erasures that are not initialled shall be deemed void and without effect.

3) Unless otherwise noted elsewhere in the Bid Documents, facsimile copies of bids are not acceptable. E-mail copies of bids are also not acceptable.

4) To ensure the integrity of the competitive bid process, enquiries and other communication regarding the bid must be directed only to the Contracting Authority identified in the bid. Failure to comply with this requirement may result in the proposal being declared non-responsive.

To ensure consistency and quality of information provided to bidders, significant enquiries received and the replies to such enquiries will be provided simultaneously to bidders to whom the tender has been sent without revealing the sources of the enquiries.

GI03 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.

GI04 GOODS AND SERVICES TAX / HARMONIZED SALES TAX

1) Bidders are not to include any amounts for the Goods and Services Tax (GST) or Harmonized Sales Tax (HST), whichever is applicable, and the GST/HST shall not be included when calculating the amount of any bid security or contract security that may be required. Any amount levied in respect of the GST/HST shall be billed as a separate item in a progress claim submitted by the Contractor, and shall be paid to the Contractor in addition to the amount approved by Canada for work performed under the Contract. The Contractor shall be required to remit the appropriate amount to the Canada Revenue Agency in accordance with the applicable legislation.

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GI05 QUEBEC SALES TAX

1) The Federal Government is exempt from the Quebec Sales Tax (QST). Bidders shall not include in their prices any amount that is intended to cover the QST on goods and services performed in the execution of the Work except for such amounts for which an Input Tax Refund is not available. The successful Bidder should make arrangements directly with the Province of Quebec to recover any QST paid by it in performing the Work under the resulting Contract.

GI06 CAPITAL DEVELOPMENT AND REDEVELOPMENT CHARGES

1) For the purposes of GC1.8, "Laws, Permits and Taxes", in the General Conditions of the Contract, only fees or charges directly related to the processing and issuing of building permits shall be included. The Bidder 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.

GI07 REGISTRY AND PRE-QUALIFICATION OF FLOATING PLANT

1) Dredges or other floating plant to be used in the performance of the Work must be on Canadian registry. For dredges or other floating plant that are not of Canadian make or manufacture, the Bidder must obtain a certificate of qualification from Industry Canada as described in the [Tender Form Floating Plant \(form FP-5141-E\) - http://www.dfo-mpo.gc.ca/forms-formulaires/FP_5141_E.pdf](http://www.dfo-mpo.gc.ca/forms-formulaires/FP_5141_E.pdf), and this certificate must accompany the bid. Plant so qualified by Industry Canada may be accepted on this project.

GI08 LISTING OF SUBCONTRACTORS 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.

GI09 BID SECURITY REQUIREMENTS

1) Bid security is required when the advertised project budget is greater than \$100,000.00 or when specifically called for in the Tender Documents. The Bidder shall submit bid security with the tender in the form of a bid bond or a security deposit, with original signature(s). Fax or photocopies are NOT acceptable.

- a) If the tender amount is \$500,000.00 or less, the bid security shall be equal to not less than 10% of the tender amount;
- b) If the tender amount is greater than \$500,000.00, the bid security shall be \$50,000.00 plus an amount that is equal to not less than 5% of that part of the tender amount that exceeds \$500,000.00,
- c) The maximum amount of bid security required with any tender is \$2,000,000.00;

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- 2) A [bid bond \(form FP-5132-E\)](http://www.dfo-mpo.gc.ca/forms-formulaires/FP_5132_E.pdf) - http://www.dfo-mpo.gc.ca/forms-formulaires/FP_5132_E.pdf, shall be in an approved form, properly completed, with original signature(s) and issued by an approved 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](#).
- 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 payable to the Receiver General for Canada;
 - (b) bonds of, or unconditionally guaranteed as to principal and interest by, the Government of Canada; or
- 4) A bill of exchange, bank draft or money order referred to in subparagraph 3)(a) of GI09 shall be certified by or drawn on
 - (a) a corporation or institution that is a member of the Canadian Payments Association;
 - (b) a corporation that accepts public deposits and repayment of the deposits is unconditionally guaranteed by Her Majesty in right of a province;
 - (c) a corporation that accepts deposits that are insured by the Canada Deposit Insurance Corporation or the "Régie de l'assurance-dépôts du Québec" to the maximum permitted by law;
 - (d) 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)(b) of the *Income Tax Act*; or
 - (e) Canada Post Corporation.
- 5) If a bill of exchange, bank draft or money order is 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 paragraph 4) of GI09, either by letter or by a stamped certification on the bill of exchange, bank draft, or money order.
- 6) For the purposes of this section 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 time, a sum certain of money to, or to the order of, the Receiver General for Canada.
- 7) Bonds referred to in subparagraph 3)(b) of GI09 shall be provided on the basis of their market value current at the date of solicitation closing, and shall be
 - (a) payable to bearer;

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(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.

8) 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.

9) An irrevocable standby letter of credit referred to in paragraph 8) of GI09 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 for Documentary Credits, 2007 Revision, ICC Publication No. 600;

(g) clearly specify that it is irrevocable or deemed to be irrevocable pursuant to article 6 c) of the ICC Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600; and

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(h) 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.

10) 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.

11) Notwithstanding the provisions of paragraph 10) of GI09 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.

GI10 SUBMISSION OF BID

1) The Construction Tender Form – FP-5155E, duly completed, and the bid security shall be enclosed and sealed in an envelope provided by the Bidder, and shall be addressed and submitted to the office designated on the Front Page "Invitation to Tender" 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 Instructions to Bidders

- (a) the bid shall be in Canadian currency;
- (b) exchange rate fluctuation protection is not offered; and
- (c) any request for exchange rate fluctuation protection shall not be considered.

3) Prior to submitting the bid, the Bidder shall ensure that the following information is clearly printed or typed on the face of the bid envelope:

- (a) Solicitation Number;
- (b) Name of Bidder;
- (c) Return address; and
- (d) Closing Date and Time.

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- 4) Timely and correct delivery of bids is the sole responsibility of the Bidder.
- 5) Bids delivered after the stipulated closing date and time will be returned unopened.
- 6) Bids will remain open for acceptance for a period of not less than sixty (60) days from the closing date of the bid solicitation, unless specified otherwise in the bid solicitation. Canada reserves the right to seek an extension of the bid validity period from all responsive bidders in writing, within a minimum of three (3) days before the end of the bid validity period. If the extension is accepted by all responsive bidders, Canada will continue with the evaluation of the bids. If the extension is not accepted by all responsive bidders, Canada will, at its sole discretion, either continue with the evaluation of the bids of those who have accepted the extension or cancel the solicitation.

GI11 MODIFICATION OF BID

- 1) A bid submitted in accordance with these instructions may be modified by letter or facsimile provided the modification is received at the office designated for the receipt of bids, on or before the date and time set for the closing of the solicitation. The letter or facsimile shall be on the Bidder's letterhead or bear a signature that identifies the Bidder.
- 2) A modification to a bid that includes unit prices must clearly identify the change(s) in the unit price(s) and the specific item(s) to which each change applies.
- 3) A letter or facsimile submitted to confirm an earlier modification shall be clearly identified as a confirmation.
- 4) Failure to comply with any of the above provisions shall result in the rejection of the non-compliant modification(s) only. The bid shall be evaluated based on the original bid submitted and all other compliant modification(s).

GI12 ACCEPTANCE 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 GI12, Canada may reject a bid if any of the following circumstances is present:
 - (a) the Bidder, or any employee or subcontractor included as part of the bid, has been convicted under section 121 ("Frauds on the government" & "Contractor subscribing to election fund"), 124 "Selling or purchasing office"), 380 ("Fraud committed against Her Majesty") or 418 ("Selling defective stores to Her Majesty") of the *Criminal Code* of Canada, or under paragraph 80(1)(d) ("False entry, certificate or return"), subsection 80(2) ("Fraud against Her Majesty") or Section 154.01 ("Fraud against Her Majesty") of the *Financial Administration Act*;
 - (b) the Bidder's bidding privileges are suspended or are in the process of being suspended;

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(c) 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;

(d) with respect to current or prior transactions with Canada

(i) the Bidder is bankrupt or if, for whatever reason, its activities are rendered inoperable for an extended period;

(ii) 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;

(iii) 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

(iv) 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)(d)(iv) of G112, 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 G112, 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) If Canada intends to reject a bid pursuant to a provision of paragraphs 1), 2), 3) or 4) of G112, other than subparagraph 2)(b) of G112, Canada shall so inform the Bidder

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and provide the Bidder ten (10) days within which to make representations, prior to 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.

GI13 LANGUAGE OF THE CONTRACT

1) The contract documents to be signed by the successful Bidder shall be in the same official language (English or French) as the language of the tender documents submitted.

GI14 TO BE ASSIGNED

GI15 CONTRACT SECURITY

1) Contract Security is required when advertised project budget is greater than \$100,000.00 or, if the advertised budget is less than \$100,000.00 when specifically called for in the Tender Documents. Contract Security shall be submitted within fourteen (14) days after written notification of the acceptance, by Canada, of the Contractor's tender in accordance with section GC9 of the General Conditions - Construction.

GI16 BID DEPOSITORY

1) When called for by the Tender Documents, Bidders shall obtain tenders for the work specified through the Bid Depository according to local rules and trade definitions.

GI17 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.

GI18 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 licences, 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 1) of GI18, a Bidder shall, if requested, provide a copy of every valid licence, permit, registration, certificate,

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declaration, filing or other authorization listed in the request, and shall provide such documentation within the time limit(s) set out in the said request.

3) Failure to comply with the requirements of paragraph 2) of GI18 shall result in disqualification of the bid.

GI19 INTERNATIONAL SANCTIONS

1) Bidders must ensure that no goods or services that originate, either directly or indirectly, from the countries subject to economic sanctions imposed by Canada, are included in their tender. Details on existing sanctions are set out at: <http://www.dfait-maeci.gc.ca/trade/sanctions-en.asp>.

GI20 APPROVAL OF ALTERNATIVE MATERIALS

1) When materials are specified by trade names or trademarks, or by manufacturers' or suppliers' names, the bid shall be based on use of the named materials. During the solicitation period, alternative materials may be considered provided full technical data is received in writing by the Contracting Officer at least ten (10) calendar days prior to the solicitation closing date. If the alternative materials are approved for the purposes of the bid, an addendum to the bid documents shall be issued.

GI21 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 shall 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.

2) The [FP-5135-E - Contractor Performance Evaluation Report Form](http://www.dfo-mpo.gc.ca/forms-formulaires/FP_5135_E.pdf) - http://www.dfo-mpo.gc.ca/forms-formulaires/FP_5135_E.pdf , is used to record the performance.

GI22 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.

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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.