



# Yukon

## REQUEST FOR BIDS

Title:

**Supply and Deliver Asphalt Products to the Government of Yukon**

Issued by:

**Highways and Public Works**

### Overview and Information:

**Community:** Carcross, Tagish, Haines Junction, Mayo, Burwash Landing, Destruction Bay, Whitehorse, Watson Lake, Carmacks, Ross River, Pelly, Teslin, Dawson City and Beaver Creek

**Traditional Territory:** Carcross/Tagish First Nation, Champagne and Aishihik First Nations, First Nation of Na-Cho Nyäk Dun, Kluane First Nation, Kwanlin Dun First Nation, Liard First Nation, Little Salmon/Carmacks First Nation, Ross River Dena Council, Selkirk First Nation, Ta'an Kwäch'än Council, Teslin Tlingit Council, Tr'ondëk Hwëch'in and White River First Nation

Supply and deliver asphalt products to various sites and locations throughout the Yukon Territory for the Government of Yukon.

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**PREVIEW**

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# PART A: DEFINITIONS AND INTERPRETATION

## 1.0 Definitions

1. For the purposes of this Tender:
  1. **“Bid”** means a bid submitted by a Bidder in response to and in accordance with the terms of this Tender;
  2. **“Bid Form”** means the form(s) upon which a Bid is submitted as described under this Tender, which form part of the Bid and may contain multiple pages (as amended in accordance with the terms of this Tender);
  3. **“Bidder”** means an individual, partnership, corporation or other valid legal entity recognized under this Tender that submits a Bid to perform the Work;
  4. **“Business Day(s)”** means a day that is not a Saturday, a Sunday or a statutory holiday in the Yukon;
  5. **“Closing Location”** means the specified location(s) for the submission of Bids as described under section 2.0 – Electronic Bidding System and Closing Location of Part B: Instructions to Bidders and this Tender (as amended);
  6. **“Closing Time”** means the date and time Bids must be duly received by the Owner in accordance with section 1.0 - Closing Time of Part B: Instructions to Bidders and the terms of this Tender (as amended in accordance with the terms of this RFB);
  7. **“Contract”** means the contract which may be awarded by the Owner under this Tender for the performance of the Work, and includes Part F: Contract, Specifications, and Other Documents including: general terms and conditions, schedules, appendices, and any supplementary or project specific terms and conditions (as amended in accordance with the terms of this Tender);
  8. **“Electronic Bidding System”** means the bids&tenders Electronic Bidding System at: <https://yukon.bidsandtenders.ca/>
  9. **“Owner”** means the Government of Yukon or a duly authorized representative of the Government of Yukon;
  10. **“Specifications”** or **“Scope of Work”** means the work, services, standards, requirements, and plans as described under Part F: Contract, Specifications, and Other Documents (as amended in accordance with the terms of this RFB);
  11. **“Tender”** or **“RFB”** means this tender and any addenda issued in accordance with the terms of this Tender;
  12. **“Work”** means everything done or to be performed by or a through the selected Bidder/Contractor under the Contract, as set out in the Contract and any Specifications, including: preparation and provision of any work, goods, services, materials, equipment or deliverables required by the Contract and any ancillary or related work; and
  13. **“Yukon First Nation Criteria”** means the evaluation criteria related to Yukon First Nations under this RFB, including: Yukon First Nation ownership, business location, and/or Yukon First Nation labour or wages.

## 2.0 Interpretation

1. In this Tender:
  1. The words shall have a plural, feminine or neutral meaning where the context so requires.
  2. No term of this Tender will be construed against or interpreted to the disadvantage of the Owner because the Owner has drafted the provision.
  3. Throughout this Tender, terminology is used that clearly identifies the relative importance of each of the Owner’s requirements. Bidders must understand the meaning of each term as described below and take the meaning of each term into account in responding to this Tender:
    1. the words “must”, “shall”, and “will” have an imperative or mandatory meaning;
    2. the word “should” is not mandatory, but is recommended to be followed, and failure to comply may affect the acceptance of a Bid, and failure to comply or follow the recommendation may, at the Owner’s discretion, result in the rejection of a Bid;

3. the words “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall in all cases be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”;
4. where a right or discretion is given to the Owner under this Tender, whether using words such as: “in its discretion”, “at its discretion”, or “at the discretion of the Owner”, such discretion shall be interpreted in preference to the Owner and deemed for any and all purposes to be exercisable by the Owner at the Owner's sole discretion taking into account solely what the Owner subjectively considers to be in the interests of the Owner, all without consideration of the interests of any Bidders or any other person; and
5. where a term states it is “notwithstanding”, “despite”, or “regardless of” any other term in this Tender, the term shall take precedence and govern over all other provisions of this Tender that are inconsistent or conflict with the term.

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## PART B: INSTRUCTIONS TO BIDDERS

**IMPORTANT:** Bidders must carefully read and follow the instructions set out in this Tender, including all addenda, attached documents and materials, as any variation from them may result in the rejection of a Bid. If a Bidder has any questions or concerns regarding the Tender, they should submit written questions in accordance with the terms of the Tender. By submitting a Bid, Bidders acknowledge and agree that they bear the full risk and responsibility for the rejection of their Bid if they fail to follow the instructions or requirements of this Tender, fail to ask questions or seek clarification from the Owner on any instructions, requirement, or matter related to this Tender, or fail to provide any information requested in the Tender.

### 1.0 Closing Time

1. Bids must be received at the Closing Location **before the date and time stated in the “Bid Closing Date” section in the View Details page of the Electronic Bidding System.**  
Delivery of Bids prior to the Closing Time is the sole responsibility of Bidders. Bids received after the Closing Time will not be considered regardless of the reason for their late delivery.
2. The electronic clock within the Electronic Bidding System is deemed to be conclusively correct as to the date and time of receipt of Bids. A Bid will only be considered to have been submitted once it has been RECEIVED by the Electronic Bidding System, and a confirmation email from such system is received by the Bidder, confirming receipt of the Bid, subject to any amendments by the Bidder.

### 2.0 Electronic Bidding System and Closing Location

1. In order to be eligible to submit a Bid on this Tender, Bidders must register as a Plan Taker for this Tender on the Electronic Bidding System and agree to any terms of service on the Electronic Bidding System.
2. All Bids must be submitted on and through the Electronic Bidding System in accordance with the terms of this Tender. The Electronic Bidding System can be found on the following website:  
<https://yukon.bidsandtenders.ca/>
3. Bids submitted in hard copy form or through any other electronic system, including fax or email, will not be accepted or considered regardless of the reason, unless otherwise explicitly stated and authorized under this Tender.
4. Bids must be submitted in accordance with the requirements, procedures, and terms of service of the Electronic Bidding System. Please see: <https://yukon.bidsandtenders.ca/> for further information on the requirements, procedures, and terms of service of the Electronic Bidding System or contact bids&tenders using the email address [support@bidsandtenders.ca](mailto:support@bidsandtenders.ca).
5. Bidders acknowledge and agree that they bear the full risk and sole responsibility for: registering on the Electronic Bidding System, including as a Plan Taker for this Tender; following the requirements, procedures, and terms of service of the Electronic Bidding System in order to submit, amend, or resubmit a Bid; asking questions or seeking clarification on any requirements, procedures, terms of service, or any other matter related to or arising from the Electronic Bidding System.
6. For greater certainty, the terms of this Tender apply in addition to any requirements, procedures, and terms of service related to or arising from the Electronic Bidding System.
7. If a Bidder wishes to confirm that their Bid has been received prior to the Closing Time, they may check the Electronic Bidding System or contact bids&tenders using the email address: [support@bidsandtenders.ca](mailto:support@bidsandtenders.ca).

### 3.0 Amendments by the Bidder

1. Once a Bid has been submitted, Bidders may amend and resubmit their Bid before the Closing Time in accordance with the terms of this Tender. Amendments received after the Closing Time will not be considered regardless of the reason for their late delivery.
2. Any amendments by a Bidder must be made through the Electronic Bidding System and in accordance with the requirements, procedures, and terms of service of the Electronic Bidding System. **After an amendment is made to a Bid, Bidders must resubmit their Bid through the Electronic Bidding System.**

3. Bidders are solely responsible for ensuring that any applicable bid security and consent of surety reflects and incorporates any amendments that increases or decreases the price of their Bid.
4. If any amendment to a Bid is unclear, ambiguous as to its meaning or intent, or does not comply with the requirements of this Tender, then the Owner reserves the right, at its discretion to:
  1. reject the amendment and the original Bid, including any previous amendment(s) to the Bid; or
  2. where the amendment has a non-material defect, remedy the non-material defect in accordance with the terms of this Tender, and accept the amendment.
5. The Bidder bears the full risk that the Electronic Bidding System, internet, and Owner's equipment functions in a proper and timely manner with respect to the delivery of any amendment. The Owner does not assume any risk, responsibility or liability, and makes no representation or warranty in any way, including in contract or tort (including negligence) to any person or the Bidder that the Electronic Bidding System, internet, or any equipment is able to transmit or receive transmissions or information in an accurate, reliable, or timely manner, or that an electronic transmission or communication is received by the Owner in its entirety or within any time limit specified under this Tender. If Bidders are concerned about the delivery of information or amendments, they are fully and solely responsible for ensuring that such information or amendments are received in accordance with the terms of this Tender before the Closing Time.

#### **4.0 Withdrawal of Bid Prior to Closing Time**

1. Prior to the Closing Time, Bidders may withdraw their Bid through and in accordance with the terms and requirements of the Electronic Bidding System.
2. If a Bidder withdraws and re-submits a Bid, then the Bid with the latest time and date will be deemed to be the official Bid and supersedes entirely anything submitted previously.

#### **5.0 Questions and Requests for Alternative Materials or Equipment**

1. All questions or inquiries related to the Tender shall be submitted in writing through the Electronic Bidding System and before the question deadline stated on the Electronic Bidding System. The Owner may respond to any questions or inquiries (in whole or in part) by issuing an addendum. Information obtained from any other source other than the Electronic Bidding System and any addenda issued thereunder may not be accurate and should not be relied upon. The Owner has no duty or obligation in any way to respond to inquiries and reserves the right, at its discretion, to respond or not respond to questions or inquiries.
2. The Bidder represents and warrants that it has carefully and diligently read and followed the instructions set out in this Tender, and made best efforts to ask any questions or seek out assistance to ensure that it complies with the terms of this Tender.
3. Bidders are responsible for reviewing the Tender documents and should immediately notify the Owner, in writing, if the Tender documents appear to be incomplete or contain any discrepancies, inconsistencies, ambiguities, errors or omissions, or if conditions for the Work differ from those described in the Tender documents.
4. Bidders are solely responsible for ensuring that they provide any materials or equipment specified in the Contract. Prior to the Closing Time, and subject to any deadline or time limits for questions or inquiries, Bidders may make a written request to the Owner for approval of alternative materials or equipment to perform the Work other than those specified in the Specifications or Contract. The Owner may respond by issuing an addendum in accordance with this Tender. The Owner has no duty or obligation in any way to: approve or accept alternative materials or equipment other than those specified in the Specifications or Contract or to respond to such requests.
5. The Bidder should include in its request for approval of alternate materials or equipment:
  1. the pros and cons of using the alternative materials or equipment;
  2. sufficient proof that the alternative materials or equipment are compatible with the Work and equal to or superior to the materials or equipment specified in the Contract; and
  3. detailed specifications of the alternative materials or equipment.

The Owner may request further information or documentation related to the alternative materials or equipment.

6. The Owner may review the proposed alternate materials and equipment and, at its discretion, approve or not approve the alternate materials or equipment. The Owner may reject the alternate materials or equipment without response or reasons for rejection. If the alternate materials or equipment are approved by the Owner, the Owner will issue an addendum designating the alternate materials or equipment as approved by the Owner, providing that responsibility for the selection, suitability and performance of the alternate remains at all times with the Bidder. For greater certainty, no alternate materials or equipment will be considered approved or acceptable under the Contract or by the Owner, unless the alternate materials or equipment are explicitly approved by the Owner by written addendum, and any risks, changes or extra costs or expenses related to the Work arising from or related to the approved alternate materials or equipment shall be deemed to be included in the price of the Bid and Contract.
7. The Owner will not accept Bids with alternative materials and equipment, unless such alternative materials and equipment are approved prior to the Closing Time by the Owner via addendum in accordance with this Tender. Bidders bear the full risk and responsibility for the rejection of their Bid if they submit a Bid with alternate materials and equipment that are not approved by the Owner via addendum.

## **6.0 Addenda**

1. To receive addenda or notice of addenda on the Tender, Bidders must register as a Plan Taker for this specific Tender on the Electronic Bidding System.
2. The Owner may, at any time prior to the Closing Time, issue addenda through the Electronic Bidding System to amend the terms of the Tender, including: adding, modifying, omitting, or deleting terms or information; correcting errors, discrepancies or omissions in the Tender; or clarifying the meaning or intent of any provision therein. All addenda are deemed to be incorporated into the Tender or subsequent Contract (as applicable). The Owner, at its discretion, will determine the form and content of any addenda. Written addenda are the only means of amending or clarifying this Tender, and no other form of communication whether written or oral, will in any way be included in or amend this Tender and must not be relied upon by Bidders.
3. If the Owner issues addenda within three (3) Business Days of the Closing Time, then the Owner may extend the Closing Time.
4. If a Bid has been submitted and a subsequent addendum has been issued, then such Bid will be deemed incomplete and automatically withdrawn under the Electronic Bidding System, and Bidders are solely responsible for resubmitting their Bid in accordance with the terms of the Tender prior to the Closing Time.
5. Bidders are solely responsible for checking and ensuring that they have received all addenda and incorporated such addenda into their Bid.

## **7.0 Responsibility for Bid Costs**

1. Bidders are solely responsible for any and all costs or expenses related to the preparing, presenting, and delivery of their Bids, including: obtaining and providing any documentation, certifications, materials, applicable bid security, or contract security; attending any information meetings or site visits if required; or reviewing, responding to, or incorporating any addenda.

## **8.0 Irrevocability Period**

1. Bidders acknowledge and agree that their Bid shall be unconditional, irrevocable and open to acceptance by the Owner at any time within sixty (60) calendar days after the Closing Time and any extension thereof. Within this 60 calendar day irrevocability period, the Owner reserves the right, at its discretion, to extend the irrevocability period for an additional thirty (30) calendar days upon written notice to Bidders. Failure by the Bidder to receive such notice will not alter or affect the extension of the irrevocability period, and Bidders are solely responsible for ensuring that their Bids are open to acceptance for the additional 30 calendar day irrevocability period. If, after the irrevocability period of the Tender or any extension thereof, the Bidder has not revoked its Bid in writing, the Owner may accept the Bid.

## 9.0 Opening of Bids

1. After the Closing Time, Bids will be opened and viewed.
2. Once Bids are opened, they become the sole property of the Owner, and will not be returned, unless otherwise stated in the Tender. The Bidder agrees that the Owner may make additional copies of all or part of the Bid for: the Owner's internal use, a governmental purpose, or any other purpose required or allowed by law.
3. The price(s) or amount of the Bid and any other information or materials disclosed or posted by the Owner are unverified and shall not constitute acceptance of the Bid, price/amount, or other information or materials until review, verification, calculation, and adjustment by the Owner in accordance with the terms of this Tender.

## 10.0 Right to Cancel Tender

1. This Tender does not commit the Owner in any way to award or execute a Contract. Despite any other term in this Tender, at any time prior to award of the Contract, the Owner reserves the right, at its discretion, to cancel this Tender without cause and for convenience or for any other reason without liability, award, or compensation to Bidders. Bidders acknowledge and agree that by submitting a Bid, the price(s) of their Bid may be made public, and the Owner reserves the right to reissue this Tender upon the same or different terms and conditions, including in circumstances where Bids or pricing (in whole or in part) have been made public.

## 11.0 Right to Reject Bid

1. Failure to comply with any instruction or term contained in this Tender may be deemed sufficient cause by the Owner for the rejection of a Bid. Any items omitted from or any terms, conditions, assumptions, or qualifications added to the Bid may cause the Bid to be rejected or affect the evaluation of the Bid. Any Bid submitted on forms other than those provided or in a form or through a system not explicitly authorized under this Tender may also be rejected. No escalation clauses will be accepted, unless explicitly authorized under this Tender.
2. The Owner need not necessarily accept the lowest priced, highest ranked, or any Bid. Without limiting the generality of the foregoing, the Owner reserves the right, at its discretion, to reject a Bid and has no duty or obligation in any way to accept a Bid, award, or execute a Contract if:
  1. the Bid is not submitted in the required form or in accordance with the terms of this Tender, is non-legible, or has significant errors or omissions of requested information;
  2. the Bidder fails to submit or complete the Bid Forms, or misrepresents or fails to properly identify or describe a subcontractor or the Bidder's own forces in the Bid Forms;
  3. the Bid is not submitted or signed by a duly authorized person representing the Bidder;
  4. the Bidder fails to submit applicable bid security in the required form or bid security is not submitted in accordance with the terms of the Tender;
  5. the Bid includes additional terms, conditions, assumptions, qualifications, or changes;
  6. the amounts in the Bid are unbalanced, including pricing that is too low or too high (in whole or in part);
  7. the Bid is in excess of the Owner's available funds or budget for the Work, materially in excess of the prices received for similar work in the past, or in excess of the Owner's cost to perform the Work, or a significant portion thereof, with its own forces, or the Bid is too low and is 25% or more, lower than the Owner's estimated budget for the Work;
  8. there is evidence that the Bidder would be unable to properly perform or carry out the Work, Contract, or contents of its Bid, including: lack of experience, qualifications, equipment, materials, or resources to satisfactorily perform the Contract or Work; ability to perform the Contract or Work or satisfactorily meet the schedule for the Work; difficulty working with the Bidder; or past proclivity of disputes with the Owner or claims by the Bidder;
  9. there is evidence that the Bidder does not or cannot perform the Work or comply with the terms of the Specifications or Contract;

10. there is evidence, that the Bidder, its officers, employees, subcontractors, consultants, agents, or other members of the Bidder's team have been involved in fraud, bribery, misrepresentation, illegal or criminal activity;
11. the Bidder is in breach of or fails to comply with any applicable policies of the Owner, including: Government of Yukon's General Administration Manual, or is in breach of or fails to comply with any applicable laws;
12. the Bidder fails to follow or comply with any instructions or terms of this Tender;
13. the Bidder fails to comply with the requirements, procedures, and terms of service of the Electronic Bidding System; or
14. in the discretion of the Owner, best value for the Owner or the financial or other interests of the Owner would best be served by rejecting or not accepting a Bid or not executing a Contract with a Bidder.

The above list is non-exhaustive and the Owner reserves the right, at its discretion, to reject a Bid that otherwise fails to comply with the Tender or for any other reasonable causes.

3. The Bidder represents that it has carefully and diligently read and followed the instructions set out in this Tender, and made best efforts to ask any questions or seek out assistance to ensure that it complies with the terms of this Tender.
4. **Bids that include any special conditions, assumptions, additional terms or contract clauses, disclaimers, qualifications, additional pricing or work, math errors or ambiguous pricing, or any other changes to the Work, Contract, or Tender (collectively, the "Counter Terms") may be rejected. Such Counter Terms may constitute a counter-offer, create uncertainty or unfairness, or affect the cost or performance of the Contract. Bidders are cautioned to review their Bids for any Counter Terms, and assume the full risk and responsibility for rejection or disqualification of their Bid if they include such Counter Terms in or with their Bid.**

#### 12.0 Acceptance of Minor or Non-Material Defects

1. Despite any other term under this Tender, if there is a non-material defect or minor irregularity in a Bid or in a Bidder's compliance with any requirement or instruction of this Tender, then the Owner reserves the right, at its discretion, to waive the minor defect or minor irregularity, and accept the Bid.
2. The Owner, reserves the right, at its discretion, to request written clarification from a Bidder or third party, in a form and with content acceptable to the Owner, on any non-material defect or minor irregularity related to a Bid. If, at the discretion of the Owner, the Bidder or third party fails to provide a response within the timeframe specified by the Owner, or fails to provide a written response that sufficiently and properly clarifies its Bid, then this will be deemed sufficient grounds by the Owner to reject a Bid.
3. For greater certainty, the Owner's right to waive or clarify non-material defects or minor irregularities in a Bid does not entitle a Bidder with an opportunity to substantially change or repair its Bid, and Bidders remain solely responsible for following the terms or requirements of this Tender, and bear the full risk and responsibility if they fail to follow the terms or requirements of this Tender or fail to ask questions or seek clarification from the Owner on any terms, requirement, or matter related to this Tender.
4. The determination of whether or not to disqualify any Bid; waive any non-material defect or minor irregularity; whether or not to require or request clarification, and the adequacy and acceptability of any clarification submitted by a Bidder shall be made at discretion of the Owner, and the Owner does not have a duty or obligation in any way to exercise its right to waive non-material defects or minor irregularities, or request clarification. The Owner shall not be bound by industry custom or the Owner's prior practice, in the exercise of its right to waive any non-material defect or minor irregularity, or request or require clarification.
5. The Owner, reserves the right, at its discretion, to make corrections to the pricing of a Bid as follows:
  1. if there is a discrepancy between a unit price(s) and the extended total(s), then the unit price(s) shall be deemed to be correct, and corresponding corrections will be made to the extended total(s);

2. if a unit price has been given but the corresponding extended total(s) has been omitted, then the extended total(s) will be calculated from the unit price and the estimated quantity;
  3. if an extended total has been given but the corresponding unit price has been omitted, then the unit price will be calculated from the extended total and the estimated quantity;
  4. if there is a discrepancy between the price of a lump sum item and the extended total(s) for such item, then the price of the lump sum item(s) shall be deemed to be correct, and corresponding corrections will be made to the extended total(s). Where applicable, the extended total(s) will be calculated based on the price of the lump sum item(s) and the quantity of the lump sum item. The price of a lump sum item(s) shall be deemed to have a quantity of one, unless otherwise explicitly stated in the Tender; or
  5. if there is a discrepancy between an extended total and the final total, then the extended total(s) shall be deemed to be correct subject to any unit price or lump sum corrections above, and corresponding corrections will be made to the final total.
6. By submitting a Bid, the Bidder acknowledges and agrees to the Owner's right to make the corrections above and any revisions or adjustments to the Bid by the Owner in accordance with the terms of this Tender shall be binding on the Bidder.

### 13.0 Bid Review Meeting

1. After the Owner has evaluated the Bids, it may discuss the Work and the Bid with the selected Bidder at a review meeting. The Owner will advise the selected Bidder of the date and time for such a meeting. The selected Bidder should be prepared and available to attend the review meeting and should prepare a preliminary schedule for completion of the Work in accordance with the Contract and any other information or materials related to the Work for the Owner's review at the meeting.

### 14.0 Award and Execution of Contract

1. Subject to section 14.2, should the Owner, at its discretion, decide to award and execute a Contract, it will provide written notice to the selected Bidder. The Owner will, at its discretion, determine the date of execution of the Contract within the irrevocability period stated in the Tender or any extension thereof, and Bidders must be fully prepared and ready to promptly sign and execute the Contract upon notice of award from the Owner. Bidders acknowledge and agree that any failure by the Bidder to promptly sign and execute the Contract will result in the forfeiture of any bid security.
2. At any time upon request by the Owner, the Bidder must promptly provide to the Owner within the timeframe specified by the Owner and in a form and with content acceptable to the Owner:
  1. **Letter of Compliance from the Workers' Safety and Compensation Board:** including the Bidder's Workers' Compensation number, or proof of compliance under Workers' Safety and Compensation Act to be provided within ten (10) Business Days from notice of award;
  2. **Insurance Coverage,** including sufficient proof of any applicable insurance coverage and amounts stipulated in the Contract to be provided within five (5) Business Days from notice of award;
  3. **Contract Security** (if applicable) in accordance with the Contract to be provided within fourteen (14) Business Days from notice of award;
  4. **List of Equipment** (if applicable), including any equipment to be used in the performance of the Work or any equipment required or stated in the Contract;
  5. **Legal Entity Status,** including: registration or status under the Yukon Business Corporations Act, RSY 2002, c.20, Partnership and Business Names Act, RSY 2002, c. 166, or any other applicable legislation;
  6. **Valid Municipal Business License** (if applicable);
  7. **Yukon First Nation Participation Plan/Agreement** (as applicable) in accordance with its Bid, including: contact information for each Yukon First Nation Business listed in the selected Bidder's Bid Form. The Bidder acknowledges and agrees that the Owner may, at its discretion, use this information to contact and inform the Yukon First Nation Business of the following: that they were listed in the Bid; and the value of the Work; the description of work being completed; and any other commitments to be performed by the Yukon

First Nation Business stated in the Bid; and

8. **Additional Information or Documentation** requested by the Owner that may be material to the performance of the Work or reasonably necessary in order for the Owner to make the final decision to award and execute the Contract, to be provided within the timeframe requested by the Owner. For greater certainty, the right to request additional information or documentation does not entitle the Bidder with an opportunity to substantially change or repair its Bid.

Bidders must be fully prepared and ready to promptly provide the information or materials above upon request by the Owner. If the selected Bidder fails to provide the information or material above within the time frame prescribed by the Owner, then the Owner, reserves the right, at its discretion, to: reject the Bid of the Bidder and award and execute a Contract with the next highest ranked Bidder who meets the terms of the Tender or cancel the Tender.

3. If the selected Bidder is unable to properly perform or carry out the Work or Contract or fails or refuses to promptly enter into the Contract in accordance with the Tender, then the Owner reserves the right, at its discretion, to: award and execute the Contract with the next highest ranked Bidder who meets the terms of the Tender or cancel the Tender.
4. Bidders acknowledge and agree that if the Owner accepts a Bid and executes a Contract with the selected Bidder, the Contract, Specifications, and any applicable addenda, documents and materials included with or attached to the Contract shall constitute the entire agreement and be binding on the parties. The Owner may, at its discretion, attach or include terms or portions of the selected Bid in the Contract, which the Bidder shall be bound by as part of the Contract.

#### **15.0 Acceptance of Terms**

1. By submitting a Bid, Bidders fully acknowledge and agree to enter into a Contract on the terms and conditions set out under the Tender and to fulfill such terms and conditions, including: the terms and conditions under the Contract, Specifications, addenda, and any attachments thereto.
2. Without limiting any other rights or remedies the Owner have under this Tender or in law, if the selected Bidder does not accept the terms of the Contract, then the Owner reserves the right, at its discretion, to: award and execute the Contract with the next highest ranked Bidder who meets the terms of the Tender or cancel the Tender.

#### **16.0 Discretion to Make Minor Changes to Contract Terms**

1. After final evaluation of Bids, the Owner may, at its discretion, make minor changes or corrections to the terms and conditions of the Contract with the selected Bidder without invalidating the Tender or Contract. Such changes or corrections, if any, shall not substantially change the terms of the Contract, be within the general scope of the Contract, and limited to those terms and conditions, which would not have an effect on the ranking of Bids or provide a substantially unfair advantage with respect to other Bidders. The Owner does not have a duty or obligation in any way to exercise its right to make minor changes/corrections, and such right will not entitle the Bidder with an opportunity to substantially change or repair its Bid.

#### **17.0 Dispute Resolution and Exclusion of Liability**

1. Each Bidder, by submitting a Bid, irrevocably agrees that:
  1. if the Bidder has any dispute related to or arising from this Tender process, these Instructions to Bidders, or any of the Tender documents, then the Bidder will attend a debrief with the Owner's representative and will make good faith efforts to resolve the dispute by amicable discussions with the Owner, and the Bidder shall provide frank, candid and timely disclosure of all relevant facts, information and documents relating to the dispute to the Owner's representative; and
  2. if there is a failure to resolve the Bidder's dispute through amicable discussions, the Bidder may submit the dispute to the Procurement Complaint Process set out under the Government of Yukon's General Administration Manual – Procurement Policy - 2.6 and its operational requirements (as amended). Each Bidder, by submitting a Bid, consents to the disclosure of its Bid and the evaluation of its Bid for the purposes of the Procurement Complaint Process.

2. Despite any other term under this Tender, except for a claim for costs awarded in a proceeding under the Procurement Complaint Process set out under the Government of Yukon's General Administration Manual – Procurement Policy - 2.6 and its operational requirements (as amended), each Bidder by submitting a Bid, permanently and irrevocably agrees to waive and release the Owner, its elected officials, officers, employees, and agents from any and all claims, liabilities, actions, proceedings (including any judicial review or injunction application), damages (including: direct, indirect, consequential, incidental, general, special or exemplary damages, any economic losses, lost profits, lost opportunities, or all other costs, expenses and losses of any type or for any reason), or any other legal remedy in any way or for any reason, whether unknown or unforeseen, whether in law or in equity or pursuant to statute or regulation (collectively, the "Claims") arising from or related to this procurement process or Tender, including:
  1. any actual or alleged breach of any common law duties or any other duty or obligation including: breach of the duty of good faith, duty of fairness, or any other "Contract A"– based tendering or common law duties or obligations (express or implied) on the part of the Owner at any stage of the procurement process or Tender, including: the receipt, acceptance, rejection, evaluation of Bids, or award of the Contract;
  2. any errors or omissions in the evaluation of Bids;
  3. any breach of the Owner's policies or directives or any breach of a statutory or other duty;
  4. any failure by the Owner to award or execute a Contract or cancellation of the Tender regardless of the reason or re-procurement of the Work on the same terms or other terms;
  5. acceptance by the Owner of a non-compliant Bid or rejecting a compliant Bid;
  6. access to or use of the Electronic Bidding System, including: the content, veracity, accuracy, availability, suitability, reliability, usability, functionality, compliance, completeness or timeliness of Bids or the Electronic Bidding System or any failure to receive or transmit a Bid or any part of a Bid electronically in an accurate, sufficient, or timely manner;
  7. any failure by the Bidder or any subcontractors to properly register, be verified, and officially listed under the Yukon First Nation Business Registry or failure to properly qualify as a Yukon First Nation Business;
  8. any failure to investigate, verify or clarify the contents or commitments contained in a Bid, including: the ability of a Bidder to perform any Work, or comply with any representations or commitments made in relation to any Bid, including: any Yukon First Nation Criteria or Yukon First Nation Participation Plan/Agreement;
  9. the content, veracity, accuracy, availability, suitability, reliability, usability, functionality, compliance, completeness, or timeliness of any Bid;
  10. negligence, misrepresentation (negligent or otherwise), or any other tort;
  11. any breach or fundamental breach of express or implied duties or terms of this Tender or breach of contract; or
  12. any decisions, acts, omissions or errors by the Owner related to or arising from this procurement process, Tender, or the formation and execution of the Contract.

Section 17.2 shall survive the Closing Time, expiry, or cancellation of this Tender.

3. If section 17.2 is inapplicable, unconscionable, contrary to public policy, substantially incontestable, or otherwise unenforceable or invalid for any reason, in whole or in part, or where the Bidder is otherwise entitled to a remedy or compensation at common law (including for breach of the duty of good faith) or otherwise for any reason in relation to this procurement process or Tender, the Bidder acknowledges and agrees that the sole and absolute remedy and total maximum compensation for any and all Claims against the Owner in relation to or arising from this procurement process or Tender, either individually or cumulatively, will not exceed the lesser of: the Bidder's reasonable and direct costs of preparing its Bid or \$5000.00, and in no way or for any reason shall the Owner be liable to the Bidder for an amount greater than this amount. Multiple claims will not enlarge this limit. Section 17.3 shall survive the Closing Time, expiry, or cancellation of this Tender.

## 18.0 Assumption of Risks

1. By submitting a Bid, the Bidder represents and warrants that the Bidder is satisfied as to the practicality of executing the Work in accordance with the terms of the Contract, and has exercised due diligence to investigate all facts and conditions that are related to or affect the Work under the Contract and included this into the price of their Bid, including: the nature, condition, and location of the work site; delivery dates or dates for progress or completion of the Work; existing structures and the surrounding environment; soil and subsurface conditions; the quantities and nature of the Work; the labour resources required to complete the Work; certifications or specialized knowledge or expertise; materials and equipment necessary for the completion of the Work, including the cost of any tariffs, duties, freight and shipping; means of access to the site; any travel or accommodations that may be required; health and safety requirements; environmental requirements; permitting, licensing or other regulatory requirements; compliance with any public health or state of emergency requirements or policies issued by governmental authorities; implementation and completion of any applicable Yukon First Nation Participation Plan or Agreement, bonding/contract security and insurance requirements; inflation and escalation costs; taxes; and any other costs, expenses, risks, contingencies or other circumstances which may arise from or relate to the Work.
2. The Owner and its advisers make no representation, warranty, or guarantee as to the accuracy of the information contained in this Tender or any addenda. Any quantities shown or data contained or provided under this Tender or provided by way of addenda are estimates only, and are for the sole purpose of indicating to Bidders the general scale and scope of the Work. It is the Bidder's responsibility to obtain all the information necessary to prepare a Bid in response to this Tender. The Owner also makes no guarantee in any way as to the value or volume of Work to be assigned to the selected Bidder under the Contract.

## 19.0 Conflict of Interest, Restricted Parties, and Prohibited Activities

1. The Owner reserves the right, at its discretion, to reject or disqualify a Bidder without award or compensation to the Bidder, if the Bidder has an actual or potential conflict of interest related to or arising from the Tender, including: where the Bidder assists in the preparation and planning of the Tender, or obtains any material information not disclosed to other Bidders related to or arising from such planning or preparation.
2. The Owner may, at its discretion, designate a person as a restricted party under this Tender or through an addendum ("Restricted Party"). Each Bidder is solely responsible for ensuring that they do not use or seek advice or assistance from a Restricted Party.
3. The Owner also reserves the right, at its discretion, to reject or disqualify a Bidder without award or compensation to the Bidder, if the Bidder has engaged in any of the following conduct or activities:
  1. uses or seeks advice or assistance from a Restricted Party, directly or indirectly, including: using or seeking advice or assistance from a Restricted Party to prepare its Bid or participate in the Tender; or including a Restricted Party on the Bidder's team or as an officer, employee, advisor or consultant to the Bidder or one of its team members;
  2. engages in any illegal activities, including: any violation of the Competition Act (R.S.C., 1985, c. C-34) and its regulations (as amended), bid-rigging, price-fixing, bribery, fraud, coercion or collusion;
  3. lobbying or communicates or attempts to communicate, directly or indirectly, with any employee, contractor, representative or elected official of the Owner to influence the outcome of accepting or rejecting a Bid to the Bidder's advantage or favor, or makes any misrepresentation or provides misleading or inaccurate information to public officials; or
  4. engages in any unethical conduct or conduct which substantially and adversely affects the fairness or integrity of the procurement process(collectively, the "Prohibited Activities").
4. By submitting a Bid, each Bidder represents and warrants that they do not have a conflict of interest and have not engaged in any Prohibited Activities.
5. Each Bidder and member of the Bidder's team is solely responsible for promptly and fully disclosing to the Owner any conflict of interest or Prohibited Activities.

6. A potential Bidder or a prospective team member or advisor of a Bidder who has any concerns regarding whether the Bidder or a current or prospective employee, advisor or team member of the Bidder has: a conflict of interest or has engaged in any Prohibited Activities, is encouraged to submit a written request for an advance decision from the Owner, not less than ten (10) Business Days prior to the Closing Time. Such request must include the following information:
  1. names and contact information of the Bidder and the person for which the advance opinion is requested;
  2. a sufficient description of the circumstances related to the conflict of interest or Prohibited Activities; and
  3. a sufficient description of the steps taken to date, and future steps proposed to be taken, to mitigate the conflict of interest or Prohibited Activities.
7. The Owner may, at its discretion, make an advance decision or may refer the request for an advance decision to a third party adjudicator for resolution. If the Owner refers the request to a third party for adjudication and resolution, the Owner may, at its discretion, and upon notice to the affected party, make its own submission to the third party adjudicator.
8. The Owner or the third party adjudicator, as applicable, shall establish the relevant processes from time to time to address a conflict of interest or any Prohibited Activities, including: consideration of further facts or circumstances in which a decision may be amended or supplemented, or impose conditions on the participation of a Bidder or any other person.
9. The person(s) requesting the decision and all other related parties shall fully cooperate with the Owner or third party adjudicator related to any process to address any conflict of interest or Prohibited Activities. Upon request by the Owner or third party adjudicator, the Bidder shall, in a form and with content acceptable to the Owner or third party adjudicator, provide the Owner or third party adjudicator with any additional relevant documentation, information, or materials.
10. The onus is solely on the person(s) requesting the decision to clear or resolve any conflict of interest or Prohibited Activities. The decision of the Owner or third party adjudicator, as applicable, is final and binding on the persons requesting the ruling and all other parties, including: any Bidders or current or prospective employee, advisor or team member of a Bidder.

## **20.0 Disclosure of Bids and Access to Information and Protection of Privacy Laws and Trade Agreements**

1. The Owner is subject to the Access to Information and Protection of Privacy Act, SY 2018, c.9, as amended, ("ATIPP"), which gives people a right of access to records in the custody or control of the Owner, with certain exceptions.
2. Once a Bid is submitted to the Owner it is subject to ATIPP. By submitting a Bid, the Bidder acknowledges and agrees to the following:
  1. publication of the name of the Bidder and the total pricing of its Bid, including any applicable changes or reductions to such pricing; and
  2. disclosure of the Bid and its evaluation to the Bid Challenge Committee if there is a complaint made about this procurement under the dispute resolution process/Procurement Complaint Procedures as described in the Government of Yukon's Contract and Procurement Regulation and the Government of Yukon's General Administration Manual – Procurement Policy - 2.6 and its operational requirements (as amended).
3. If a Bid contains information, in whole or in part, that may be considered a trade secret, scientific or technical information, commercial or financial information, those portions should be labelled "confidential" in the Bid. And in particular, the Bidder must:
  1. clearly label that part of their Bid which is "confidential"; and
  2. upon request by the Owner, provide all reasonable assistance and a timely response with objective evidence that supports the claim for confidentiality.

**NOTE:** Please do not include a confidentiality clause or terms or conditions in the Bid as this may be considered a counter-offer and may result in rejection of a Bid.

4. If a Bidder does not indicate in its Bid the portions of its Bid that are confidential and clearly highlight the confidential information, the Owner may publicly disclose the Bid without notice to, or consent from, the Bidder. Failure to clearly identify portions of the Bid which are confidential constitutes consent of the Bidder to disclosure of the entire Bid.
5. If a request is made which includes information labelled as confidential by a Bidder, the Owner may notify the Bidder of the request and may give the Bidder an opportunity to provide objective, timely evidence that sufficiently supports the Bidder's claim of confidentiality. The Bidder may also be notified of the Owner's decision about whether to disclose the Bid and so will the requestor.
6. The Bidder shall fully cooperate with the Owner and provide reasonable assistance in identifying and designating any information for the purposes of ATIPP or other privacy laws.
7. By submitting a Bid, the Bidder acknowledges and agrees that any information and materials, including "personal information" as defined under ATIPP may be collected, used, or disclosed for the purposes or matters related to "law enforcement" as defined under ATIPP, including: any violation of the Competition Act (R.S.C., 1985, c. C-34) and its regulations (as amended), bid-rigging, price-fixing, bribery, fraud, coercion or collusion.
8. This Tender is subject to the applicable Trade Agreements (as amended).

### 21.0 Information Meeting

1. The Owner may, at its discretion, conduct one or more information meetings prior to the Closing Time to provide Bidders with an opportunity to clarify and confirm the requirements of the Tender or Work. If the Owner decides to conduct such a meeting, it will provide written notice of the time and location of the meeting, and any other terms or requirements in the Tender or via addendum. If the information meeting is mandatory, **failure by a Bidder to attend a mandatory information meeting will result in the rejection of their Bid.** If the information meeting is not mandatory, Bidders who do not attend the meeting will be deemed to have accepted the full risk and responsibility for not attending the information meeting and not receiving any information or materials related to or arising from the information meeting.

### 22.0 Site Visit

1. The Owner may, at its discretion, conduct one or more site visits prior to the Closing Time to provide Bidders with an opportunity to clarify and confirm the requirements of the Tender or Work. If the Owner decides to conduct such a visit, it will provide written notice of the time and location of the site visit, and any other terms or requirements in the Tender or via addendum. If the site visit is mandatory, **failure by a Bidder to attend a mandatory site visit will result in the rejection of their Bid.** If the site visit is not mandatory, Bidders who do not attend the site visit will be deemed to have accepted the full risk and responsibility for not attending the site visit and not receiving any information or materials related to or arising from the site visit.

### 23.0 Yukon First Nation Procurement Policy and Yukon First Nation Participation Plan

1. This Tender may be subject to the Government of Yukon's First Nation Procurement Policy and operational requirements (as amended). Where applicable, and subject to the terms of the RFB, Bids may be eligible (in whole or in part) for bid value reductions and/or additional points based on Yukon First Nation Criteria. Bidders bear the sole risk and responsibility for checking and ensuring that they and/or their subcontractors provide all information, meet all eligibility requirements, and comply with all the instructions and terms related to any Yukon First Nation Criteria. If the Bidder fails to follow the instructions or requirements for any Yukon First Nation Criteria or their Bid contains any errors, omissions, misrepresentations or any other inaccurate, misleading or incomplete information, then the Owner, reserves the right, at its discretion, to do one or more of the following: reject a Bid, not apply any Yukon First Nation Criteria (including any bid value reduction ("BVR")), provide a score of zero for any Yukon First Nation Criteria or BVR, or adjust the evaluation scoring of a Bidder.
2. In order to be eligible or qualify for some Yukon First Nation Criteria, including any applicable bid value reductions, the Bidder and/or their subcontractors must be duly registered and officially listed under the Yukon First Nation Business Registry ("YFNBR"). For further information on the registry, please go to the following website at: <https://yukon.ca/en/search-yukon-first-nations-business-registry>, or contact the Yukon First Nation Chamber of Commerce at: email: [hello@yfncc.ca](mailto:hello@yfncc.ca) or by phone at: 1-867-687-2908.

3. If selected for a Contract, the Bidder acknowledges and agrees that the contents and commitments related to any Yukon First Nation Criteria in their Bid, including: the value of any proposed work, type of services, wages, or labour related to Yukon First Nations, shall become part of their Yukon First Nation Participation Plan or Agreement, and such plan or agreement and the terms and commitments therein shall become a contractual obligation and commitment and deemed to be incorporated into and form part of the terms of the Contract to be fully performed by the selected Bidder.

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## PART C: SUBMISSION PROCESS AND CONTENT

**IMPORTANT:** Bidders are solely responsible for ensuring that the form, content, and submission of their Bid is complete and in accordance with this Tender. Varying or failing to comply with the instructions with respect to the form, content, or submission of the Bid as outlined in this Tender may result in the rejection of a Bid. Bidders acknowledge and agree that they bear the full risk and responsibility for the rejection of their Bid if they fail to follow the instructions or requirements of this Tender or fail to ask questions or seek clarification from the Owner on any instructions, requirement, or matter related to this Tender.

### 24.0 Forms and Contents of Bid

1. Bidders shall include the following as part of their Bid:
  1. **BID FORMS:** Bidders shall use the Bid Forms that are provided on the Electronic Bidding System and authorized by the Owner, including a Schedule of Prices/Price Table (where applicable) to be filled out. Bid Forms may contain multiple pages; and
  2. any other forms, information, documents, or materials explicitly required under this Tender, including any applicable bid security and consent of surety.
2. Please read and fill out the Bid Forms carefully, as any failure to complete or submit the latest Bid Forms provided in their entirety may result in the rejection of a Bid or a Bid being ineligible for submission under the Electronic Bidding System.
3. **Other than inserting information where explicitly requested, Bidders are advised to not alter or change the Bid Forms (in whole or in part), which may result in the rejection of their Bid.**
4. **When filling out the Bid Forms, including any applicable Schedule of Prices/Unit Price Table, please mark zero "0" for any pricing that has a zero "0" cost. Bidders acknowledge and agree that pricing marked with a dash ("-") or similar mark will be deemed to be a zero ("0") and deemed to be priced at zero "0" cost. To avoid uncertainty and potential rejection of a Bid, please do NOT leave mandatory pricing blank when filling out pricing information in the Bid Forms. Bidders acknowledge and agree that they bear the full risk and responsibility for the rejection of their Bid if they: leave mandatory pricing blank; fail to mark zero "0" or a dash ("-") or similar mark for any applicable pricing; or fail to ask questions or seek clarification from the Owner on any instructions, requirement, or matter related to this Tender.**
5. Bidders should not include the Goods and Services Tax or Harmonized Sales Tax (GST/HST) in the pricing of their Bids. The property and/or services contracted for, are for the use of, and are being purchased by the Owner with public funds and are not subject to the Goods and Services Tax or Harmonized Sales Tax (GST/HST).
6. In order to maintain the confidentiality of a Bid, **Bidders shall not disclose the original total price(s) OR actual total amended price(s) of the Bid to the Owner prior to the Closing Time. Disclosure of the total pricing of the Bid prior to the Closing Time may result in rejection of a Bid.**
7. Bidders are cautioned to review the information submitted for any Yukon First Nation Criteria carefully to ensure that it is compliant, accurate and complete. Bidders acknowledge and agree that they bear the full risk and responsibility for any Yukon First Nation Criteria (including any BVR) not being applied, scored zero, or having their evaluation scoring adjusted if their submission contains any errors, omissions, misrepresentations or any other inaccurate, misleading or incomplete information or fails to comply with the terms of the RFB.
8. The Owner reserves the right, at its discretion, to not apply any Yukon First Nation Criteria (including any BVR), score a Bidder zero for a Yukon First Nation Criteria or BVR, or adjust the evaluation scoring of a Bidder if the Bid or Bidder's submission contains any errors, omissions, misrepresentations or any other inaccurate, misleading or incomplete information or fails to comply with the terms of the RFB. Without limiting the generality of the foregoing, the Owner reserves the right, at its discretion, to: not apply any Yukon First Nation Criteria or BVR, score a Bidder zero for a Yukon First Nation Criteria or BVR, or adjust the evaluation scoring of a Bidder if:

1. the total dollar value of any BVR submitted by the Bidder is higher than the total Bid price submitted, excluding any contingencies and/or provisional cost sums stated;
2. the Bidder is not officially listed as a Yukon First Nation Business (“YFN Business”) on the Yukon First Nation Business Registry (“YFN Business Registry”); or
3. the full legal name of the YFN Business, as listed on the YFN Business Registry, does not exactly match the name of the YFN Business provided on the applicable Bid Form.

The above list is non-exhaustive.

## 25.0 Authority to Submit Bid

1. The Bid Forms must be submitted only in the name of a single individual, a single partnership, or a single corporation, and shall be signed and submitted as follows:
  1. if the Bidder is an individual or sole proprietor carrying on business in their own name, signed by the Bidder in its personal capacity;
  2. if the Bidder is a registered partnership, signed by a duly authorized partner who has authority to sign for and bind the partnership; or
  3. if the Bidder is a corporation, signed by a duly authorized officer of the corporation.
2. If the Bidder is carrying on business under a name other than its own, it must be signed by the registered owner of the business name, or by an authorized official of the registered owner if the owner is a corporation.
3. Every Bidder must be an entity capable, as a matter of law, of entering into and being bound by a Contract with the Owner. Bidders should be aware of the requirements of the *Partnerships and Business Names Act, R.S.Y. 2002, c. 166* and the *Business Corporations Act, R.S.Y. 2002, c. 20*. Failure to comply with the requirements of those statutes, particularly those requiring registration as an extra-territorial entity, may result in the rejection of a Bid, at the discretion of the Owner.
4. If a Bid is submitted by a joint venture, the Bid must be:
  1. submitted only in the name of a single individual, a single partner, or a single corporation, who will be deemed to be the Bidder and the lead entity for the joint venture; and
  2. submitted by a valid legal entity as properly named on the Bid Form.
5. After the Closing Time and submission of Bids, and upon request by the Owner, any Bidder who is part of a joint venture shall provide a list of all joint venture members.
6. The Bidder and any joint venture members are deemed to be jointly and severally liable to the Owner under any contract related to or arising from this Tender, and the Bidder shall execute such further documents and give such further assurances from time to time as are reasonably required to make each member of the joint venture jointly and severally liable to the Owner under any contract related to or arising from this Tender.
7. **Bidders bear the full risk and responsibility for the rejection of their Bid if they: submit a Bid in the name of more than one legal entity in their Bid Form; fail to properly name a legal entity or ensure that the entity named on the Bid Form is an entity capable, as a matter of law, of entering into and being bound by a contract with the Owner; or fail to follow the instructions for submission of a joint venture or Bid.**
8. The Owner reserves the right, at its discretion, to reject any Bid where the named Bidder is not a valid legal entity, the Bid includes more than one legal entity as the named Bidder, or the Bidder fails to follow the instructions for submission of a joint venture or Bid.

## PART D: EVALUATION AND SELECTION

### 1.0 Overview of Evaluation

1. Bids will be evaluated based upon the following criteria:
  1. price, subject to any bid value reduction criteria; and
  2. any supplementary evaluation criteria explicitly stated in the Tender, the Electronic Bidding System, and Bid Forms.
2. The pricing of a Bid may be subject to a reduction, only for the purposes of evaluation, in accordance with: the terms of this Tender, the Electronic Bidding System and Bid Forms. For further information on the bid value reduction criteria and their application, please see the Electronic Bidding System and related forms.
3. **In order to be eligible for bid value reductions related to Yukon First Nation Business Ownership and Yukon First Nation Business Location, Bidders and/or their subcontractors must be duly registered and officially listed as a Yukon First Nation Business under the Yukon First Nation Business Registry before the Closing Time.** If a Bidder and/or their subcontractors have submitted as a Yukon First Nation Business, but it is found at any time prior to award of the Contract, that they are not duly registered or officially listed as a Yukon First Nation Business under the Yukon First Nation Business Registry, then the Owner reserves the right, at its discretion, to: reject a Bid, exclude a Bidder from a Contract, not apply any applicable evaluation criteria or BVR, score a Bidder a zero for any applicable evaluation criteria, or adjust the evaluation scoring of a Bidder. For further information on the registry, please go to the following website at: <https://yukon.ca/en/search-yukon-first-nations-business-registry>, or contact the Yukon First Nation Chamber of Commerce at: email: [hello@yfncc.ca](mailto:hello@yfncc.ca) or by phone at: 1-867-687-2908.
4. Bidders are solely responsible for checking and ensuring that they register, provide all information, and meet all eligibility requirements in order to qualify as a Yukon First Nation Business under the Yukon First Nation Business Registry, and bear the full risk and responsibility for being ineligible for any bid value reductions if they fail to follow the instructions or requirements as set out under this Tender or under the Yukon First Nation Business Registry, or fail to ask questions or seek clarification on any instructions, requirement, or matter related to the Yukon First Nation Business Registry.
5. The Owner reserves the right, at its discretion, to: reject a Bid, exclude a Bidder from a Contract, not apply any evaluation criteria or BVR, score a Bidder a zero for any evaluation criteria, or adjust the evaluation scoring of a Bidder if the Bid or Bidder's submission contains any errors, omissions, misrepresentations or any other inaccurate, misleading, false, or incomplete information, or otherwise fails to comply with any instruction or requirement under this Tender.
6. Subject to any bid value reduction criteria, the Bid with the total lowest price and that meets any applicable supplementary evaluation criteria will be the highest ranked Bid and may be chosen or selected for award and execution of the Contract subject to the terms of the Tender.
7. Subject to section 1.8 below, evaluation of Bids will be based on the information contained in the Bids submitted at the Closing Time. **Bidders are cautioned that the text fields for a Bid submission on the Electronic Bidding System may contain a maximum limit of 32 000 characters.**
8. The Owner reserves the right, at its discretion, to investigate or request verification or clarification from a Bidder with respect to the contents of its Bid, without being obligated to seek verification or clarification from any or all other Bidders. Such further verification or clarification may include: details of qualifications or certifications of any personnel, current legal entity status, verification or clarification that the Bidder or any of its subcontractors are duly registered, verified, and officially listed under the Yukon First Nations Business Registry, verification that the primary business location of the Bidder or its subcontractors is situated in the Traditional Territory where the Work is taking place, insurance or health and safety certification or record, status of security or bonds, financial capability, business practices, references for previous work or services, details respecting labour, subcontractors, supplies or equipment, or the ability of the Bidder to perform the Work, meet the requirements of the Contract,

or fulfill any commitments or statements under their Bid. The Bidder agrees to permit and fully cooperate with the Owner in seeking verification or clarification respecting the contents of their Bid.

9. The Owner may, at its discretion, accept a Bid without any investigation, verification, or clarification, and there is no duty or obligation on the Owner in any way to exercise its sole right to request or seek verification or clarification from any Bidder, and such right does not entitle any Bidder with a right or opportunity to substantially change, fix or repair its Bid; or to investigate the Bid or another Bidder. The Owner will be under no duty or obligation in any way to further verify or clarify or receive further information, whether written or oral, from any Bidder. The Owner is under no duty or obligation in any way to Bidders to perform any investigations on the contents of a Bid or to otherwise verify or clarify any statements or representations made in a Bid.
10. If two or more Bids are tied in their total final price, then the Owner may, at its discretion, select from among those Bidders, the Bidder who, at the discretion of the Owner, can perform the Work in the best interests of the Owner.
11. If all the Bids submitted on the Tender are all non-compliant, over-budget, or otherwise unacceptable to the Owner, then the Owner reserves the right, at its discretion, to do any one or more of the following: cancel the Tender, re-procure the Work on the same or different terms and conditions regardless of whether price(s) of the Bid have been made public or not, or take such other action as the Owner deems fit.

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## PART E: SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

### 1.0 Bid Security and Consent of Surety

1. Bidders must submit security with their Bid in accordance with the terms of this Tender.
2. If the amount of the Bid is **\$1,000,000.00 or more**, then the **Bidder shall include as part of their Bid:**
  1. a valid and enforceable bid bond, properly completed, signed, and sealed by the appropriate parties, and which names the Government of Yukon as obligee for an amount not less than 10% of the total price of the Bid. Such bid security shall be issued by a surety who is duly authorized to operate as a suretyship in Yukon, and whose bonds are in a form and with content acceptable to the Owner; **AND**
  2. a Consent of Surety certifying that the surety will issue a performance bond and labour and material payment bond each in an amount equal to or more than 50% of the total price of the Contract, and which names the Government of Yukon as obligee. The Consent of Surety shall be issued by a surety who is duly authorized to operate as a suretyship in Yukon, and whose bonds are in a form and with content acceptable to the Owner.
3. If the amount of the Bid is **less than \$1,000,000.00**, then the Bidder **shall include as part of their Bid:**
  1. a bid bond and consent of surety in accordance with the terms of this Tender; **OR**
  2. bid security submitted in the form of: a bank draft, certified cheque, Canadian Postal money order, or unconditional irrevocable letter of credit, for an amount not less than 10% of the total price of the Bid payable to the Government of Yukon. Such bid security shall be valid, and in a form and with content acceptable to the Owner.
4. For greater certainty, any bid value reductions that may be applicable to the evaluation of a Bid **MUST NOT** be included when calculating the total amount of the Bid for the purposes of submitting bid security or determining the total amount of bid security to be provided under this Tender, and Bidders must provide bid security based on the total amount of the Bid **without** bid value reductions.
5. If the Bidder chooses to submit bid security or any applicable consent of surety in hard copy form or in the form of a: bank draft, certified cheque, Canadian Postal money order, or unconditional irrevocable letter of credit, then such bid security must be submitted in a sealed envelope or package and delivered to the following location before the Closing Time:

**Government of Yukon  
Procurement Support Centre  
Suite 101-104 Elliott Street Whitehorse, Yukon Y1A 0M2  
Phone: (867) 667-5385**

The envelope or package containing the bid security or any applicable consent of surety should be clearly labelled on the outside with the following information:

1. Tender/Project title;
2. Bidder's name as stated on the Bid Form;
3. Bid Closing Time and date; and
4. Bidder's return address.

**Bidders are cautioned that failure to properly label the envelope or package containing their bid security or any consent of surety may result in the rejection of their Bid.**

6. Bidders may submit a bid bond and consent of surety in electronic form ("Electronic Bid Bond and Electronic Consent of Surety"). If a Bidder chooses to submit an Electronic Bid Bond and Electronic Consent of Surety, then Electronic Bid Bond and Electronic Consent of Surety must be submitted before the Closing Time and uploaded on and submitted through the Electronic Bidding System in accordance with the requirements, procedures, and terms of service of the Electronic Bidding System.

7. Any Electronic Bid Bond and Electronic Consent of Surety **must**:
  1. be viewable, printable, and storable in standard pdf format for access, review, and verification by the Owner, and have no requirements for passwords, fees, or other conditions to access, review, verify, or use the Electronic Bid Bond and Electronic Consent of Surety. **Bidders are cautioned that scanned pdf copies of a hard copy issued bid bond or consent of surety that do not state or contain links to verification of such bid bond or consent of surety are NOT acceptable, and if the bid bond does not state or contain links to verification, the Bid will be rejected regardless of the reason for the failed, unverified, or inconclusive verification or authentication AND**
  2. be fully valid and verifiable by the Owner with the Surety Company or an approved verification service provider of the Surety Company with respect to the validity, enforceability, form, totality, and wholeness of the bond and consent of surety, including:
    1. validity and verification of its terms and content, all digital signatures, and all digital seals; and
    2. verification that the Electronic Bid Bond and Electronic Consent of Surety are the true documents executed and have not been changed or altered.
8. The Owner must be able to complete the verification at any time. **The results of the verification for both the Electronic Bid Bond and Electronic Consent of Surety must provide a clear, immediate, and printable indication of pass or fail. If an Electronic Bid Bond is invalid or fails the verification process, is unverified, inconclusive, or cannot be properly verified or authenticated, the Bid may be rejected regardless of the reason for the failed, unverified, or inconclusive verification or authentication. Bidders are cautioned to check the verifiability of their Electronic Bid Bond and Electronic Consent of Surety prior to submission/uploading.**
9. Despite any other term under this Tender, if there is a defect, error, omission, non-compliance, or irregularity with a Consent of Surety, or the Consent of Surety is not received from the selected Bidder or cannot be accessed, reviewed, verified, or authenticated by the Owner, the Owner may, at its discretion, give written notice to the Bidder allowing two (2) Business Days to rectify the defect, error, omission, non-compliance, or irregularity or provide the Consent of Surety. Any failure to rectify or provide the Consent of Surety within the two (2) Business Days will result in a Bid being rejected.
10. If a Bidder fails to enter into a Contract with the Owner in accordance within this Tender, the Owner may retain the bid security of that Bidder in an amount equal to the difference between the total Bid of that Bidder and the total price submitted by the Bidder who enters into the Contract with the Owner, plus any additional costs or expenses incurred by the Owner arising from the Bidder's failure to enter into the Contract.
11. After evaluation of the Bids by the Owner, the Owner may release one or more Bidders from their bid security if a selected Bidder has been determined to enter into a Contract.
12. If there is a minor discrepancy or error in the amount of the bid security received from a Bidder that does not exceed 10% of the total required bid security, then, the Owner, may at discretion, deem such discrepancy or error in the amount of the bid security to be a non-material defect or minor irregularity in accordance with this Tender, and the Owner may accept the bid security and deem the Bid acceptable.
13. **Bidders are cautioned that failure to provide bid security will result in the rejection of a Bid. Any failure to provide bid security or any applicable consent of surety in accordance with the terms of this Tender may result in a Bid being rejected. Bidders acknowledge and agree that they bear the full risk and responsibility for the rejection of their Bid if they fail to submit bid security or any applicable consent of surety in accordance with the terms of this Tender.**

## 2.0 Post-Tender Review Meeting

1. A Post-Tender Review Meeting will be held with the lowest priced bidder prior to the notification of intent to award being given.
2. The following are required to be submitted to the Project Manager within five (5) business days of notification of intent to award and prior to the start of any work as determined by the Tender Review Meeting:
  1. Proof of Insurance as described in Appendix A - General Conditions for Goods Contract, Section 7.0 Insurance and Liability.
  2. A "Letter of Compliance" (Provided within 10 business days as per Part B: 14.2 in this document) from the Yukon Workers' Safety and Compensation Board, valid for the duration of the contract;
  3. Documentation of Weigh Scale Certification which establishes that the scales utilized to supply the product are certified for trades by Measurement Canada;
  4. Material Safety Data Sheets for both products HF-250S A/S & MC250;
  5. Product Specification and Typical Analysis HF-250S with A/S.
3. Any failure to submit and gain approval for any of the required submissions listed in this Section 2.2 will result in a delay of Contract award until such time as all submissions are received and approved.
4. Continued failure to submit and gain approval for any of the required submissions listed in this Section 2.2, causing a delay of Contract award of more than 14 calendar days may result in a bid being rejected.

## 3.0 Notice

1. Bidders are advised that [Customs Notice 25-19: United States Surtax Remission Order \(2025\)](#) may be applicable. It is the responsibility of the Bidder to review and consider the implications of this notice in the preparation of their submission.

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PREVIEW

## **PART F: CONTRACT, SPECIFICATIONS, AND OTHER DOCUMENTS**

Please see the attached Contract, Specifications, and Other Documents:

### **Specifications:**

**PART 1: PROJECT SCOPE AND SPECIAL REQUIREMENTS**

**PART 2A: GENERAL – SUPPLY AND DELIVER HIGH-FLOAT EMULSIFIED ASPHALT**

**PART 2B: PRODUCT – HIGH-FLOAT EMULSIFIED ASPHALT**

**PART 3A: GENERAL – SUPPLY AND DELIVER MC250 CUTBACK ASPHALT**

**PART 3B: PRODUCT – MC250 CUTBACK ASPHALT**

### **Appendices:**

**Appendix A - Goods-General Contract Terms and Conditions**

**Appendix B - Materials Quality Control**

**Appendix C - Yukon Highway System**

**Appendix D - Yukon Road Map**

**Appendix E - Safety Program Supplement**

# SPECIFICATIONS

## PART 1: PROJECT SCOPE AND SPECIAL REQUIREMENTS

### 1.0 Scope of Work

1. Work to be done under this Contract consists of:
  1. The supply and delivery of High Float Emulsified Asphalt to the travelling Yukon Government Bituminous Surface Treatment Crew; and
  2. The supply and delivery of MC250 Cutback Asphalt to various locations of Yukon Territory.
2. The Contractor shall supply all labour, plant, and material to properly execute the work contained in the Contract documents.
3. The work consists of, but is not limited to:
  1. The production of asphalt products to the grades specified on Location and Quantities Price Form (HF250S and MC250);
  2. The delivery of asphalt products at sites as specified in Location and Quantities Price Form and transferred into one or more of the following supplied by Government of Yukon:
    1. Two (2) 70,000 litre (total 140 tonne) mobile insulated tanks;
    2. Four (4) 58,000 litre stationary storage tanks; and/or
    3. Two (2) 22,000 litre asphalt distributors.
4. The Government of Yukon will be responsible for applying the asphalt products.

### 2.0 Schedule

1. Supply and delivery of asphalt products will be ordered on an as required basis as determined by the Operations Supervisor or their delegate.
2. The Owner will provide the Contractor with Yukon Government Bituminous Surface Treatment Crew updated work schedules as necessary.
3. **The Contractor shall be prepared to supply and deliver asphalt products upon order between May 1, 2026 and October 31, 2026.**
4. The Contractor shall supply and deliver asphalt products in the quantities and at the locations as specified in Location and Quantities Price Form or as designated by the Owner for an Unspecified Location.
5. Quantities and delivery locations are determined on a weekly basis. For the location that do not require a full truck load, the order may be combined with other locations. The Government of Yukon may use their mobile storage and their distributor to spray the product at the locations requiring smaller quantities.
6. The Contractor shall supply and deliver asphalt products to the maximum rate of 200 tonne per day to any specified site.
7. The Contractor shall have the ability to supply, load, and initiate delivery of asphalt products within 24 hours of receipt of each individual order. Delivery time shall be established for the specified site at the time of order.
8. The Contractor will send a representative to Yukon to be on site of Bituminous Surface Treatment application for two (2) to four (4) days to:
  1. Assess quality control; and
  2. Provide suggestions for additional/alternative products and/or methods to best suit the conditions of Yukon. Coordination of representative's site visit will be with the Operations Supervisor to determine availability and suitability for the Yukon Government Bituminous Surface Treatment Crew's schedule.
9. Failure to comply with these "Schedule" terms may be cause for taking the work out of the Contractor's hands.

### 3.0 Contract Term

1. The Contract term is anticipated to be from May 1, 2026 to October 31, 2026.

#### **4.0 Axle Loading**

1. The Contractor shall be limited to legal axle and legal Gross Vehicle (GVW) loading.
2. It is the Contractor's responsibility to keep current with the requirement for weight restrictions, as they may change at any time. Further information may be obtained from the following source:  
<https://511yukon.ca/map>
3. The Government of the Yukon will not compensate the Contractor for any extra costs attributable to road bans and/or weight restrictions in any jurisdiction.

#### **5.0 Provisional Cost Sum**

1. A Provisional Cost Sum is provided on the Bid Form in bids&tenders to cover the cost of:
  1. Demurrage;
  2. Testing of new methods and/or products related to the scope of work;
  3. Any additional work as directed by the Owner during the course of the project that is not paid for under any other item in the Contract and agreed to in advance of work beginning by both parties.
2. The Owner makes no guarantee, representation or warranty and has no duty or obligation in any way to use or authorize the use of the provisional cost sum.

#### **6.0 Travel and Disbursements**

1. All travel and disbursement costs are the responsibility of the Contractor and are included in the Contract price.

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PREVIEW

## PART 2A: GENERAL – SUPPLY AND DELIVER HIGH-FLOAT EMULSIFIED ASPHALT

### 1.0 Description

1. This section specifies requirements for the production, supply and delivery of high-float emulsified asphalt.

### 2.0 Definitions

1. **Measurement Canada:** An agency of Innovation, Science and Economic Development Canada responsible for calibrating and certifying standards of mass, length, volume, pressure, temperature and various electrical quantities, ensuring measurement in domestic and international trade is accurate and uniform forming the basis of all trade measurement in Canada.
2. **Weigh Scale:** A measuring machine that measures mass or weight calibrated and certified for accuracy by Measurement Canada.
3. **Weigh Scale Certification:** Certified documents (certificates), including statements showing the results of the examination and official documents, less than two (2) years old at the time of tender closing, issued by Measurement Canada or a Measurement Canada authorized service provider declaring the weigh scale(s) utilized in this Contract are inspected and approved for current usage and certified for accuracy meeting the requirements of Measurement Canada Weights and Measures Act R.S.C., 1985, c. W-6 <https://laws-lois.justice.gc.ca/PDF/W-6.pdf> and Weights and Measures Regulations C.R.C., c. 1605 [https://laws-lois.justice.gc.ca/PDF/C.R.C.,\\_c.\\_1605.pdf](https://laws-lois.justice.gc.ca/PDF/C.R.C.,_c._1605.pdf)

Weigh Scale Certification includes official documentation issued by Measurement Canada authorizing the service provider to inspect and certify weigh scales on behalf of Measurement Canada.

### 3.0 Material Certification

1. The Contractor shall not change supplier without obtaining written approval from the Project Manager.
2. At any time upon request, the Contractor shall submit manufacturer's test data and certification that the emulsified asphalt meets requirements of this section.
3. If the Supplier chooses to incorporate non-traditional material components such as, but not limited to, crude oil, waste products and industrial or manufacturing by-products in the emulsified asphalt, the Project Manager must be advised in writing and the non-traditional material components approved in writing by the Project Manager before any emulsified asphalt is supplied.

### 4.0 Plant Inspection

1. The Owner may undertake the inspection of materials at the source. Manufacturing plants may be inspected periodically for compliance with suitable manufacturing methods and material samples will be obtained for laboratory testing for compliance with material's quality requirements.
  1. The Owner shall have the cooperation and assistance of the Contractor and the Supplier with whom is contracted for materials.
  2. The Owner shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
  3. Advise the Owner or Owner's inspection agency a minimum of 48 hours prior to beginning work on any item requiring inspection. All materials for which the Owner has requested plant inspection and which are produced without such inspection will be considered unacceptable.
2. The Owner reserves the right to retest all materials which have been tested at the source of supply prior to incorporation into the work and to reject or reduce payment of all materials which, when retested, does not meet the requirements of the specifications.

### 5.0 Weight Scale

1. Weight for payment shall be established on weigh scales certified for trade by Measurement Canada located at the manufacturing plant.
2. If a scale is not available at the manufacturing plant the weight for payment may, upon written consent by the Owner, be established at the Government of Yukon weigh scale located closest to the production plant.

3. All scales shall be capable of providing a printed weigh ticket indicating tare, gross, and net weights. Weigh tickets with hand-entered weights are not acceptable unless approved in writing by the Owner.

## 6.0 Weighing

1. The Contractor shall provide accurate and certified weigh tickets supporting the quantity of product delivered and invoiced for. These weigh tickets shall provide detailed weights for each load delivered. Weight shall be established as follows, depending on the product type and the type of vessel used for transport.
  1. Product delivered in bulk: The net weight of each load will be established by scaling the empty container or truck at a certified weigh scale to establish a tare weight, then scaling the loaded container or truck to establish a gross weight. The net difference in weights will be the weight delivered and invoiced for. It is mandatory that printed weight tickets supporting each load be attached to each individual delivery notice.
2. If the transport vessel is a truck, the fuel tanks on the trucks are to be filled prior to establishing the gross and tare weights. The truck must be tared for each delivery. A tare weight taken at the start and used for each subsequent trip is not acceptable.
3. The government of Yukon reserves the right to verify the weight of containers or truckloads of bulk products at an approved scale. All costs incurred by the Contractor with respect to the Government of Yukon verifying weights will be considered incidental to the work and no separate payment will be made.

## 7.0 Storage and Handling of Materials

1. Store materials to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may be inspected prior to their use in the work.
2. Handle all materials in such a manner to preserve their quality and fitness for the work. Transport materials to the designated area in vehicles so constructed as to prevent damage or loss of material.
3. Ensure that all shipments are made in clean, uncontaminated tanks.
4. Ensure that all shipments are made in tanks with adequate insulation to provide delivery of material within specified temperature range.

## 8.0 Product Acceptance

1. Emulsified asphalt received and stored in the Government of Yukon storage tanks, which show signs of separation, shall be removed and disposed of at the Contractor's expense and no payment will be made for those materials.
2. Emulsified asphalt received may be sampled and tested prior to off-loading to ensure the product is homogenous and of uniform consistency, free from visible lumps. Testing will be in accordance with paragraph 8.2.1. The emulsion supplier will be notified when retained lumps are identified in the sample. Emulsified asphalt which fails the retained lump test shall, at the request of the Owner, be removed and disposed of at the Contractor's expense and no payment will be made for such material.
  1. Retained lump test:
    1. Sampling shall be as outlined in section 10.0 Sampling.
    2. Pour a 1 litre sample at delivery temperature through a 1000 µm mesh sieve fitted in a 76.2 mm diameter frame and allow to drain for 30 minutes. At the completion of time, observe any retained lumps for type, size and quantity. Failure will be indicated when retained lumps are excessive (more than ten per test) and are of combined type, size and quantity to adversely affect the material consistency and handling properties.
3. Emulsified asphalt received may be tested to ensure compliance with non-Newtonian flow characteristics. Testing will be in accordance with paragraph 8.3.1. The emulsion supplier will be notified when penetration samples subjected to the flow characteristic testing criteria exhibit flow. Emulsified asphalt, which fails the actual flow characteristic test, shall, at the request of the Owner, and if still in storage, be removed and disposed of at the Contractor's expense. No payment will be made for material that fails the test.
  1. Flow characteristic test:
    1. Sampling shall be as outlined in section 10.0 Sampling.

2. Preparation of the test sample shall conform to the requirements for penetration testing.
2. Weigh the prepared sample and place container on its side on a level surface for a period of three hours. At completion of specified time, trim off any material that has flowed from the container with a slightly heated knife or spatula. Weigh the remaining residue and determine the percent residue loss. Failure will be determined as percent residue loss greater than 5% by weight.

## 9.0 Sampling Device

1. The Contractor must equip each tank on all transport vehicles with a submerged asphalt-sampling device in accordance with Fig. 1 [ASTM D140/D140M Standard Practice for Sampling Asphalt Materials \(astm.org\)](http://ASTM D140/D140M Standard Practice for Sampling Asphalt Materials (astm.org)). Devices, which are similar in principle, must have prior approval of the owner. The Contractor must inform all designated carriers of the requirement to have a submerged asphalt-sampling device.
2. The Contractor is to ensure that all sampling devices are accessible, free, and operable when the trucks arrive on site.

## 10.0 Sampling

1. All truck loads will be sampled by the Owner prior to off-loading.
2. Where delivery is made using multiple tank carrier, any/or all tanks may be sampled.
3. Discharge at leave five (5) litres of emulsified asphalt through sampling device immediately before a test sample is taken.
4. When delivery of emulsion is beyond Whitehorse, and the Contractor's return route to the supplier's plant passes through Whitehorse, the Contractor shall, upon the request of the Owner, backhaul and deliver samples to the Whitehorse Weigh Scales. Delivery of samples to the Whitehorse Weigh Scales will be considered incidental to the work and no separate payment will be made.

## 11.0 Measurement of Payment

1. Supply and delivery of emulsified asphalt will be measured in tonne, with reductions for non-compliance with specifications subject to section 12.0 Payment Reduction.
2. Price per tonne will be full compensation for supply and delivery of emulsified asphalt.
3. Where a delivery location has been specified in Location and Quantities Price Form, all Freight costs are to be included in the price bid per tonne.
4. Where the actual delivery location changes by less than twenty (20) kilometers from a specified delivery location, no additional Freight payments will be made.
5. Where a new delivery location is identified, or the actual delivery location changes by twenty (20) kilometers or more from a specified delivery location, payment will be made at the price bid per tonne delivered to the adjacent specified location nearer the supply plant (as per the Location and Quantities Price Form), plus an additional Unspecified Location Freight payment (per tonne).
6. Unspecified Location Freight payments (per tonne) will be calculated as the distance in kilometers between the actual delivery location and the adjacent delivery location nearer the supply plant (as per the Location and Quantities Price Form) multiplied by the Unspecified Location Freight per km per tonne.
  1. **The Government of Yukon will pay \$0.50 per km per tonne for the Unspecified Location Freight.**

### Example:

1. Order 48 Tonnes High Float Emulsified Asphalt to an Unspecified Delivery Location at km 1202 Alaska Highway. Adjacent specified location nearer the supply plant (as per Location and Quantities Price Form) is km 1136 Alaska Highway. Difference in distance = (1202-1136) = 66 kms
2. Unit Price per Tonne payment as per Location and Quantities Price Form for the adjacent specified delivery location nearer the supply plant (km 1136 Alaska Highway) = \$834.81 per tonne
3. Unspecified Location Freight = \$0.50/ tonne/kilometre
4. Unspecified Location Freight payment (per tonne) will be the difference in distance X the Unit Price for Unspecified Location Freight = (1202-1136) X \$0.50 = \$33.00 per tonne

5. Total payment:  $\$834.81 \times 48 + \$33.00 \times 48 = \$41,654.88$
7. No payment will be made for supply and delivery of emulsified asphalt off-loaded prior to sampling by the Owner without prior written consent.
8. The Contractor shall be responsible for all costs associated with the transport and disposal of rejected loads.

## 12.0 Payment Reduction

1. The Government of Yukon will perform tests on emulsified asphalt in accordance with standard methods specified.
2. Material to be accepted in full or in part and may be subject to a payment reduction based on delivery temperature as per Part 2B section 2.0 Temperature and/or on the basis of results of tests made on samples selected and tested by the Owner as per paragraphs 12.3 to 12.9.
3. The Owner has the option to do any of, or any combination of tests listed on Form EA-1 (see Appendix B). Payment reduction will be assessed on the basis of material not meeting the specifications when tests are performed less than four (4) weeks of sampling date.
4. Loads on which no tests are performed, or where tests have not been performed less than (4) weeks after the sampling date, will be accepted without payment reduction. Full price will be paid for those loads.
5. If a test result fails to meet specification, a second test will be done on another portion of the same sample and results averaged to assess penalty. Should duplicate test results differ by more than acceptable ASTM standards, repeatability as shown in test procedure, then average of test values shall not be used and instead the test result numerically nearest specification requirements shall govern.
6. Reductions in payment for the load from which the sample was taken will be calculated by means of factors shown in Form EA-1 (see Appendix B). The number of units outside specification requirements will be multiplied by the multiplier factor to get number of adjustment points. The total number of adjustment points will be divided by 100 to get percent pay reduction assessed. "Units" means measurement unit as shown in Table 1 of CGSB CAN2-16.5 [Canadian General Standards Board Catalogue - CGSB - PSPC - Canada.ca \(tpsgc-pwgsc.gc.ca\)](http://www.cpsc.gc.ca/tpsgc-pwgsc.gc.ca).
7. Any payment reduction assessed will apply only to the load from which the sample was taken.
8. No payment reduction will be assessed on loads when test results indicate percentage adjustment of greater than 2.0% total pay reduction.
9. No payment will be made for loads when test results of samples indicate a percentage of adjustment of greater than 30.0% total pay reduction.

## 13.0 Demurrage and Failure to Deliver

1. The Government of Yukon will pay a demurrage charge to the Contractor for each hour or part thereof for any truck delayed commencing off-loading more than four (4) hours beyond the actual delivery time or scheduled delivery time, whichever is later, where the delay in off-loading is caused by some action or inaction by the Government of Yukon. Demurrage shall not include off-loading time.
2. Demurrage rates shall be \$150.00/hour for units with six or fewer axles and \$200.00/hour for all two-trailer unit combinations.
3. Should the emulsified asphalt being supplied be such that it is deemed necessary to sample and test prior to off-loading, no payment will be made for necessary delays.
4. Order time, scheduled delivery time, actual delivery time, off-loading time, and reason for demurrage shall be written on the bill of lading and co-signed by the Contractor's carrier and the Owner.
5. Such payment to the Contractor will be considered payment in full for any losses due to off-loading delay.
6. Where the Contractor delivers emulsion more than four (4) hours after the scheduled delivery time, which results in the delay of Government of Yukon Bituminous Surface Treatment operations, the Contractor will be charged \$750.00/hour for each hour or part thereof in excess of four (4) hours of normal working time that the operation was delayed.

7. The scheduled delivery time will be established by the Owner in consultation with the Contractor at the time of each material order.
8. Delays in off-loading caused by weather and/or natural phenomenon will not factor into demurrage payments being made to either Contractor or Owner.
9. Payments for this section will be made under the Provisional Cost Sum Item.

#### **14.0 Off Loading**

1. Off-loading shall not begin prior to a sample of the load being taken by the Owner. Sampling will not be done outside of normal working hours unless unusual circumstances arise and it is in the best interest of the Government of Yukon. No payment may be made for demurrage charges resulting from delays in sampling of loads delivered outside of normal working hours. The Contractor may be charged for costs of sampling for loads delivered outside of normal working hours.
2. Normal working hours will be considered to be from 6:00 A.M. to 5:30 P.M. on scheduled workdays of the Government of Yukon Bituminous Surface Treatment Crew.

### **PART 2B: PRODUCT – HIGH-FLOAT EMULSIFIED ASPHALT**

#### **1.0 Materials**

1. Emulsified Asphalt HF-250S with A/S (Anti-Strip) at a ratio of 0.5%.
  1. To CGSB CAN 2-16.5, Type HF-250S Emulsified Asphalt, with the following exceptions:
    1. Saybolt Furol Viscosity at 50°C, measured in seconds, shall be a minimum of 75 s, and a maximum of 150 s;
    2. Demulsibility, 50 ml, 5.55 g/L, CaCl<sub>2</sub>, (% by mass) shall be a minimum of 65%;
    3. Penetration at 25°C (0.1 mm), minimum of 250 and a maximum of 400.
  2. Reference to CGSB CAN 2-16.5 is to be most current year.

#### **2.0 Temperature**

1. The Yukon Government Bituminous Surface Treatment Crew attempts to apply emulsified asphalt at a temperature of 60°C.
2. The temperature of emulsified asphalt, measured at the time of unloading, shall be within the range of 50°C and 80°C.
3. If the emulsified asphalt is delivered at a temperature less than 50°C, a payment reduction will be applied to the delivery invoice, in the amount of \$300.00 for each degree C that the emulsified asphalt delivery temperature is below 50°C.
4. Notwithstanding paragraph 2.3, if the emulsified asphalt is delivered at a temperature less than 40°C or greater than 80°C, the asphalt may be rejected.

## PART 3A: GENERAL – SUPPLY AND DELIVER MC250 CUTBACK ASPHALT

### 1.0 Description

1. This section specifies requirements for the supply and delivery of MC-250 Cutback Asphalt.

### 2.0 Definitions

1. **Measurement Canada:** An agency on Innovation, Science and Economic Development Canada responsible for calibrating and certifying standards of mass, length, volume, pressure, temperature and various electrical quantities, ensuring measurement in domestic and international trade is accurate and uniform forming the basis of all trade measurement in Canada.
2. **Weigh Scale:** A measuring machine that measures mass or weight calibrated and certified for accuracy by Measurement Canada.
3. **Weigh Scale Certification:** Certified documents (certificates), including statements showing the result of the examination and official documents, less than two (2) years old at the time of tender closing, issued by Measurement Canada or a Measurement Canada authorized service provider declaring the weigh scale(s) utilized in this Contract is inspected and approved for current usage and certified for accuracy meeting the requirements of Measurement Canada Weights and Measures Act R.S.C., 1985, c. W-6 <https://laws-lois.justice.gc.ca/PDF/W-6.pdf> and Weights and Measures Regulations C.R.C., c. 1605 [https://laws-lois.justice.gc.ca/PDF/C.R.C.,\\_c.\\_1605.pdf](https://laws-lois.justice.gc.ca/PDF/C.R.C.,_c._1605.pdf).

Weigh Scale Certification includes official documentation issued by Measurement Canada authorizing the service provider to inspect and certify weigh scales on behalf of Measurement Canada.

### 3.0 Material Certification

1. The Contractor shall not change supplier without obtaining written approval from the Project Manager.
2. At any time upon request, the Contractor shall submit manufacturer's test data and certification that the cutback asphalt meets requirements of the Contract.

### 4.0 Weight Scale

1. Weight for payment shall be established on weigh scales certified for trade by Measurement Canada located at the manufacturing plant.
2. If a scale is not available at the manufacturing plant, the weight for payment may, upon written consent by the Owner, be established at the Government of Yukon weigh scale located closest to the production plant.
3. All scales shall be capable of providing a printed weigh ticket indicating tare, gross, and net weights. Weigh tickets with hand-entered weights are not acceptable unless approved in writing by the Owner.

### 5.0 Weighing

1. The Contractor shall provide accurate and certified weigh tickets supporting the quantity of product delivered and invoiced for. These weigh tickets shall provide detailed weights for each load delivered. Weight shall be established as follows, depending on the product type and the type of vessel used for transport.
2. Product delivered in bulk: The net weight of each load will be established by scaling the empty container or truck at a certified weigh scale to establish a tare weight, then scaling the loaded container or truck to establish a gross weight. The net difference in weights will be the weight delivered and invoiced for. It is mandatory that printed weigh tickets supporting each load be attached to each individual delivery invoice.
3. If the transport vessel is a truck, the fuel tanks on the trucks are to be filled prior to establishing the gross and tare weights. The truck must be tared for each delivery. A tare weight taken at the start and used for each subsequent trip is not acceptable.
4. The Government of Yukon reserves the right to verify the weight of containers or truckloads of bulk product at an approved scale. All costs incurred by the Contractor with respect to Government of Yukon verifying weights will be considered incidental to the work and no separate payment will be made.

## 6.0 Storage and Handling of Materials

1. All products shall be handled in such a manner as to preserve its quality and fitness for the work. Product shall be transported to the storage area in vehicles so constructed as to prevent damage or loss of material.
2. Ensure that all shipments are made in clean uncontaminated tanks.

## 7.0 Unloading Product

1. The Contractor shall be responsible for unloading of the MC-250 Asphalt; therefore, the Contractor's carrier shall be equipped with a self-contained operative pump or suitable device including the necessary accessories for the unloading of the product and shall provide technical knowledge in the operation of the said unloading device and the unloading procedure.
2. The Contractor must schedule deliveries to ensure their carrier arrives to the delivery site during normal working hours, which is 6:00 A.M. to 5:30 P.M. on scheduled workdays. No deliveries will be accepted on Fridays, weekends or statutory holidays.
3. The carrier will not be allowed to unload MC-250 Cutback Asphalt at any storage location unless Transportation Maintenance personnel are present.
4. The Contractor shall provide notice of delivery time to the Project Manager no less than 24 hours prior to arrival at the delivery location.
5. No additional payment will be issued to the Contractor for any delays which have resulted from a failure to provide notice of delivery.

## 8.0 Sampling

1. The Contractor must equip each tank on all transport vehicles with a submerged asphalt sampling device in accordance with figure 1 ASTM D140. Devices, which are similar in principle, must have prior approval of the owner. The Contractor must inform all designated carriers of the requirement to have a submerged asphalt-sampling device.
2. The Contractor is to ensure that all sampling devices are accessible, free, and operable when the trucks arrive on site.

## 9.0 Measurement of Payment

1. Supply and delivery of MC-250 Cutback Asphalt will be measured in tonne.
2. Price per tonne will be full compensation for supply and delivery of MC-250 Cutback Asphalt.
3. Where a delivery location has been specified in Location and Quantities Price Form, all freight costs are to be included in the price bid per tonne.
4. Where a new or actual delivery location is identified nearer the supply plant from the specified delivery location, payment will be made at the price bid per tonne delivered to the specified location.
5. Where a new or actual delivery location is further from the supply plant from the specified delivery location, payment will be made at the price bid per tonne delivered to the specified location plus an additional Unspecified Location Freight Payment (per tonne).
6. Unspecified Location Freight payments (per tonne) will be calculated as the distance in kilometers between the new or actual delivery location and the specified delivery location nearer the supply plant (as per the Location and Quantities Price Form) multiplied by the Unspecified Location Freight per km per tonne.

### 1. The Government of Yukon will pay \$0.50 per km per tonne for the Unspecified Location Freight.

#### Example:

1. Order 28 tonnes MC-250 Cutback Asphalt to Unspecified Delivery Location at km 1690 Alaska Highway. Specified location nearer the supply plant (as per Location and Quantities Price Form) is km 1425.5 Alaska Highway. Difference in distance =  $(1690 - 1425.5) = 264.5$  km
2. Unit Price per Tonne payment as per Location and Quantities Price Form for the specified delivery location nearer the supply plant (km 1425.5 Alaska Highway) = \$873.46 per tonne.

3. Unspecified Location Freight as per Location and Quantities Price Form = \$0.50/tonne/kilometre
4. Unspecified Location Freight payment (per tonne) will be the difference in distance X the Unit Price for Unspecified Location Freight = (1690 - 1425.5) X \$0.50 = \$132.25 per tonne.
5. Total payment: \$873.46 x 28 + \$132.25 x 28 = \$28,160.72
7. No payment will be made for supply and delivery of MC-250 cutback asphalt off-loaded prior to sampling by the Owner without prior written consent.
8. The Contractor shall be responsible for all costs associated with the transport and disposal of all rejected loads.

#### **10.0 Demurrage and Failure to Deliver**

1. The Government of Yukon will pay a demurrage charge to the Contractor for each hour or part thereof for any truck delayed commencing off-loading more than four (4) hours beyond the actual delivery time or scheduled delivery time, whichever is later, where the delay in off-loading is caused by some action or inaction by the Government of Yukon. Demurrage shall not include off-loading time.
2. Demurrage rates shall be \$150.00/hour for units with six or fewer axles and \$200.00/hour for all two-trailer unit combinations.
3. Should the asphalt being supplied be such that it is deemed necessary to sample and test prior to off-loading, no payment will be made for necessary delays.
4. Order time, scheduled delivery time, actual delivery time, off-loading time, and reason for demurrage shall be written on the bill of lading and co-signed by the Contractor's carrier and the Owner.
5. Such payment to the Contractor will be considered payment in full for any losses due to off-loading delay.
6. Where the Contractor delivers asphalt more than four (4) hours after the scheduled delivery time, which results in the delay of Government of Yukon Bituminous Surface Treatment operations, the Contractor will be charged \$200.00/hour for each hour or part thereof in excess of four (4) hours of normal working time that the operation was delayed.
7. The scheduled delivery time will be established by the Owner in consultation with the Contractor at the time of each material order.
8. Delays in off-loading arising from technical issues attributable to the Contractor shall be taken into account when assessing demurrage charges. Such issues include, but are not limited to, the arrival of a truck without a self-contained operative pump or other suitable unloading device.
9. Delays in off-loading caused by weather and/or natural phenomenon will not factor into demurrage payments being made to either Contractor or Owner.
10. Payments for this section will be made under the Provisional Cost Sum Item.

### **PART 3B: PRODUCT – MC250 CUTBACK ASPHALT**

#### **1.0 MC-250 Cutback Asphalt**

1. The oil supplied must conform to ASTM D2027/D2027M-13 Standard Specification for Cutback Asphalt (Medium-Curing Type).

#### **2.0 Unacceptable Product**

1. All product not conforming to the D2027/D2027M -13 specifications at the time they are delivered will be rejected.

# PROJECT SPECIFIC TERMS AND CONDITIONS

## 1.0 Conflicts

1. Where a conflict exists between a General Terms clause and the Project Specific Terms and Conditions, the Project Specific Terms and Conditions will govern.

## 2.0 Payment and Contact Information

1. The Owner shall, no later than 30 days after the receipt by the Project Manager of an invoice, pay the Contractor the full value of the invoice, with the exception of a 5% holdback.
  1. A 5% holdback may be held on any invoice if deficiencies are apparent, if testing, unspecified location freight, demurrage and temperature have not been accounted for, resolved or received at the time of receipt of invoice.
2. All outstanding holdbacks will be released no later than 60 days after the receipt of the final invoice and after all deficiencies have been resolved.

## 3.0 Contract Security

1. Within 10 business days of notice of award as determined at the tender review meeting, the Contractor will obtain and deliver contract security to the Owner, in a form and with content acceptable to the Owner, as follows:
  1. Where the Contract amount is \$1,000,000.00 or more, an executed performance bond and a labour and material payment bond ("Bonds"), each in an amount equal to or more than 50% of the Contract Price. The Bonds shall be in a form and have terms acceptable to the Owner. The Bonds shall be issued by a surety licensed to transact the business of a surety in Yukon. The Bonds shall properly identify the Contract and parties to the Bonds, and shall be valid and properly completed, with original signatures, and sealed. The Contractor will pay for and continually maintain the Bonds in force and in good standing until completion of the Work and fulfillment of the Contract; OR
  2. Where the Contract Price is less than \$1,000,000.00, Contract security may be provided in the amount of 10% of the Contract Price (as amended), in the form of a bank draft, certified cheque, Canadian Postal money order, or unconditional irrevocable letter of credit, that is in a form and with content acceptable to the Owner, to be retained by the Owner until completion of the Work and fulfillment of the terms of the Contract, unless otherwise agreed to in writing by the Owner.
2. Contract security will be held pending completion of all work identified in the contract and all deficiencies have been remedied to the approval of the Project Manager.
3. The Owner may convert the contract security, if any, to their own use if the Contract is terminated, Contractor is in breach of or in default under the Contract as per Appendix A General Conditions for Goods Contract section 11.0 Default, Termination, Suspension, or Cancellation of Order.
4. Any balance of contract security that remains after payment of all losses, damage and claims of Owner and third party shall be paid by the Owner to the Contractor if, in the opinion of the Project Manager, it is not required for the purpose of the Contract.
5. After the Project Manager has approved the completion of the work, the Owner shall, if the Contractor is not in breach of or default under the Contract, return to the Contractor all or any part of the contract security that in the opinion of the Project Manager, is not required for the purpose of the Contract.

## 4.0 Sub-Contractors

1. The Contractor may subcontract any part of the work.
2. The Contractor shall submit and identify any potential Subcontractor information into the Subcontractor's section of the Electronic Bidding System, bids&tenders.
3. The Contractor shall notify the Project Manager in writing of their intention to subcontract identifying the part of the work and the Subcontractor with whom it is intended to subcontract.

4. The Project Manager may object to the intended subcontracting by notifying the Contractor in writing within 5 days of receipt by the Project Manager on notification to subcontract. If the Project Manager objects, the Contractor shall not enter into the intended subcontract.
5. The Contractor must obtain prior written approval from the Owner to:
  1. use Subcontractors other than those listed in the Electronic Bidding System, bids&tenders; or
  2. add, delete, or change Subcontractors or own forces to perform the Work.
6. The Contractor shall not, without the written consent of the Project Manager, change a Subcontractor who has been engaged by them.
7. Every subcontract entered into by the Contractor shall adapt to all terms and conditions of this tender.
8. Neither a subcontracting nor the Project Manager's consent to a subcontracting by the Contractor shall be constructed to relieve the Contractor from any obligation under the contract or to impose any liability upon the Owner.

#### **5.0 Safety and Security Requirements**

1. The Contractor will collaborate with Transportation Maintenance Branch to develop a mutually agreed-to safety protocol program.
2. The Contractor will be required to provide a Program Specific Safety Plan to address at a minimum:
  1. Hazard assessment and controls
  2. Safe operating procedures with regards to work being undertaken during the course of the contract
  3. WHIMIS Safety Data Sheets for all applicable products
  4. Workplace Safety Rules
  5. PPE Requirements
  6. Preventative Maintenance Program
  7. Training and Communication
  8. Inspections
  9. Incident investigations and reporting
  10. Emergency preparedness
  11. Workplace Violence and Harassment Prevention
3. Following a review of the submitted safety plan, Yukon government may engage with Contractor to make changes as necessary.
4. A list of known hazards set out by Yukon government has been provided in Appendix E - Safety Program Supplement.

#### **6.0 New Tariffs – Increases or Decreases to the Cost or Time to Deliver the Goods**

1. Subject to the terms of the Contract and sections 6.2 to 6.4 below, if there is a substantial, valid, and sufficiently proven increase or decrease in the cost and/or time to deliver the Goods that is due solely to: new tariffs or changes in tariffs issued by any government authority in the United States of America or other country ("US Tariffs"), new tariffs or changes in tariffs issued by any government authority from another country ("Other Tariffs"), or due solely to retaliatory tariffs or counter tariffs issued by any government authority in Canada in response to any US Tariffs or Other Tariffs (" Canadian Tariffs") (collectively, the "New Tariffs"), and if such tariffs came into effect after the date this Contract was executed, then the Contractor may be entitled to such increase in costs and/or time under the Contract, if reasonable and proper, through a Change Order in accordance with the terms of the Contract.
2. Any increase to costs and/or time due to New Tariffs or any subsequent payment or Change Order related thereto, is subject to the Contractor providing the Owner with sufficient notice and proof of any increase to the cost and/or time to deliver the Goods due to changes in New Tariffs. The Contractor shall provide such proof in a form and with content reasonably acceptable to the Owner, including: a full, organized, and

detailed account of the amounts claimed, the grounds upon which the claim is based, a description of the portions of the Goods affected (if any), all steps taken or available to reasonably mitigate the claim or its impact, and any supporting information, documentation, or materials required by the Owner as may be reasonably necessary to support the claim. Such notice and proof shall be provided to the Owner no later than 10 calendar days from the date the increase to costs and/or time due to New Tariffs: was first discovered by the Contractor, ought to have been reasonably known to the Contractor, or within such other timeframe as agreed to in writing by the Owner, whichever is the earlier.

3. The Contractor shall use all reasonable efforts to mitigate any additional costs or delays related to or arising from New Tariffs, including, but not limited to: promptly finding alternative or other businesses outside the United States of America or other applicable country to perform or provide the applicable Goods. Prior to finalizing any Change Order or any payment for any additional costs or delays related to or arising from New Tariffs, and upon request by the Owner, the Contractor will promptly submit a sufficient and detailed description, supported by all materials or documentation as the Owner may reasonably require, of the measures and steps taken by the Contractor to mitigate any additional costs or delays.
4. If there is any reduction in costs or expenses related to or arising from the imposition of New Tariffs, then the Owner shall be entitled to and receive a deduction, credit, or rebate for such costs or expenses from the total amount otherwise payable to the Contractor under the Contract. Upon request by the Owner, the Contractor, shall within the timeframe provided by the Owner, acting reasonably, and in a form and with content reasonably acceptable to the Owner, provide the Owner with sufficient proof of any increase or decrease to the cost and/or time to deliver the Goods or Contract that is due to New Tariffs.
5. Despite any other term in this Contract, if the Contractor fails to provide: sufficient notice or sufficient proof of additional costs or delays related to or arising from any New Tariffs or changes in New Tariffs in accordance with and as required by any terms or timeframes of the Contract, then no extension of time shall be provided to the Contractor and no payment shall be made to the Contractor for any additional expense, cost, or any loss, damages, or compensation incurred or sustained by the Contractor for any reason related to or arising from New Tariffs or any changes in New Tariffs.
6. The Contractor shall ensure that: any contract security and insurance coverage required under this Contract is adjusted accordingly commensurate with the imposition of any New Tariffs or changes in New Tariffs, the Goods, or Contract; and such security and coverage remains valid and is maintained until completion of the delivery of Goods and fulfillment of the Contract. Upon request by the Owner, the Contractor shall provide the Owner with sufficient proof and confirmation as the Owner may require to verify and confirm that the contract security and insurance coverage is valid and has been adjusted accordingly and approved by the insurer, surety or issuer.

#### **7.0 New Tariffs – Right of Termination by Owner If Contract Price Increases Due to Tariffs**

1. If, at any time, there is an increase in the total price of the Contract due to, related to, or arising from New Tariffs and if the amount of such increase in total price is unacceptable to the Owner, then upon 5 calendar days' prior written notice, the Owner reserves and has the right, at its discretion, to terminate the Contract for its convenience and without cause at any time, despite whether the Contractor is in breach or default of the Contract or not.
2. In the event of termination pursuant to section 7.1, the Owner shall pay to the Contractor for work actually and properly performed in accordance with the terms of the Contract up to the date of termination, together with all reasonable and proper costs directly incurred by the Contractor during the period prior to the termination that the Contractor can demonstrate and sufficiently prove cannot be mitigated by the Contractor using all reasonable efforts. Any disputes in relation to such costs or expenses shall be resolved in accordance with the dispute resolution clause under the Contract.
3. The Contractor acknowledges and agrees that the payment under section 7.2 shall be the sole and exclusive remedy, and the maximum total compensation payable to the Contractor, for any and all claims and damages in any way or for any reason against the Owner, and its elected officials, employees, and agents, in relation to or arising from such termination, either individually or cumulatively. Multiple claims will not

enlarge this limit. In no event, shall the Owner be liable in any way or for any reason for any indirect, incidental, exemplary, special or consequential damages of any nature or kind, including, but not limited to: loss of use, loss of revenues or profits and loss of opportunity related to or arising from the Owner's termination of this Contract, regardless of the form of action, whether in contract, tort (including negligence), common law, strict liability, breach of any duty of fairness, or otherwise.

4. For greater certainty, sections 7.2 to 7.3 shall survive any expiry or termination of this Contract.

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