



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2020-039

Construction Galipeau Inc.

v.

Department of Public Works and
Government Services

*Determination and reasons issued
Wednesday, December 9, 2020*

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IN THE MATTER OF a complaint filed by Construction Galipeau Inc. pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.);

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

BETWEEN

CONSTRUCTION GALIPEAU INC.

Complainant

AND

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

Government Institution

DETERMINATION

Pursuant to subsection 30.14(2) of the *Canadian International Trade Tribunal Act (CITT Act)*, the Canadian International Trade Tribunal determines that the complaint is valid in part.

Pursuant to subsections 30.15(2) and (3) of the *CITT Act*, the Tribunal recommends, as a remedy, that the Department of Public Works and Government Services (PWGSC) proceed with the evaluation of the bid submitted by Construction Galipeau Inc. (Galipeau).

If Galipeau's proposal is found to be the lowest-priced bid, then it is recommended that PWGSC terminate its contract with Construction Citadelle Inc. (Citadelle) and award a contract to Galipeau.

If such is the case, it is also recommended that Galipeau and PWGSC negotiate an amount for work already performed by Citadelle to compensate Galipeau for any profit that it would have made had it been awarded the contract at the outset. Galipeau and PWGSC must inform the Tribunal of the outcome of this negotiation within 90 days of the date of this determination.

If the parties are unable to agree on the amount of compensation, the parties will file with the Tribunal, within 120 days of the date of this determination, submissions on the issue of compensation. Each party may file, no later than 20 days later, submissions in reply to those of the other party. The parties are required to serve their submissions on each other and file them with the Tribunal simultaneously. The Tribunal reserves jurisdiction to establish the final amount of compensation.

In the event that, following the evaluation, it is established that Galipeau's proposal is not the lowest-priced, the Tribunal orders PWGSC to compensate Galipeau for its reasonable bid preparation costs. The amount of compensation must be negotiated between Galipeau and PWGSC according to the same schedule as for filing submissions should compensation be required, as mentioned above.

In accordance with the *Procurement Costs Guideline (Guideline)*, the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1 and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary level of complexity or indication of the amount of the cost award, it may make submissions to the Tribunal, in accordance with Article 4.2 of the *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

Serge Fréchette

Serge Fréchette
Presiding Member

Tribunal Panel:	Serge Fréchette, Presiding Member
Support Staff:	Zackery Shaver, Counsel
Complainant:	Construction Galipeau Inc.
Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	Caroline Leblanc Valérie Arseneault

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STATEMENT OF REASONS

SUMMARY OF THE COMPLAINT

[1] On September 10, 2020, Construction Galipeau Inc. (Galipeau) filed, pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*,¹ a complaint with the Canadian International Trade Tribunal with respect to a Request for a Standing Offer (RFSO)² (Solicitation No. EE517-190005/A) issued by the Department of Public Works and Government Services (PWGSC). The RFSO involved the provision of general contractor services for on-demand construction work required for Government of Canada buildings and properties located in the municipalities of Québec and Les Escoumins.

[2] Galipeau is challenging the rejection of its bid by PWGSC. According to Galipeau, PWGSC should not have rejected its bid on the sole basis that it was submitted to the address indicated on the cover page of the RFSO rather than through Canada Post's epost Connect service (epost). Furthermore, Galipeau contends that the winning bidder, Construction Citadelle Inc. (Citadelle), lacks the necessary certifications to carry out the work requested in the RFSO.

[3] As a remedy, Galipeau requests that the Tribunal recommend the acceptance and evaluation of its bid by PWGSC. In the event that Galipeau's bid ought to have been selected, Galipeau asks that the contract be awarded to it or, in the alternative, that Galipeau be compensated for its lost profits. In the event that Galipeau's bid is not selected, Galipeau seeks compensation for its bid preparation costs. Galipeau is also seeking to be awarded its costs incurred in preparing the complaint.

[4] After having determined that the complaint met the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,³ the Tribunal decided to conduct an inquiry into the complaint in accordance with subsection 30.13(1) of the *CITT Act*.

[5] The Tribunal has conducted an inquiry into the complaint in accordance with sections 30.14 and 30.15 of the *CITT Act*. For the reasons set out below, the Tribunal finds that the complaint is valid in part.

BACKGROUND

[6] On July 31, 2020, PWGSC published the RFSO on buyandsell.gc.ca, the Government of Canada's official portal for information on tenders.

[7] Galipeau filed its bid on August 19, 2020, at 9:22 a.m. (EDT). A public servant provided Galipeau with a receipt at that time.

[8] The RFSO closed on August 21, 2020, at 2:00 p.m. (EDT).

[9] On August 24, 2020, Galipeau followed up with PWGSC to inquire whether the results of the evaluation had been communicated to the bidders; the answer was no.

¹ R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].

² Excerpts relevant to this case are set out in Appendix A to these reasons.

³ SOR/93-602 [*Regulations*].

[10] On September 1, 2020, a PWGSC employee notified Galipeau that its bid had been rejected because it had not been filed through epost as was purportedly required in the RFSO.

[11] That same day, Galipeau communicated its objection to the decision, pointing out that it had submitted its bid, according to the instructions, at the address indicated on the cover page of the RFSO.

[12] On September 2 and 8, 2020, Galipeau contacted PWGSC in order to find out whether the results of the evaluation of the bids had been communicated to the bidders.

[13] In a letter dated September 9, 2020, PWGSC notified Galipeau that its bid had not been successful and that the contract related to the standing offer had been awarded to Citadelle.

[14] On September 10, 2020, Galipeau filed its complaint with the Tribunal.

[15] On September 16, 2020, the Tribunal agreed to conduct an inquiry into the complaint.

[16] On October 19, 2020, PWGSC filed its Government Institution Report (GIR).

[17] On October 26, 2020, Galipeau filed its submissions on the GIR.

[18] The Tribunal determined that there was no need for a hearing, given that there was sufficient evidence on the record to determine the validity of the complaint and, accordingly, conducted a file hearing.

ISSUES IN DISPUTE AND POSITIONS OF THE PARTIES

[19] Galipeau raises the following two grounds of complaint:

- i. PWGSC erred in finding that Galipeau's bid was non-compliant because it was filed at the address that appeared on the cover page of the RFSO rather than through epost;
- ii. Citadelle's successful bid failed to meet the requirements of the RFSO: Citadelle lacked the necessary certifications to carry out the work requested in the RFSO.

[20] With respect to the first ground of complaint, Galipeau argues that it submitted its bid at the address that appeared on the cover page of the RFSO—the address identified as being the location at which bids were to be filed—before the closing of the RFSO; which it did, as evidenced by the receipt provided by PWGSC.⁴ According to Galipeau, the RFSO invited bidders to file their bids either by submitting them by hand at the address indicated, or through epost. In Galipeau's view, the RFSO presented both options as being equally valid. Galipeau notes, moreover, that section GI08 of the RFSO does not indicate that the chosen means of submitting a bid may be grounds for rejection.

[21] With respect to the second ground of complaint, Galipeau alleges that Citadelle lacks the necessary certifications to carry out some of the work required in the RFSO.⁵ The Tribunal notes, however, that no evidence was provided to support this allegation.

⁴ Exhibit PR-2020-039-01 at 13.

⁵ *Ibid.* at 10.

[22] For its part, PWGSC contends that Galipeau's complaint is not valid: according to PWGSC, the RFSO requires that bids be filed through epost; PWGSC points to the instructions contained in sections GI06, GI07 and SI07 of the RFSO.⁶ PWGSC argues that if there was any uncertainty as to the means or location of the filing of bids, Galipeau should have sought clarification.

ANALYSIS

[23] Subsection 30.14(1) of the *CITT Act* requires that, in conducting an inquiry, the Tribunal limits its considerations to the subject matter of the complaint. At the conclusion of the inquiry, the Tribunal must determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract have been observed. Section 11 of the *Regulations* provides that the Tribunal is required to determine whether the procurement was conducted in accordance with the applicable trade agreements.⁷

[24] Subsection 515(4) of the Canadian Free Trade Agreement⁸ pertains to the filing of bids and reads as follows:

Evaluation and Award of Contract

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the tender notices and tender documentation and be from a supplier that satisfies the conditions for participation.

[25] It is well established that the onus is on the bidder to demonstrate that it meets all of the mandatory requirements of the procurement.⁹ With respect to the first ground of complaint, Galipeau asserts that it followed the instructions that appeared on the cover page of the RFSO (reproduced in Appendix A). Galipeau acknowledges that instructions regarding the filing of bids through epost were also contained in the RFSO, but essentially argues that it had no reason to believe that the filing of bids through epost was mandatory; rather, it considered this to be an alternate means of filing that was available to bidders in place of the option to deliver bids by hand that appeared on the cover page.

[26] PWGSC argues that, if the RFSO was ambiguous, Galipeau should have sought clarification on the matter before submitting its bid.¹⁰ PWGSC notes that on the eve of the closing date of the RFSO, a public servant had responded to a question from another bidder as to the means of submitting bids and that Galipeau should have also raised the question.¹¹

⁶ Exhibit PR-2020-039-08 at 12.

⁷ The Canadian Free Trade Agreement, which is listed at paragraph 7(1)(c) of the *Regulations*, applies to this Request for a Standing Offer. The other free trade agreements do not apply in this case because of their higher thresholds for construction services.

⁸ Canadian Free Trade Agreement, online: Internal Trade Secretariat <https://www.cfta-alec.ca/wp-content/uploads/2020/09/CFTA-Consolidated-Text-Final-English_September-24-2020.pdf> (entered into force 1 July 2017) [CFTA]. The description of the RFSO on Buyandsell.gc.ca states that it is subject to the CFTA.

⁹ *Otec Solutions Inc. v. Department of Foreign Affairs, Trade and Development* (5 October 2016), PR-2016-012 (CITT) at para. 28.

¹⁰ *Samson & Associates* (13 April 2015), PR-2014-050 (CITT) at para. 36; Exhibit PR-2020-039-08 at para. 47.

¹¹ Exhibit PR-2020-039-08 at 4 and 19.

[27] In the Tribunal's view, it is quite clear that the RFSO contained two sets of instructions in which imperative language was used in prescribing *more than one* different means for submitting bids.

[28] To begin with, the cover page of the RFSO indicates, in bold capital letters, "**RETURN BIDS TO** [a given municipal address located in Québec]". Obviously, these are instructions for submitting bids other than by electronic means—for example, using a physical medium (normally using a paper format) or another physical medium (such as a CD-ROM or USB key, for example) physically delivered to the municipal address indicated. The RFSO invited potential suppliers to send their bids to a certain address—presumably by any available means—therefore by delivering these to the government office, either in person, by courier or by Canada Post or any other courier service.

[29] There are also instructions that are just as imperative and very detailed which prescribe submitting bids through epost. These instructions, found in sections GI06, GI07 and SI07 of the RFSO, are clearly instructions for filing bids electronically.

[30] In the opinion of the Tribunal, the RFSO may reasonably be interpreted as authorizing the delivery method used by Galipeau. The company relied on instructions that appeared on the cover page which clearly indicated that the bidder could submit its bid at the specified municipal address in Québec. It goes without saying that the bidder submitting a bid in paper format or using another physical medium such as a CD-ROM or USB key would use this method of delivery, even in the context of the COVID-19 pandemic, unless there were clear indications to the contrary. However, the RFSO contains no such indication. The use of the hand delivery option seems all the more legitimate for a bidder who is hesitant to use electronic delivery.

[31] In the Tribunal's view, from the moment a supplier chose the clear and simple option of submitting its bid in person to a government office in a physical format, as Galipeau did, it had no need to worry, and it could completely disregard any instructions that clearly only applied to electronic filing.

[32] If there was any ambiguity in the RFSO, it was entirely latent. The Tribunal cannot in such a case expect the bidder to have spotted it. Thus, in accordance with the *contra proferentum* doctrine, it is for PWGSC to bear the consequence related to such an ambiguity if it arises.¹²

[33] It therefore follows that PWGSC breached the CFTA and that Galipeau's bid should have been accepted and evaluated.

[34] The Tribunal thus finds, with respect to the first ground of complaint, that the complaint is valid and fully warrants the remedy set out below.

[35] As to the second ground of complaint raised by the complainant, the Tribunal has already noted that no evidence was provided in support of this allegation; accordingly, no inquiry shall be conducted regarding this ground of complaint.¹³

¹² *Accipiter Radar Technologies Inc. v. Department of Fisheries and Oceans* (17 February 2011), PR-2010-078 (CITT); *Lanthier Bakery Ltd. v. Department of Publics Works and Government Services* (3 June 2015), PR-2014-047 (CITT).

¹³ *Veseys Seeds Limited, doing business as Club Car Atlantic* (10 February 2010), PR-2009-079 (CITT) at para. 9; *Flag Connection Inc.* (25 January 2013), PR-2012-040 (CITT) at para. 35; *Manitex Lifting ULC* (19 March 2013), PR-2012-049 (CITT) at para. 22.

REMEDY

[36] An appropriate remedy proposed by the Tribunal must consider all of the circumstances of the case and the criteria set out in subsection 30.15(3) of the *CITT Act*.

[37] Galipeau is asking that its bid be evaluated and that it be awarded the standing offer if its bid is found to be the lowest-priced. This is the remedy to which Galipeau is entitled and it is so ordered by the Tribunal.

[38] Under the criteria set out in subsection 30.15(3) of the *CITT Act*, the Tribunal finds that the position adopted by PWGSC in this matter is such that it brings the administration of the procurement process into disrepute in the eyes of taxpayers. It must be noted in this case that the specific wording and font used for the relevant passage on the cover page are such that a reasonable person may conclude that it is a guideline related to the filing of a bid. To argue otherwise would be absurd and unreasonable. PWGSC should have conceded this, accepted its responsibilities and done what is right.

[39] As mentioned earlier, the Tribunal recommends that PWGSC evaluate Galipeau's proposal. If Galipeau's proposal is found to be the lowest-priced, it is recommended that PWGSC rescind the standing offer with Citadelle and award one to Galipeau for the remainder of the work.

[40] If Galipeau is entitled to the standing offer, the Tribunal recommends: (1) that PWGSC calculate the work carried out by Citadelle up to the moment the existing contract is rescinded and (2) that an amount agreed upon by both parties be paid to Galipeau for the profits that it would have made had it been awarded the contract at the outset.

[41] In the event that, following the evaluation, Galipeau's proposal is not the lowest-priced, the Tribunal orders PWGSC to compensate Galipeau for its reasonable bid preparation costs.¹⁴ The amount of compensation will have to be negotiated between PWGSC and Galipeau. The Tribunal finds that such an order is necessary in order to compensate Galipeau for the efforts it made in preparing its bid, which was wrongly rejected. This order is also justified due to the fact that Galipeau's complaint provided PWGSC with an opportunity to correct a significant breach of the integrity of the competitive procurement system.

COSTS

[42] Section 30.16 of the *CITT Act* provides that "... the Tribunal may award costs of, and incidental to, any proceedings before it in relation to a complaint on a final or interim basis and the costs may be fixed at a sum certain or may be taxed."

[43] In determining the amount of costs in this case, the Tribunal took into account its *Procurement Costs Guideline (Guideline)*, according to which the assessment of the level of complexity of a complaint is based on three criteria: the complexity of the procurement, the complexity of the complaint and the complexity of the proceedings.

¹⁴ Compensation for bid preparation costs is covered by section 30.15(4) of the *CITT Act* and is a means of compensating a party that has suffered a loss due to a fault in the content or process of the procurement, but who will not benefit from further remedies. In other words, the bid preparation costs agreement compensates for loss of time and opportunity associated with the procurement system. See, for example, *IBM Canada Ltd.* (7 September 2000), PR-99-020 (CITT).

[44] In this case, the complexity of the procurement was relatively high, but it was not the subject of the complaint. The complaint related to the filing of a bid, which required a relatively straightforward analysis of the facts of the case. The interventions of the parties were neither complicated nor extensive.

[45] As such, a level of complexity for this complaint case was Level 1 and compensation in the amount of \$1,150 seems appropriate under the circumstances.

DETERMINATION

[46] Pursuant to subsection 30.14(2) of the *CITT Act*, the Tribunal determines that the complaint is valid in part.

[47] Pursuant to subsections 30.15(2) and (3) of the *CITT Act*, the Tribunal recommends, as a remedy, that PWGSC proceed with the evaluation of the bid submitted by Galipeau.

[48] If Galipeau's proposal is found to be the lowest-priced bid, then it is recommended that PWGSC terminate its contract with Citadelle and award a contract to Galipeau.

[49] If such is the case, it is also recommended that Galipeau and PWGSC negotiate an amount for work already performed by Citadelle to compensate Galipeau for any profit that it would have made had it been awarded the contract at the outset. Galipeau and PWGSC must inform the Tribunal of the outcome of this negotiation within 90 days of the date of this determination.

[50] If the parties are unable to agree on the amount of compensation, the parties will file with the Tribunal, within 120 days of the date of this determination, submissions on the issue of compensation. Each party may file, no later than 20 days later (i.e. 140 days following the date of this determination), submissions in reply to those of the other party. The parties are required to serve their submissions on each other and file them with the Tribunal simultaneously. The Tribunal reserves jurisdiction to establish the final amount of compensation.

[51] In the event that, following the evaluation, it is established that Galipeau's proposal is not the lowest-priced, the Tribunal orders PWGSC to compensate Galipeau for its reasonable bid preparation costs. The amount of compensation must be negotiated between Galipeau and PWGSC according to the same schedule as for filing submissions should compensation be required, as mentioned above.

[52] In accordance with the *Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1 and its preliminary indication of the amount of the cost award is \$1,150. If any party disagrees with the preliminary level of complexity or indication of the amount of the cost award, it may make submissions to the Tribunal, in accordance with Article 4.2 of the *Guideline*. The Tribunal reserves jurisdiction to establish the final amount of the cost award.


Serge Fréchette

Serge Fréchette

Presiding Member

APPENDIX A: EXCERPTS FROM THE REQUEST FOR A STANDING OFFER (EE517-190005/A)

Cover page: Graphic in red added

 Public Works and Government Services / Travaux publics et Services gouvernementaux Canada / Canada	
RETURN BIDS TO: RETOURNER LES SOUMISSIONS À: Réception des soumissions - TPSGC / Bid Receiving - PWGSC 1550, Avenue d'Estimauville 1550, D'Estimauville Avenue Québec Québec G1J 0C7	
Request For a Standing Offer	
Title - Sujet OAC Entrepreneur général 5 ans	
Solicitation No. - N° de l'invitation EE517-190005/A	Date 2020-07-30
Client Reference No. - N° de référence du client R.0011991.001	GETS Ref. No. - N° de réf. de SEAG PW-SQCM-032-17959
File No. - N° de dossier QCM-9-42129 (032)	CCC No./N° CCC - FMS No./N° VME
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2020-08-21	
Time Zone Fuseau horaire Heure Avancée de l'Est HAE	

GI06 Submission of Offer

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

- v. failure of the Bidder to properly identify the bid;
 - vi. illegibility of the bid;
 - vii. security of bid data; or,
 - viii. inability to create an electronic conversation through the epost Connect service.
- h. The Bid Receiving Unit will send an acknowledgement of the receipt of bid Document(s) via the epost Connect conversation, regardless of whether the conversation was initiated by the supplier using its own licence or the Bid Receiving Unit. This acknowledgement will confirm only the receipt of bid Document(s) and will not confirm if the attachments may be opened nor if the content is readable.
 - i. Bidders must ensure that they are using the correct email address for the Bid Receiving Unit when initiating a conversation in epost Connect or communicating with the Bid Receiving Unit and should not rely on the accuracy of copying and pasting the email address into the epost Connect system.
 - j. A bid transmitted by epost Connect service constitutes the formal bid of the Bidder.
- 2. Unless otherwise specified in the Special Instructions to Offerors:
 - a. the offer shall be in Canadian currency;
 - b. the requirement does not offer exchange rate fluctuation risk mitigation. Requests for exchange rate fluctuation risk mitigation will not be considered. All offers including such provision will render the offer non-responsive.
 - 3. Timely and correct delivery of offers is the sole responsibility of the Offeror.

GI07 (2010-01-11) Revision of offer

- 1. An offer submitted in accordance with these instructions may be revised by using epost Connect before the date and time set for the closing of the solicitation.
- 2. A revision to an offer that includes unit prices must clearly identify the change(s) in the unit price(s) and the specific item(s) to which each change applies.
- 3. Failure to comply with any of the above provisions may result in the rejection of the non-compliant revision(s). The offer shall be evaluated based on the original offer submitted and all other compliant revision(s).

GI08 (2014-09-25) Rejection of offer

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

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