

DEPARTMENT OF TRANSPORTATION, INFRASTRUCTURE AND ENERGY
Province of Prince Edward Island
Transportation of Bulk Highway Salt

TENDER FORM AND AGREEMENT

THIS AGREEMENT made by and between, herein called the Contractor, the Party of the First Part and The Government of Prince Edward Island as represented by the Honourable Paula J. Biggar, herein called the Minister, the Party of the Second Part.

WHEREAS the Parties hereto are desirous of entering into a formal agreement setting out the terms and conditions of employment and service;

NOW THEREFORE THIS AGREEMENT WITNESS TO that in consideration of the premises and of the mutual and several promises and undertakings hereinafter expressed, the Parties hereto covenant, undertake and mutually agree and promise each other as follows:

1. DEFINITIONS

The definition of terms used in this contract agreement shall conform in all respects to the definition of terms contained in the document entitled "General Provisions and Contract Specifications for Highway Construction", published by the Department of Transportation, Infrastructure and Energy of the Province of Prince Edward Island, as amended on the date of closing of tenders pursuant to this Agreement.

2. GENERAL COVENANT

The Contractor hereby covenants and agrees with the Government as herein provided in connection with the following work, namely;

TRANSPORTATION OF SALT - QUEENS COUNTY

Description of Work: The transportation of 21,000 tonnes \pm 25 % bulk highway salt from the Pugwash Mine in Nova Scotia to the designated point in this contract.

SEALED BIDS TO BE RETURNED TO:
The Department of Transportation, Infrastructure and Energy
Highway Maintenance Division
c/o Stephen Szwarc, A/Director
64 Park Street, P.O. Box 2000
Charlottetown, PE C1A 7N8

Before 2:00 p.m., Tuesday, September 26, 2017

3. No Implied Contract

It is hereby understood and agreed between the parties hereto that no implied contract of any kind whatsoever, by, or on behalf, of the Minister shall arise or be implied from anything contained in this Contract, or from any position or situation of the parties at any time, and that this Contract made by the Minister is, and shall be, the only Contract upon which any rights against the Minister are to be founded.

4. How Party of the First Part is Read

Whenever this agreement is entered into by more than one party or parties of the first part, the word "Contractor" shall be read "Contractors," and pronouns in the contract referring to the Contractor shall be read as plural and whenever a corporation is the Party of the First Part, the said pronouns shall be read accordingly.

5. Consideration of Clauses as Covenants

Wherever it is stipulated that anything shall be done or performed by either of the Parties hereto, it shall have the same effect and be constructed as if such Party had entered into a covenant with the other Party to do or perform the same, and as if such covenant had been expressly made on the part of the Contractor, not only on the Contractor's own behalf, but also on the behalf of the Contractor's legal representative, successors or assigns; and as if any such covenant on the part of the Minister has been made on behalf of the Minister, and the Minister's successors in office.

6. Contractors Submission Respecting the Agreement

The Contractor shall, as part of the Contractor's submission respecting this agreement, complete the attached Schedule B, Identification of Principles; Schedule C, Schedule of Tendered Unit Prices; Schedule D, Schedule of Equipment to be used on the work; and Schedule E, Schedule of Subcontractors.

The agreement, including all appended schedules, shall be completed in complete conformity with the instructions to bidders contained in the document entitled "General Provisions and Contract Specification for Highway Construction."

In presenting the Contractor's submission for consideration by the Minister, the Contractor understands that until, and unless, the agreement is endorsed by the Minister, no agreement between the parties shall exist and the Minister shall not be bound to endorse any agreement.

7. Performance by Contractor

The Contractor, at the Contractor's own expense, shall, except as herein otherwise specifically provided, furnish and provide all and every kind of labour and superintendence, services, tools, implements, machinery, plant materials, articles and whatsoever is necessary for the due execution of the work.

The Contractor shall fully construct and erect the work in the most thorough, professional and substantial manner, in every respect to the satisfaction and approval of the Engineer. The Contractor shall complete the work within the time specified herein and deliver it to the Minister in the manner and upon the terms and conditions of the Contract.

8. Bid and Performance Security

The Contractor hereby and herewith deposits with and delivers to the Minister, as security of the due fulfilment of the Contract, one of the following, which shall remain in effect for a minimum of 60 days after Tender Closing:

- a) a certified cheque in the amount of ten percent (10%) of the Tender Value, excluding HST.
- OR
- b) a Bid Format irrevocable standby letter of credit on a Government approved form in the amount of ten percent (10%) of the Tender Value, excluding HST.
- OR
- c) a bid bond in the amount of ten percent (10%) of the Tender Value, excluding HST. The bond shall be from a surety company authorized to carry on business in Canada guaranteeing to supply a performance bond equal to 50% of the Contract Value, excluding HST and a labour and material bond equal to 25% of the Contract Value, excluding HST.

Performance Security which shall be held and retained by the Minister as security for the due and faithful performance, observance and fulfilment by the Contractor of all the covenants, provisos, agreements, conditions and reservations in this Contract contained on the part of the Contractors to be observed, performed and complied with shall be in the form of:

- d) a certified cheque in the amount of ten percent (10%) of the Contract Value, excluding HST, which shall be retained until Substantial Completion of the Contract.
- OR
- e) a Performance Format irrevocable standby letter of credit on a Government approved form in the amount of ten percent (10%) of the Contract Value, excluding HST, which shall be retained until November 30th in the year of the Contract or until Substantial Completion.
- OR
- f) a performance bond equal to 50% of the Contract Value, excluding HST and a labour and materials bond equal to 25% of the Contract Value, excluding HST which shall be retained until the warranty period of one (1) year has elapsed.

The bidder will forfeit security to the Minister if the bidder fails to enter into or carry out the contract when called upon to do so.

It is understood and agreed that the Contractor assumes risk and must bear any loss in respect to the performance security as aforesaid, occasioned by the failure or insolvency of the banks on which any cheque was drawn or in which any deposit was made in connection with the security aforesaid.

If at any time hereafter the said Contractor should make default under the said Contract, or if the Minister acting under the powers reserved in the said Contract shall determine that the said works, or any portion thereof remaining to be done, should be taken out of the hands of the Contractor and be completed in any manner or way whatsoever than by the Contractor, or if the Contractor refuses or neglects to pay for work done or materials supplied by any person in connection with the said work, the Minister may, in either case dispose of said security for the carrying out of the construction and completion of the work of the Contract or for paying any salaries or wages for work done, or any accounts for materials supplied for the said works that may be left unpaid by the said Contractor.

In the event of any breach, default or non-performance being made or suffered by the Contractor in or in respect of any of the terms and conditions, covenants, provisions, agreements, or restrictions herein contained, which on the part of the said Contractor should be observed, performed or complied with, the said security so delivered to or deposited with the Minister or by the Minister received in respect thereof, shall by the contractor, be forfeited absolutely to the Minister.

Upon the due and faithful performance, observance and fulfilment by the Contractor of all the terms, provisions, covenants, agreements, conditions, reservations, hereinbefore contained, on the part of the Contractors to be observed, performed and complied with, the Minister shall surrender the performance security.

9. Minister Covenants to Pay

In consideration of the faithful performance by the Contractor of all and singular covenants, agreements and provisions of the Contract, the Minister hereby covenants and agrees with the Contractor that, on the full completion by the Contractor of all the work as specified in the Contract, within the time specified and limited for the final completion thereof, and to the entire satisfaction of the Engineer to be evidenced by the certificate of the Engineer in writing, the said Minister will well and truly pay, or cause to be paid, to the said Contractor the amount of the Contract price, representing the actual quantities in the several items in the Schedule of Prices, identified as Schedule C to this agreement, at the unit prices or lump sum prices quoted by the Contractor. This amount paid to the Contractor as above, shall include all and every kind of work, labour, superintendence, services, tools, implements, machinery, plant materials, articles and things whatsoever necessary for the full execution and completion of the work to the entire satisfaction of the Engineer.

10. Final Payment

It is hereby agreed by the parties hereto that the payment of the final amount due under the Contract, and the adjustment and payment of any bills that may be rendered for work done, in accordance with any alteration in or addition to the same, shall release the Minister from any and all claims or liability on account of work performed under the said Contract or any alteration in or addition to the same.

11. No Waiver

It is hereby agreed that no condoning, excusing, or overlooking by the Minister, or any person acting on the Minister's behalf on previous occasions of breaches or defaults similar to that for which any action is taken or power is exercised, or forfeiture is claimed or enforced against the Contractor, shall be taken as a waiver of any provisions of the Contract, or as defeating, affecting or prejudicing in any way the right of the Minister under the Contract.

12. Components of the Contract

Any and all plans or drawings prepared by the Department, the document titled "General Provisions and Contract Specifications for Highway Construction", the advertisement, the Tender Form and Agreement together with Schedule A, Schedule of Special Provisions; Schedule B, Identification of Principals; Schedule C, Schedule of Tendered Unit Prices; Schedule D, Schedule of Equipment; and Schedule E, Schedule of Sub-Contractors; as well as any addenda which may be issued by the Department pursuant to this Contract shall hereby be a part of this Agreement as fully and to the same effect as if the same had been set forth at length in the body of the agreement.

13. Completion of Work

To be determined by the Department. See Special Provision # 2.

14. FOIPP Clause

- 1. By submitting your bid, you agree to disclosure of the information supplied, subject to the provisions of the Freedom of Information and Protection of Privacy Act (FOIPP).
- 2. Anything submitted in your bid that you consider to be "confidential information" because of its proprietary nature should be marked as "confidential" and will be subject to appropriate consideration under the Freedom of Information and Protection of Privacy Act.
- 3. During the delivery and installation of goods and/or services, you may have access to confidential or personal information. Should this occur, you must ensure that such information is not released to any third party or unauthorized individual.
- 4. Any information provided on this contract may be subject to release under the Freedom of Information and Protection of Privacy Act. You will be consulted prior to the release of any information.

IN WITNESS WHEREOF the parties hereto have hereby caused these presents to be signed and sealed on the dates stated.

SIGNED, SEALED AND DELIVERED
by the Contractor on the [] day
of [], 2017.

SIGNED, SEALED AND DELIVERED
by the Minister on the [] day
of [], 2017.

.....
CONTRACTOR

.....
MINISTER

In the presence of:

In the presence of:

.....

.....

**SCHEDULE A
SCHEDULE OF SPECIAL PROVISIONS**

1) DESCRIPTION OF WORK

This contract consists of the delivery of bulk highway salt for the purpose of ice control to the designated points on Prince Edward Island as listed within this contract from the salt mine in Pugwash, Nova Scotia.

The salt will be purchased by the Department of Transportation, Infrastructure and Energy from K&S Windsor Salt Ltd. For the purpose of this tender, the unit price submitted shall include all costs incurred for transportation of the designated quantity from the salt mine at K&S Windsor Salt Ltd. in Pugwash, Nova Scotia to the Department's designated storage site(s) for this contract.

Contractors are reminded that the highway via Tidnish, New Brunswick to Pugwash, Nova Scotia is not open to this type of truck haul.

In the case where the Contractor is trucking salt from Pugwash to the designated points within the contract, the Department agrees to pay the Contractor an extra 4.0 cents/tonne/kilometre haul on all loads trucked over the necessitated longer truck route (20.9 km) through Nova Scotia when that province imposes its spring weight restrictions.

2) EXECUTION AND COMPLETION OF WORK

This contract is for the 2017-2018 season only. The quantities listed in this contract for each site are approximate and may vary depending on this season's maintenance requirements.

The Contractor is required to notify the County Superintendent prior to startup. For the period of November 1, 2017 through to the end of the contract period, the Contractor must have the ability to supply each depot with a minimum of **150 tonnes** per day when required. The Charlottetown dome is currently full to capacity therefore it is expected that no salt will be required prior to November 1, 2017 unless otherwise specified by the County Superintendent.

The Department will advise the successful Contractor of other delivery requirements as necessary to fully execute the contract. The Contractor will also be notified by the Department in letter form of the completion date of this contract in late March/early April of 2018.

3) MATERIAL HANDLING

The salt shall not contain more than 1.50% moisture by weight when delivered to the designated points within the contract. **All loads shall be covered by waterproof tarps in good condition that are securely tied down during transit.** Any salt that gets contaminated as it is being delivered by the Contractor shall be screened with all costs associated with the screening being deducted from progress claims to the Contractor.

SCHEDULE A
SCHEDULE OF SPECIAL PROVISIONS

4) DELIVERY

The Department will receive materials only during non-holiday weekdays between the hours of 8:00 a.m. and 5:00 p.m. up to Friday November 17, 2017 starting Sunday November 19, 2017, the Department will accept material 7 days a week.

Subject to reasonable advance notice, the Department will accept shipments outside of this period only if the additional direct payroll costs for operators are absorbed by the Contractor. The Department shall recover these costs by deducting the amount thereof from the amount to be paid to the Contractor for work under contract.

Salt shall not be dumped outside storage buildings when equipment is not available to transfer salt inside. Material deposited outside without such direction by the Department may be rejected for payment.

5) MEASUREMENT OF WEIGHED MATERIALS

Delivery number tickets indicating the ticket number, the weight of the load, the date and the name of the trucker will be issued for each load by the K&S Windsor Salt Ltd. at their mine. One copy of the ticket must be left with Department personnel for each load delivered to each designated point in this contract.

When submitting a bill for a progress payment, the contractor should also submit a copy of each ticket for each load delivered to the various designated points.

The Contractor, on returning to the province with each load, must stop at the Provincial Scales in Borden to have the weight of the load certified. When submitting a bill for progress payment, the Contractor must submit a copy of the ticket issued by the Department scales as well as a copy of the ticket issued by the salt company. Loads that are delivered using the Wood Islands ferry service will not be required to have the weight certified once it enters the province.

6) PRICE OF WORK

The Contractor shall accept the compensation as herein provided in full payment for furnishing all necessary materials, labour, tools, equipment, supplies and other incidentals and for performing all work under the contract.

7) SECTION 107.01 - PAYMENTS

The Superintendent may issue monthly payment equal to 100% of the value of the work, depending upon the acceptance of the Certificate of Final Quantities by the Contractor, after the Superintendent has issued a Certificate of Substantial Completion and the Contractor has submitted a Statutory Declaration that all monies the Contractor owes in carrying out the work have been paid. In the absence of implementing a 15 % hold back, the Department will not release the bid deposit until all the appropriate paperwork has been submitted and approved by the Department. Notwithstanding the foregoing, no payment shall be construed to be an acceptance of any defective work or material.

**SCHEDULE A
SCHEDULE OF SPECIAL PROVISIONS**

8) FUEL PRICE ADJUSTMENT

A benchmark price for diesel fuel will be established on the closing date for the tender, Thursday, September 28, 2017 based on the price posted by the Island Regulatory and Appeals Commission on that date.

At the completion of the contract, the Department will apply the calculated monthly price adjustment as outlined in the Table below to the Contractor's invoices for each appropriate month. These adjustments will be based on the monthly retail price of diesel fuel for Charlottetown as established by MJ Ervin & Associates.

% Fuel Increase or Decrease Price Change +/-	Unit bid price per tonne - Schedule "C"
0.10 - 10.0	0
10.1 - 15.0	2%
15.1 - 20.0	4%
20.1 - 25.0	6%
25.1 - 30.0	8%
30.1 - 35.0	10%
35.1 - 40.0	12%
40.1 - 45.0	14%
45.1 - 50.0	16%

9) SECTION 105.04 - INSURANCE REQUIREMENTS

The Contractor shall, without limiting its obligations or liabilities herein and at the Contractor's own expense, provide and maintain the following insurances in forms and amounts acceptable to the Minister.

Automobile Liability in an amount not less than \$2,000,000.00 on all vehicles owned, leased, operated or licensed in the name of the Contractor.

All the foregoing insurance shall be primary and shall not require the sharing of any loss by any insurer of the Province and shall preclude subrogations by the Insurer against the Government of Prince Edward Island.

SCHEDULE A
SCHEDULE OF SPECIAL PROVISIONS

Comprehensive General Liability in an amount not less than \$3,000,000.00 inclusive per occurrence against bodily injury and property damage. The Government of Prince Edward Island is to be added as an insured under this policy. Such insurance shall include, but not be limited to the following:

Products and Completed Operations Liability;
Owner's and Contractor's Protective Liability;
Blanket Written Contractual Liability;
Contingent Employer's Liability;
Personal Injury Liability;
Non-Owned Automobile Liability;
Cross Liability;
Employees as Additional Insured;
Broad Form Property Damage; and
Operation of Attached Machinery.

Subsection 105.04.01, Proof of Insurance

A certified copy of the required insurance shall be submitted prior to commencing work and shall be subject to the Engineer's approval for adequacy of protection. Approval by the Engineer of any policy filed by the Contractor shall in no way relieve the Contractor of its obligations to provide the insurance referred to in the Contract, nor shall it imply that the policies are in accord with the terms of this agreement.

All required insurance shall be endorsed to provide the Government with 60 days advance written notice of cancellation or material change.

The Contractor shall ensure that the Products and Completed Operations coverage, as applicable, shall be in force for the duration of the warranty period.

The Contractor hereby waives all rights of recourse against the Province with regard to damage to the Contractor's property.

The Contractor shall require and ensure that each Subcontractor maintain comparable liability insurances.

10) SECTION 907 - VEHICLE CONFIGURATIONS AND RESTRICTION

Tractor Belly Dumps (TBD) will not be permitted for use in this contract.

**SCHEDULE B
IDENTIFICATION OF PRINCIPALS**

Name of Contractor:

Mailing Address:

Contact Numbers:

Business -
Cell -
Fax -
e-mail -

Principal's Name:

Title:

Mailing Address:

Business -
Cell -
Fax -
e-mail -

If Contractor is a corporation in which province of Canada is the corporation registered:

Schedule C

schedule of item for tender

Item Description and Price	Estimated Quantity	Contractor Total Price
PUGWASH TO BRACKLEY		
Section: Item: 138209		
PER Tonnes		
\$	PER Tonnes	21,000.00 \$
	100	

Total Carried Forward \$ _____

From Previous Page

Total Carried Forward \$ _____

HST \$ _____

Grand Total \$ _____

SCHEDULE D
SCHEDULE OF EQUIPMENT TO BE USED ON THE WORK

SCHEDULE E
SCHEDULE OF SUB-CONTRACTORS

TENDER CHECKLIST

Please ensure the following items are included/filled in prior to submitting tender:

- All pages of the tender document are attached
- Name of Contractor (first paragraph) - Page 1
- Contract dated - Page 5
- Contract signed - Page 5
- Complete Schedule “B” - Page 10
- Complete Schedule “C” - Page 11

Note: The bidder must write in ink the prices, both in words and numerals, for which the bidder proposes to do each item of the work contemplated. The bidder must extend the total for each item of the work and carry out a summation to the total value of the work to be done under the Tender.

- Complete Schedule “D” Page 12
- Complete Schedule “E” - Page 13
- Tender cheque enclosed