

**DEPARTMENT OF TRANSPORTATION, INFRASTRUCTURE AND ENERGY
Province of Prince Edward Island**

**TENDER FORM AND AGREEMENT
Revision 0**

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 Steven Myers, herein called the Minister, the Party of the Second Part.

WITNESS, AS FOLLOWS:

1. Definitions

The definition of terms used in this Tender Form and 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 Minister as herein provided in connection with the following work, namely:

Route 110 – Kelvin Grove (MacIntyre Rd) 2020
Section 11002, Station 600-1800

For a total distance of 1.20 km

The section commences approximately 600 metres south of the intersection of Rte 2 and MacIntyre Rd (Rte 110) and proceeds south for a distance of 1,200 metres.

This work includes: placing asphalt seal B (45 mm); and all other work necessary to complete the Contract.

TENDER CLOSES:

2:00 p.m., Wednesday, July 29, 2020

**(*Tenders shall be delivered between 12:00 pm and 2:00 pm*) 64 Park Street, 1st Floor,
Government Garage, Charlottetown, PE**

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 Contract 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 Contractors 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 Contract, 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 Sub-Contractors.

The Contract 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 Contract is endorsed by the Minister, no Contract between the parties shall exist and the Minister shall not be bound to endorse any Contract.

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 fulfillment of the Contract, one of the following, which shall remain in effect for a minimum of 30 days after tender closing:

- a) a certified cheque in the amount stipulated in Schedule A - Schedule of Special Provisions

OR

- b) a bank draft in the amount stipulated in Schedule A - Schedule of Special Provisions

OR

- c) a bid format irrevocable standby letter of credit on a government approved form in the amount stipulated in Schedule A - Schedule of Special Provisions

OR

- d) a bid bond in the amount stipulated in Schedule A - Schedule of Special Provisions 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

Performance security must be filed with the Department before work on the project commences. This security shall be held and retained by the Minister for the due and faithful performance, observance and fulfillment 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:

- e) a certified cheque in the minimum amount of ten percent (10%) of the Contract value, excluding HST, which shall be retained until the warranty period (one (1) year after substantial completion) has elapsed.

OR

- f) a bank draft in the minimum amount of ten percent (10%) of the Contract value, excluding HST, which shall be retained until the warranty period (one (1) year substantial completion) has elapsed.

OR

- g) a performance format irrevocable standby letter of credit on a government approved form in the minimum amount of ten percent (10%) of the Contract value, excluding HST, which shall be retained until the warranty period (one (1) year after substantial completion) has elapsed.

OR

8. Bid and Performance Security (continued)

- h) 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 both of which shall be retained until the warranty period (one (1) year after substantial completion) has elapsed.

All performance security which has an expiry date which precedes the end of warranty date must be renewed prior to the time that the security would expire. 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 Contractor 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 Contract, 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 Contract as fully and to the same effect as if the same had been set forth at length in the body of the Contract.

13. Completion of Work

The Contractor agrees to complete the work on, or before **October 30, 2020**.

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 [], 20[].

SIGNED, SEALED AND DELIVERED
by the Minister on the [] day
of [], 20[].

CONTRACTOR

MINISTER

.....
(Authorized Signing Officer)

.....

In the presence of:

In the presence of:

.....
(Witness Signature)

.....
(Witness Signature)

**SCHEDULE A
SCHEDULE OF SPECIAL PROVISIONS**

1) INSTRUCTIONS TO BIDDERS

The stipulated bid security amount shall be **\$10,000.00**. Upon award, the successful Contractor shall replace the Bid Security with the Performance Security.

A mandatory preconstruction meeting between the successful Contractor and the Department shall be held in advance of construction startup.

The Department may require a levelling course of hot mix be placed prior to placement of the seal coat. No additional compensation shall be provided for this work.

2) SECTION 102.13 - SCHEDULING OF THE WORK

The number of working days stipulated for this Contract is **2**. These working days shall be consecutive. Liquidated damages will be assessed beyond the approved schedule.

**3) SECTION 501 - ASPHALT CEMENT
(Item 50101 - Asphalt Cement)**

Contractors shall note that for bidding purposes an artificial rack price of \$900 per tonne shall replace the Government's posted Monthly Average Asphalt Binder Rack Price table for this Contract. The artificial rack price of \$900 per tonne shall be used as the price index when calculating the liquid asphalt cement price adjustment.

**4) SECTION 603 – HOT MIX ASPHALTIC CONCRETE
(Item 60350 – Asphalt Seal)**

The Contractor has the option of using a portion of RAP in the production of the hot mixed asphaltic concrete surface mix B. The maximum amount of RAP permitted shall be 15% of the total weight of the combined materials. The Contractor shall be responsible for the incorporation of RAP into the asphalt concrete surface mix which shall be done in a manner as per Section 603.05 of the PEITIE General Provisions and Contract Specifications for Highway Construction. The RAP shall be free of contamination and all particles shall pass the 50 mm sieve when tested in accordance with ASTM C136.

A mix design will also be required as per section 603.03 of the PEITIE General Provisions and Contract Specifications for Highway Construction if the Contractor chooses to produce hot mixed asphaltic concrete surface mix B containing RAP. If at any point in time during construction the B mix does not meet Department specifications as determined by the Engineer, then the amount of RAP shall be reduced or removed at the discretion of the Engineer. The Contractor must have an additional conventional hot mixed asphaltic concrete surface B mix design not containing RAP completed and approved with constituent material stockpiled prior to the start of construction in the event that the B mix containing RAP does not meet contract specifications.

A \$4.00/tonne deduction off the tendered price of Asphalt Seal shall be made should the contractor choose to use up to 15% RAP. Should the contractor choose to use less than 15% RAP a proportional deduction shall be made.

5) SECTION 603.15 - HOT MIX ASPHALTIC CONCRETE – SMOOTHNESS
Section 603.15 shall not apply to this Contract.

6) SECTION 907 - VEHICLE CONFIGURATIONS AND RESTRICTIONS
The SADT shall be understood to be 1,719.

7) SECTION 908 - TRAFFIC CONTROL PLAN
(Item 90802 - Traffic Control Plan)
Work shall not proceed until all conditions of this section are met. Failure to meet these conditions shall result in a stop work order as per Section 106.07 Suspension of Work.

**SCHEDULE B
IDENTIFICATION OF PRINCIPALS**

Name of Contractor:

Mailing Address:

Telephone:

Fax:

Principal's Name:

Title:

Mailing Address:

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
ASPHALT CEMENT			
Section: 501	Item: 50101		
		PER Tonnes	
		PER Tonnes	54.00 \$
		100	
TACK COAT			
Section: 601	Item: 60101		
		PER Square Metre	
		PER M2	7,920.00 \$
		100	
ASPHALT SEAL: B			
Section: 603	Item: 60350		
		PER Tonnes	
		PER Tonnes	860.00 \$
		100	
SIGNALLERS			
Section: 901	Item: 90101		
		PER hrs	
Twenty Dollars and 78 Cents		20.78 PER hrs	96.00 \$
		100	1,994.88
TEMPORARY MARKING			
Section: 905	Item: 90501		
		PER Metres	
		PER M	20.00 \$
		100	
TRAFFIC CONTROL PLAN			
Section: 908	Item: 90802		
		PER hrs	
Thirty Dollars and 00 Cents		30.00 PER hrs	24.00 \$
		100	720.00
		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

SCHEDULE F
ADDITIONAL FUEL ADJUSTMENTS

Due to significant fluctuations in fuel prices this year, this contract will have an additional fuel adjustments applied to the following items that are applicable at the following rates based on the formula described on page 2. This adjustment will only be applied to specific contracts in the 2020 construction season, and will not be applied to any contracts in future years.

Item# 20306	EXCAV: EARTH SURPLUS/SUITABLE	1.0 L/m ³
Item# 20307	EXCAVATION: EARTH WASTE	1.0 L/m ³
Item# 20602	BORROW: SELECT	0.5 L/t
Item# 20604	BORROW: SELECT	1.0 L/m ³
Item# 20701	GRANULAR BASE: A	0.6 L/t
Item# 60301	ASPHALT BASE: A	5.0 L/t
Item# 60326	ASPHALT LEVELING: A	5.0 L/t
Item# 60350	ASPHALT SEAL: B	5.0 L/t
Item# 61003	HMA DRIVEWAY MIX	5.0 L/t

Payment Adjustment for Fuel Cost

Compensation payable to the Department or the Contractor shall be the difference in price of diesel between the time of tender closing of the Contract and the month of which the work was completed for the applicable item. This shall be calculated in accordance with the following:

The Department shall adjust payments to the Contractor under the applicable Item in the Contract Document based on the Island Regulatory and Appeals Commission (IRAC) weekly Petroleum Prices Wholesale Diesel price. The price is published weekly and is available on the IRAC website.

The payment adjustment will be established for each week that Work is performed on any of the items in Table 1 and the Weekly Wholesale Price (WWP) differed from the Tender Fuel Price (TFP) by more than 5%.

The adjustments will be calculated using the Nominal Fuel Consumption Rates (NFCR) in Table 1 and the formulae show below. The Department shall submit a statement to the Contractor identifying, by Item, the Monthly Fuel Adjustment (MFA), the associated NFCA, and the Material Quantity (MQ) as identified on the previous month's Progress Estimate

Table 1
Nominal Fuel Consumption Rates (NFCRs) by Item

Item #	Description	NFCR
20306/20307	Excavation	1.0 L/m ³
20602/20604	Borrow	0.5 L/t or 1.0 L/m ³
20701	Aggregate Base/Subbase	0.6 L/t
60301/60326/60350/61003	Asphalt Base/Seal	5.0 L/t

The payment adjustment shall be calculated as follows, where:

MFA = Monthly Fuel Adjustment

WWP = Weekly Wholesale Price

TFP = Tender Fuel Price

NFCR = Nominal Fuel Consumption Rate

MQ = Material Quantity

When $WWP > 1.05 TFP$, the MFA is an additional payment to the Contractor as follows:

$$MFA = (WWP - 1.05TFP) \times NFCR \times MQ$$

When $WWP < 0.95 TFP$, the MFA is a deduction from payments due to the Contractor as follows:

$$MFA = (0.95TFP - WWP) \times NFCR \times MQ$$

Examples:

1. A Contractor completes placement of 10,000 tonnes of select borrow and 5000 tonnes of granular A in the month of July. Wholesale diesel prices during the month were; week 1 \$1.11, week 2 \$1.15, week 3 \$1.23, week 4 \$1.26. In week one 8,000 tonnes of borrow was placed and no granular was placed, week two 2,000 tonnes of borrow was placed and 1500 tonnes of granular was placed, week three 2000 tonnes of granular was placed, and in week four 1,500 tonnes of granular was placed. The price of wholesale price of diesel at the time of the tender closing in March was \$0.90.

Calculation

MFA = Monthly Fuel Adjustment

NFCR = Nominal Fuel Consumption Rate, = 0.5l/t for borrow, = 0.6l/t for granular

MQ = Material Quantity

	Borrow	Granular
Week One =	8,000t	0
Week Two =	2,000t	1,500t
Week Three =	0	2,000t
Week Four =	0	1,500t

WWP = Weekly Wholesale Price

Week One =	\$1.11
Week Two =	\$1.15
Week Three =	\$1.23
Week Four =	\$1.26

TFP = Tender Fuel Price = \$0.90

WWP is greater than 1.05*TFP therefore MFA = (WWP – 1.05TFP) x NFCR x MQ

		WWP	(WWP – 1.05TFP) (\$/l)	NFCR (l/t)	MQ (t)	Payment (\$)
Week One	Borrow	\$1.11	\$0.17	0.5	8000	\$680.00
	Granular	\$1.11	\$0.17	0.6	0	\$0.00
Week Two	Borrow	\$1.15	\$0.21	0.5	2000	\$210.00
	Granular	\$1.15	\$0.21	0.6	1500	\$189.00
Week Three	Borrow	\$1.23	\$0.29	0.5	0	\$0.00
	Granular	\$1.23	\$0.29	0.6	2000	\$348.00
Week Four	Borrow	\$1.26	\$0.32	0.5	0	\$0.00
	Granular	\$1.26	\$0.32	0.6	1500	\$288.00

\$1,715.00 Payment

- Contractor completes placement of 4,500 tonnes of asphalt in the month of August. Wholesale diesel prices during the month were; week 1 \$0.80, week 2 \$0.82, week 3 \$0.88, week 4 \$0.80. In week one 1,200 tonnes was placed, week two 1,000 tonnes was placed, week three 900 tonnes was placed, and in week four 1,400 tonnes was placed. The price of wholesale price of diesel at the time of the tender closing in March was \$1.35.

Calculation

MFA = Monthly Fuel Adjustment

NFCR = Nominal Fuel Consumption Rate

= 5 l/t for seal

MQ = Material Quantity

Week One = 1,200t

Week Two = 1,000t

Week Three = 900t

Week Four = 1,400t

WWP = Weekly Wholesale Price

Week One = \$0.80

Week Two = \$0.82

Week Three = \$0.88

Week Four = \$0.80

TFP = Tender Fuel Price = \$1.35

WWP is less than 1.05*TFP therefore $MFA = (0.95*TFP - WWP) \times NFCR \times MQ$

	WWP	(0.95*TFP-WWP) (\$/l)	NFCR (l/t)	MQ (t)	Payment (\$)
Week One	\$0.80	-\$0.48	5	1200	-\$2,880.00
Week Two	\$0.82	-\$0.46	5	1000	-\$2,300.00
Week Three	\$0.88	-\$0.40	5	900	-\$1,800.00
Week Four	\$0.80	-\$0.48	5	1400	-\$3,360.00

-\$10,340.00 Deduction