

FORM 160



GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
Department of Transportation and Works
Highway Design Division

SECTION 160

CONTRACTOR PERFORMANCE EVALUATION SYSTEM

INDEX

160.1 General

160.2 Performance Rating Methodology

160.3 Interpretation of Rating for Form 160A Contractor Performance

Evaluation Report Part I: Contract Work Other Than Warranty Work

160.4 Interpretation of Rating for Form 160B Contractor Performance Evaluation Report Part II:

Warranty Work Under the Contract

160.5 Completion of the Evaluation Report

160.6 Suspension of Bidding Privileges

160.7 Reinstatement of Bidding Privileges

160.8 Contractor Requested Review of Form 160A and/or Form 160B Evaluation

160.9 Confidentiality of Information

160.1 General

The Contractor Performance Evaluation System is a process designed to maintain an acceptable level of performance from Contractors carrying out work for the Department of Transportation and Works (hereafter the "Department"). It will also provide a means to identify contractors with acceptable performance records and to provide a means to identify and deal with contractors with unsatisfactory or unacceptable performance records.

A record of the performance of Contractors will be maintained to identify the following:

- (a) Those Contractors who by virtue of satisfactory performance (as defined herein) will continue to be eligible to submit tenders for work with the Department.
- (b) Those Contractors who by virtue of unacceptable performance (as defined herein) may be subject to having their bidding privileges suspended by the Department for a period of time determined by the Department based on a review and an evaluation of their contract work on a particular project.
- (c) Those Contractors who by virtue of unsatisfactory performance (as defined herein) who may have their bidding privileges suspended based on an evaluation of their contract work on a particular project and other projects completed for the Department.

During the execution of the work of the contract before the issuance of a Final Completion Certificate under the contract, and during or related to the execution of warranty work related to GC 31 of the contract the Contractor is to be notified immediately if the work is not proceeding or being completed in a satisfactory manner. This notification in the case of contract work before the issuance of a Final Completion certificate would normally be confirmed in job meeting records or correspondence to the Contractor. In the case of warranty related work required under GC 31 notification would normally be confirmed by correspondence to the Contractor. In this respect the Contractor Performance Evaluation System is not intended to interfere with, or substitute for, the normal written communication that a Resident Engineer would initiate when confronted with unsatisfactory performance.

160.2 Performance Rating Methodology

The performance of a Contractor on a contract will be conducted by the Regional Engineer in two parts in accordance with the methodology laid out in the Forms attached hereto as Form 160A being the "Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work" and as Form 160B being the "Contractor Performance Evaluation Report Part II: Warranty Work Under The Contract."

Unacceptable performance (as defined herein) on a single project may result in the suspension of bidding privileges for a period of time to be determined by the Department.

Unsatisfactory performance (as defined herein) on a particular project subject to a review of Contractor performance on other projects for the Department may result in the suspension of bidding privileges for a period of time to be determined by the Department.

The Performance Rating Methodology under each of these two parts of the Contractor Performance Evaluation System is now discussed in turn.

Performance Rating Methodology for Contractor's Work Other Than Warranty Work

The Contractor's performance in this category will be evaluated on a points rating system relative to quality of work performed, timeliness in completing work, and management/administration of contracts/work. This evaluation will be completed within thirty (30) days of the earlier of: the issuance of a Final Completion Certificate for the project; or the abandonment of the work by the Contractor; or the termination of the work of the Contractor under the contract by the Department.

(a) Quality of Work Performed (50 points)

The quality of the Contractor's work in conformance with contract documents and industry standards will form the basis for points awarded in this category.

Where the Contractor's performance is in conformity with the contract documents and industry standards the Contractor's work will be defined to be "Acceptable" and the Contractor will receive a score of fifty (50) points on Form 160A.

Where the Contractor's performance is not in conformity with the contract documents and industry standards the Contractor's work will be defined to be "Unacceptable" and the Contractor will receive a score of zero (0) points on Form 160A.

(b) Timeliness in Completing Work (25 points)

Conformance to the specified schedule in the contract in relation to circumstances within the Contractors' control will form the basis of points awarded in this category.

Time shall be of the essence in all Department contracts with Contractors.

The normal risks associated with contracting are not to be considered as causes beyond the Contractor's control.

Delays caused by sub-Contractors are the prime Contractor's responsibility. However, if the prime Contractor has taken all possible action to expedite a sub-Contractor's work, the effectiveness of this effort shall be considered by the Department when evaluating the Contractor's performance.

Timeliness deals with the Contractor's performance from the date of award to the date of substantial completion. The Contractor's performance on post completion activities (other than warranty work under the contract), such as clean up and addressing identified deficiencies in the work, should be taken into account under the Management rating.

Where the Contractor completes the work on time in accordance with the schedule for completion of the work as set out in the contract documents or the schedule of completion of the work as revised by the Contractor and accepted by the Department pursuant to the contract documents,

the Contractor's work will be defined to be "On Time" and the Contractor shall receive a score of twenty five (25) points on Form 160A.

Where the Contractor completes the work during the same fiscal year that the work was scheduled to be completed in but not in accordance with the schedule for completion of the work as set out in the contract documents or the schedule of completion of the work as revised by the Contractor and accepted by the Department pursuant to the contract documents, the Contractor's work will be defined to be "Late" and the Contractor shall receive a score of fifteen (15) points on Form 160A.

Where the Contractor completes the work during the following or a subsequent fiscal year other than the fiscal year that the work was scheduled to be completed in, not in accordance with the schedule for completion of the work as set out in the contract documents or the schedule of completion of the work as revised by the Contractor and accepted by the Department pursuant to the contract documents the Contractor's work will be defined to be "Very Late" and the Contractor shall receive a score of zero (0) points on Form 160A.

The term "fiscal year" as used in this section means a period from April 1 of a given calendar year to March 31 of an immediately following calendar year.

(c) Management/Administration of Contract (25 points)

This category evaluates the extent to which the Contractor takes charge of and effectively manages/administers a project without undue effort required by Department staff or Consultants.

Items to be considered include:

- (i) superintendence, work site coordination;
- (ii) scheduling of work;
- (iii) ordering of materials;
- (iv) shop drawings submission;
- (v) completion of deficiencies identified by or as of the date of substantial completion (other than warranty work under GC 31);
- (vi) interpretation of contract documents;
- (vii) clean up of the work area;
- (viii) administration of change orders, progress claims and other pertinent documentation;
- (ix) responsiveness to direction and instructions of owner, cooperation with Resident Supervisor;
- (x) quotation reasonableness on change orders;
- (xi) payment of accounts to suppliers, sub-Contractors, employees, etc.; and
- (xii) adherence to safety and environmental regulations.

Where the Contractor preponderantly, properly performs the work, complies with time frames/submission of paperwork without errors, effectively coordinates the work with good communication, planning and organization with its staff, suppliers and sub-contractors, effectively coordinates the work with good communication, planning and organization with the Department, effectively coordinates the work with good communication, planning and organization with all other interested and involved Departments or agencies and effectively coordinates the work with good communication, planning and organization to meet all the paper requirements of the contract documents the Contractor will be defined to be "Above Average" and the Contractor shall receive a score of twenty five (25) points on Form 160A.

Where the Contractor preponderantly, properly performs the work with minor direction from the Department, complies with time frames/submission of paperwork with minor errors and limited resubmissions of documents, coordinates the work with good communication, planning and organization with its staff, suppliers and sub-contractors with some minor problems, coordinates the work with good communication, planning and organization with the Department with some minor problems, coordinates the work with good communication, planning and organization with all other interested and involved Departments or agencies with some minor problems, and coordinates the work with good communication, planning and organization to meet all the paper requirements of the contract documents with some minor problems the Contractor will be defined to be "Average" and the Contractor shall receive a score of fifteen (15) points on Form 160A.

Where the Contractor preponderantly, performs the work with constant attention and direction from the Department, paperwork is late and/or has numerous errors and/or numerous re-submissions are required, ineffectively coordinates the work through communication, planning and organization with its staff, suppliers and sub-contractors, ineffectively coordinates the work through communication, planning and organization with the Department, ineffectively coordinates the work through communication, planning and organization with all other interested and involved Departments or agencies, and ineffectively coordinates the work through communication, planning and organization to meet all the paper requirements of the contract documents, the Contractor will be defined to be "Below Average" and the Contractor shall receive a score of zero (0) points on Form 160A.

Performance Rating Methodology For Contractor's Warranty Work Contractor's Under the Contract

The Contractor's performance in this category will be evaluated on a points rating system relative to quality of work performed and timeliness in completing work. This evaluation will be completed by the earlier of the following periods of time: within thirty (30) days of the completion of warranty work under GC 31; or where the Contractor refuses to do warranty work under GC 31 or abandons that warranty work without completing the same or the Contractor is terminated by the Department pursuant to the contract within thirty (30) days of that refusal, abandonment or termination (as the case might be).

(a) Quality of Work Performed (50 points)

The quality of the Contractor's work in conformance with contract documents and industry standards will form the basis for points awarded in this category.

Where the Contractor's performance warranty work is in conformity with the contract documents and industry standards the Contractor's work will be defined to be "Acceptable" and the Contractor will receive a score of fifty (50) points on Form 160B.

Where the Contractor's performance of warranty work is not in conformity with the contract documents and industry standards, or where the Contractor refuses to undertake the warranty work under GC 31 as directed by the Engineer/Architect or fails to provide the Engineer/Architect with an acceptable schedule for the completion of warranty work under GC 31 within thirty (30) days of receipt of request for the same from the Engineer/Architect, the Contractor's work will be defined to be "Unacceptable" and the Contractor will receive a score of zero (0) points on Form 160B.

(b) Timeliness in Completing Work (25 points)

Conformance to the specified schedule in the contract in relation to circumstances within the Contractors' control will form the basis of points awarded in this category.

Time is of the essence in all Department contracts with Contractors.

The normal risks associated with contracting are not to be considered as causes beyond the Contractor's control.

Delays caused by sub-Contractors are the prime Contractor's responsibility. However, if the prime Contractor has taken all possible action to expedite a sub-Contractor's work, the effectiveness of this effort shall be considered when evaluating the Contractor's performance.

Timeliness deals with the Contractor's performance of warranty work from the date of the Contractor is notified by the Department that such work is required to the date of completion of the warranty work.

Where the Contractor completes the warranty work on time in accordance with the schedule for completion of the work initially accepted by the Engineer/Architect for the warranty work under GC 31, or any revised schedule for the completion of the warranty work proposed by the Contractor and accepted by the Department pursuant to the contract, the timeliness of the Contractor's work will be defined to be "Acceptable" and the Contractor shall receive a score of fifty (50) points on Form 160B.

Where the Contractor completes the work during the same calendar year but not in accordance with the schedule for completion of the work initially accepted by the Engineer/Architect for the warranty work or any revised schedule for the completion of the warranty work proposed by the Contractor and accepted by the Department pursuant to the contract the timeliness of the Contractor's work will be defined to be "Unacceptable" and the Contractor shall receive a score of zero (0) points on Form 160B.

160.3 Interpretation of Rating for Form 160A Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work

The interpretation of points rating under Form 160A will be as follows:

- (a) 80 - 100 shall be defined as "Satisfactory Performance". A Contractor in this category will continue to be eligible to bid on work for the Department;
- (b) 51 - 79 shall be defined as "Unsatisfactory Performance" That Contractor's level of performance needs to be improved A Contractor in this category will be put on notice that a review of that Contractor's bidding privileges is to occur and that that Contractor's bidding privileges on work for the Department may be suspended based upon a review of the Contractor's performance on the current contract and on previous contracts for the Department; and
- (c) 0 - 50 shall be defined as "Unacceptable Performance". A Contractor in this category will be put on notice that a review of that Contractor's bidding privileges is to occur and that that Contractor's bidding privileges on work for the Department may be suspended based upon a review of the Contractor's performance on the current contract.

160.4 Interpretation of Rating for Form 160B Contractor Performance Evaluation Report Part II: Warranty Work Under The Contract

The interpretation of points rating under Form 160B will be as follows:

- (a) > 50 shall be defined as "Satisfactory Performance". A Contractor in this category will continue to be eligible to bid on work for the Department; and
- (b) ≤ 50 shall be defined as "Unacceptable Performance". A Contractor in this category will be put on notice that a review of that Contractor's bidding privileges is to occur and that that Contractor's bidding privileges on work for the Department may be suspended based upon a review of the Contractor's performance on the current contract.

160.5 Completion of the Evaluation Report

Completion of a Contractor Contract Performance Evaluation Report i.e., Form 160A and Form 160B being the Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work and the Contractor Performance Evaluation Report Part II: Warranty Work Under The Contract is required for all publicly tendered roadwork contracts.

The Form 160A Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work report will be completed by the Resident Engineer within thirty (30) days of the earlier of: the issuance of a Final Completion Certificate for the project; or the abandonment of the work by the Contractor; or the termination of the work of the Contractor under the contract by the Department. This report will be signed by the Regional Engineer and the Regional Director, and distributed to the Contractor with the Final Completion Certificate. A copy of the report will also be forwarded to the Tendering & Contracts office.

The Form 160B Contract Work Other Than Warranty Work and the Contractor Performance Evaluation Report Part II: Warranty Work Under The Contract report will be completed by the Resident Engineer if Department makes a claim against the Contractor in respect of warranty work under GC 31 by the earlier of the following periods of time: within thirty (30) days of the completion of warranty work under GC 31; or where the Contractor refuses to do warranty work under GC 31 or abandons that warranty work without

completing the same or the Contractor is terminated by the Department pursuant to the contract within thirty (30) days of that refusal, abandonment or termination (as the case might be).

If no warranty claim is made by the Department against the Contractor under GC 31 then Form 160B Contract Work Other Than Warranty Work and the Contractor Performance Evaluation Report Part II: Warranty Work Under The Contract report will be completed by the Resident Engineer within thirty (30) days of the expiration of the GC 31 warranty period related to the work. This report will be signed by the Regional Engineer and the Regional Director, and distributed to the Contractor. A copy of the form will also be forwarded to the Tendering & Contracts office.

160.6 Suspension of Bidding Privileges

Tendering and Contracts will record the Form 160A Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work for the Contractor rating on each contract and maintain a record of the Contractor's assessment on previous contracts.

Tendering and Contracts will record the Form 160B Contract Work Other Than Warranty Work and the Contractor Performance Evaluation Report Part II: Warranty Work Under The Contract rating on each contract and maintain a record of the Contractor's assessment on previous contracts.

Contractors receiving an "Unsatisfactory" rating on the Form 160A Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work for the Contractor Report will be notified in writing by Tendering and Contracts that their performance needs to be improved. A Contractor in this category will be put on notice that a review of that Contractor's bidding privileges is to occur and that that Contractor's bidding privileges on work for the Department may be suspended based upon a review of the Contractor's performance on the current contract and on previous contracts for the Department.

Contractors receiving an "Unacceptable" rating on the Form 160A Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work Report or the Contractor the Contractor's Contract Performance Evaluation Report Form or the Form 160B Contract Work Other Than Warranty Work and the Contractor Performance Evaluation Report Part II: Warranty Work Under The Contract Report have been identified for possible suspension of bidding privileges. The review will be based upon the Contractor's overall performance on previous contracts and, if necessary, a more detailed report from the Resident Engineer on the current contract including any warranty work related to that contract. The results of the review will be communicated to the Contractor in writing by Tendering and Contracts.

The decision to suspend the bidding privileges of a Contractor and for what period of time in any particular instance shall rest with the Deputy Minister of the Department after he has reviewed the facts and circumstances, including any and all Contractor Performance Evaluation Reports related to the same and will be communicated to the Contractor concerned by a letter from the Deputy Minister to the Contractor copied to Tendering and Contracts.

If a suspension of bidding privileges is approved by the Department, then all future bids from the Contractor will be rejected prior to tender opening.

Alternatively, any tenders from a Contractor under suspension, discovered after tender opening, will be marked "disqualified". [PT Act Regulations 3.(4)]

Suspensions apply to all Department tendered projects. Attempts by suspended companies to submit tenders under a new company name or structure (successor corporations) are to be rejected. It is incumbent on the "new" company to establish the merits of having the opportunity to tender.

160.7 Reinstatement of Bidding Privileges

The duration of suspensions may vary depending upon individual circumstances but will generally be for at least one (1) year and/or until the circumstance giving to the suspension is addressed to the satisfaction of the Deputy Minister of the Department.

A Contractor's suspension may be lifted by the Deputy Minister of the Department upon written request from the Contractor and demonstration to the satisfaction of the Deputy Minister of the Department of the Contractor's ability to perform satisfactorily in future: for instance, successful completion of comparable projects for others since the time of suspension, identification and correction of problems that led to the suspension, etc. , or where the suspension relates to the Contractor's failure to perform corrective work related to a GC 31 warranty that suspension may be lifted by the Deputy Minister of the Department when the warranty work has been completed to the satisfaction of the Resident Engineer and that Contractor has satisfied the Department regarding the steps that that Contractor will take in future to avoid the occurrence of such defects.

In the event of reinstatement, the Contractor must achieve a "Satisfactory" rating on the first subsequent contract in order to retain eligibility to continue bidding Transportation and Works projects.

160.8 Contractor Requested Review of Form 160A and/or Form 160B Evaluation

A Contractor may request a review be conducted by the Department of a Performance Evaluation done by a Resident Engineer as countersigned by the Regional Engineer and the Regional Director on Form 160A being the "Contractor Performance Evaluation Report Part I: Contract Work Other Than Warranty Work" and/or on Form 160B being the "Contractor Performance Evaluation Report Part II: Warranty Work Under The Contract" in respect of a particular project by submitting a written request, with supporting documentation, to Tendering and Contracts.

The review in question will be conducted by a committee established by the Assistant Deputy Minister (Transportation). The results of that review which will be completed within sixty (60) days of the request for a review will be communicated in writing to the Contractor.

160.9 Confidentiality of Information

Information compiled through the Contractor Performance Evaluation System is intended solely for internal use by the Department of Transportation and Works. Evaluation information related to a particular contractor(s) will not be released to outside parties, such as reference checks from other tendering agencies, without the consent of the affected contractor(s).

SECTION 162

FAILURE TO COMPLY WITH REGULATORY STANDARDS

Contractor's failure to comply with the regulations of any authority having jurisdiction over the works, or part thereof, or any aspect of the performance of the work and the manner of carrying out the work, will entitle and result in the Owner appointing such engineer, engineers, compliance officer or officers as may be necessary to more fully cause compliance by the Contractor with the requirements of the relevant regulatory authority.

The Owner may thereafter, and for so long as the Owner may keep such engineer, engineers, compliance officer or officers, on the site of the works, deduct from the progress payments otherwise due to the Contractor the costs including but not limited to payroll, payroll burdens, accommodations, meals, and transportation costs associated with the work of such engineer, engineers, compliance officer or officers as the case may be. The Contractor shall have no right to dispute the Owner's right to appoint such engineer, engineers, compliance officer or officers, the reasonableness of the deduction of such costs or the amount thereof and the Engineer's certificate of the amount of such costs shall be final and binding upon the Contractor and the Owner.