

**Specifications For
Manufactured Materials**

Section: PURCHASE OF ASPHALT

Subject: GENERAL PROVISIONS FOR
ASPHALT SUPPLY CONTRACTS

TABLE OF CONTENTS

1. DESCRIPTION
2. ABBREVIATIONS, DEFINITIONS AND INTERPRETATION PROVISIONS
3. MATERIALS
4. PREQUALIFICATION OF BIDDERS
5. CORRELATION TESTING
6. ORDERING OF ASPHALT
7. DELIVERY
8. SAMPLING
9. MEASUREMENT
10. REPORTING DELIVERIES
11. INVOICES
12. TERMINATION OF CONTRACT
13. OBLIGATIONS OF THE PROVINCE
14. UNIT PRICE ADJUSTMENT
15. OTHER PAYMENTS AND ADJUSTMENTS
16. NOTICES

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

1. DESCRIPTION

1.1 This specification contains the terms and conditions applicable to the supply of asphalt products pursuant to GS standing offers or purchase orders.

2. ABBREVIATIONS, DEFINITIONS AND INTERPRETATION PROVISIONS

2.1 Wherever the following abbreviations are used in this contract, they are to be construed the same as the respective expressions below:

ASTM The American Society for Testing and Materials

CAN National Standard of Canada set by CGSB

CGSB Canadian General Standards Board

MHI Ministry of Highways and Infrastructure

SMM 100 The part or parts of the MHI Specifications for Manufactured Materials Manual relating to the asphalt product or products supplied pursuant to the contract.

GS Ministry of Government Services

STP MHI Standard Test Procedures Manual

2.2 In this contract the following terms, unless the context otherwise requires, shall mean:

- (a) Asphalt or Product or Material or any combination of these words shall refer to the particular type of asphalt materials to be supplied pursuant to this contract;
- (b) Contract means this agreement as set forth in the contract documents;
- (c) Contract documents means the tender, the Terms and Conditions of Tender, any revisions or amendments pursuant to section 2.2 of the Terms and Conditions of Tender, these general provisions and the other sections of SMM 100 which relate to the products supplied pursuant to the contract;
- (d) Contractor means a third party with whom the Province has a contract for highway construction or maintenance work;

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

- (e) Delivery Code means the number assigned to each delivery point as shown on the GS standing offer or purchase order;
- (f) Holiday means:
- New Years Day
 - Family Day
 - Good Friday
 - Victoria Day
 - Canada Day
 - Saskatchewan Day
 - Labour Day
 - Thanksgiving Day
 - Remembrance Day
 - Christmas Day
 - Boxing Day
- (g) Province means Her Majesty the Queen in right of the Province of Saskatchewan as represented by the Ministry of Government Services and the Minister responsible for the ministry of government on behalf of which the product is supplied;
- (h) GS Control Number means the number on the GS standing offer or purchase order form;
- (i) Supplier means the successful bidder to whom this contract for the supply of asphalt is awarded;
- (j) Unit Price Bid means the unit price for the product as bid by the Supplier.
- 2.3 Payment by the Province of any amount under or pursuant to this contract is subject to an appropriation being made by the Legislature of the Province of Saskatchewan for the goods and services to be provided under this contract in the fiscal year of the Province in which the liability to pay arises.
- 2.4 No delay, neglect or forbearance on the part of the Province in enforcing any term, condition or obligation of this contract shall be, or be deemed to be, a waiver or in any way prejudice any right of the Province under this contract, and any waiver of any term, condition, obligation or breach of this contract must be in writing to be effective.

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

- 2.5 Any rights and remedies provided under this contract are cumulative and are in addition to and not in substitution for any rights or remedies provided or available at law or in equity.
- 2.6 The contract documents shall constitute the entire and exclusive agreement between the Province and the Supplier relating to the supply of the product and the documents supersede all prior agreements, undertakings, representations and understandings, written or oral, between the parties or their representatives relating thereto. No amendment of this agreement shall be effective unless it is in writing and executed by both parties.
- 2.7 In the event that any of the provisions contained in this contract shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from this contract and such invalidity or unenforceability shall not invalidate, affect or impair the remaining provisions of this contract but this contract shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 2.8 This contract shall be governed by and interpreted in accordance with the laws in force in the Province of Saskatchewan.
- 2.9 Time shall be of the essence of this contract.
- 2.10 Headings used in this contract are for convenience of reference only and shall not affect or be utilized in the construction of interpretation of this contract.
- 2.11 This contract may not be assigned without the written consent of the Province.
- 2.12 This contract shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 2.13 If either party hereto is delayed, hindered or prevented from the performance of any of its obligations under this Agreement (hereinafter referred to as the "delay") by reason of fire, flood, explosion, acts of God, war, revolution, civil disturbance, embargoes, strikes or other cause beyond the reasonable control of the party affected (except by reason of lack of funds or the financial condition of that party) such performance shall be excused for the period of the delay and any period within which such performance is to be effected shall be extended by the period of such delay. No party shall be entitled to relief under this section unless, within seven days after the commencement of the delay, the party claiming such relief shall have given notice in writing to the other party of the delay.

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

3. MATERIALS

- 3.1 Each product shall conform to the applicable specifications in MHI Specification SMM 100 - Asphalt Products.
- 3.2 The temperature of asphalt materials, measured at the time of unloading, shall be within the ranges shown in the following table:

PRODUCT TYPE	TEMPERATURE (°C)	
	Minimum	Maximum
ASPHALT CEMENTS		
150-200A	120	175
200-300A	115	175
300-400A	110	175
400-500A	105	175
200-300B	115	175
300-400B	110	175
CUTBACK ASPHALTS		
RC-30, MC-30	20	55
RC-70, MC-70, SC-70	40	75
RC-250, MC-250, SC-250	65	100
RC-800, MC-800, SC-800	80	120
RC-3000, MC-3000, SC-3000	95	130
EMULSIFIED ASPHALTS		
High Float Sealing Grades HF100S, HF150S, HF250S, HF350S, HFRS-2	50	80
High Float Mixing Grades HF500M, HF1000M	15	80
High Float High Residue Mixing Grades	70	90
High Float Polymer Modified Grades HF100P, HF150P	50	80
High Float Recycling Grades HF20R, HF100R, HF700R	15	80

Specifications For Manufactured Materials

SMM 104

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

PRODUCT TYPE	TEMPERATURE (°C)	
	Minimum	Maximum
Emulsified Primers		
IEP-1	50	80
Anionic Slow Setting Grades		
SS-1, SS-1(slurry), SS-1h	15	60
Anionic Medium Setting Grades		
MS-1	15	60
MS-2	35	80
Anionic Rapid Setting Grades		
RS-1	15	60
RS-2	35	80
Cationic Rapid Setting Grades		
CRS-1	15	60
CRS-2	35	80
Dust Laying Grades		
DLE-15	15	60

- 3.3 If asphalt is delivered at a temperature less than the minimum temperature or greater than the maximum temperature specified for the particular product supplied, the asphalt may be rejected.
- 3.4 If the supplier is unable to supply asphalt from a source for which the supplier performs quality control testing, the supplier shall give as much notice as is reasonably possible to the Province:
- (a) of the source from which the asphalt will be supplied and when the change of supply is likely to occur; and
 - (b) of when the change of supply will actually occur.

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

4. **PREQUALIFICATION OF BIDDERS**

- 4.1 If a supplier has not previously supplied the product specified in the tender documents, the Supplier shall provide to the Province representative samples of their product for prequalification testing. Samples must be delivered to:

Ministry of Highways and Infrastructure
Engineering Standards Branch, Materials and Testing
1610 Park Street
Regina, Saskatchewan S4N 2G1

a minimum of fourteen (14) calendar days prior to the closing of tenders for the specified product.

- 4.2 Suppliers shall provide the samples in accordance with section 102 of the STP Manual.
- 4.3 Prequalification test results will be mailed to the Supplier within two days of the completion of testing. If the test results are not within the values specified for all of the characteristics and properties specified in the applicable section of SMM 100, any tender by the supplier may be rejected.

5. **CORRELATION TESTING**

- 5.1 Prior to the first delivery of each type of asphalt, the Supplier shall deliver to Materials and Testing at 1610 Park Street, Regina a representative sample of the type of asphalt, together with a complete set of test results performed by the Supplier for all of the characteristics on which pay reductions are based for that product. Samples shall be submitted as outlined in MHI STP 102.
- 5.2 The Province shall test the sample for all of the characteristics on which pay reductions are based and provide the results to the Supplier within 7 days of receipt of the samples at the address noted in 5.1.

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

- 5.3 If the test results obtained by the Province on the sample for any test are not within the specification limits for the type of product, the Province may, at its discretion, require another sample of the product to be submitted, to which the provisions of this section will apply, or terminate all contracts relating to the supply of that particular product by the Supplier. If the additional sample of the product is not provided by the supplier within 7 days of written request, then the contract for the supply of that material may be terminated by the Province.

6. ORDERING OF ASPHALT

- 6.1 Orders for asphalt may be placed by telephone, in writing or by facsimile by any government employee in the ministry of the government to which the asphalt is supplied or by any contractor performing work for which the asphalt is supplied.
- 6.2 The Supplier shall provide one or more telephone numbers, one of which may be for facsimile transmission, at which orders may be placed and cancellation messages left 24 hours per day, 7 days per week.
- 6.3 Orders may be cancelled by telephone, in writing or by facsimile. Notice shall be given at least four hours plus travel time before the time specified for delivery. In this section "travel time" means the distance in kilometres along the most direct highway route from the point of supply to the point of delivery, divided by 80 km/hr. If a time for delivery is not specified, notice shall be given by 8:00 p.m. on the day prior to the delivery.
- 6.4 Orders must indicate the GS control number and delivery code where applicable.
- 6.5 When asphalt is ordered for highway maintenance operations, the Province shall designate one of its employees as the person responsible to receive the order at a time and location arranged with the Supplier. The Supplier shall record the employees name on the delivery slip sent with the asphalt.

7. DELIVERY

- 7.1 The Supplier shall deliver the product to the location specified in the tender and unload the product into the designated receptacle or storage facility. If the receptacle or storage facility is owned by a third party, the Supplier shall permit the third party to unload the product if the third party so chooses. The Supplier shall not be required to unload asphalt cements.

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

- 7.2 The Supplier shall make every reasonable effort to supply the asphalt as and when required by the Province and its contractors.
- 7.3 If a delivery time is:
- (a) specified by a Contractor or the Province; or
 - (b) arranged by the Supplier pursuant to 7.7
- the requested delivery time shall be shown on the bill of lading accompanying the load of asphalt.
- 7.4 Unless additional time for delivery is arranged, asphalt ordered before 3:00 p.m. Monday through Friday shall be delivered at the specified time on the next day.
- 7.5 Deliveries required on a Monday which is not a holiday shall be delivered at the specified time on the Monday if ordered by 5:00 p.m. on the preceding Friday.
- 7.6 Deliveries required on a Monday which is a holiday shall be delivered at the specified time on the Monday if ordered by 3:00 p.m. on the preceding Friday.
- 7.7 If the Supplier arranges with a local maintenance crew to deliver asphalt to the Province after 6:00 p.m. or before 6:00 a.m. on any day, or at any time on a Saturday, Sunday or a holiday, the Supplier shall deduct from the invoice for that load \$50 for the first two hours or any part thereof and \$25 for each additional hour or any part thereof as an after hours callback fee. The time shall be calculated from the arranged time for the delivery until the delivery is completed.
- 7.8 Asphalt shall be delivered in clean, uncontaminated tanks equipped with adequate insulation, suitable valves, pumps, transfer hoses, transfer hose couplings and a submerged asphalt sampling device as shown in Figure 1 of STP 102. Trucks delivering asphalt cements are not required to be equipped with pumps.
- 7.9 The Province shall reimburse the Supplier for the cost of delivering and returning asphalt which the Province or a Contractor can not receive due to lack of available storage capacity or any other reason except rejection of the product as unacceptable but the Province shall not be obligated to pay for the material pursuant to section 13.5.

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

- 7.10 Demurrage which exceeds one and one-half hours from the time the load arrives and is ready for unloading, shall be paid by the Province. Demurrage shall not include unloading time but shall include time required for weight checks pursuant to 9.3.
- 7.11 If surplus asphalt exists and the asphalt is not contaminated due to handling or storage, and no additives were incorporated, then the Province shall return the material to the Supplier. No payment shall be made pursuant to section 13.5 for material returned to the Supplier.
- 7.12 Section 7.11 does not apply to emulsion and cutback asphalts in maintenance tanks after September 30 during any year.

8. SAMPLING

- 8.1 The Supplier shall collect a sample of product at the point of shipment from each loaded truck. Samples of emulsified asphalt shall not be less than four litres in size (in a single container). Sampling shall be from the submerged sampling device specified in clause 7.8 and in accordance with MHI STP 102 - SAMPLING ASPHALT MATERIALS.
- 8.2 The sample shall be retained by the supplier for 28 days after the date of shipment, and shall be provided to the Province, f.o.b. the Supplier's point of shipment, on request of the Province.
- 8.3 If the supplier breaches 8.1 or 8.2, the pay reduction for the purpose of section 13.5 and 15.4 shall be deemed to exceed 100% and no payment shall be made for the load.
- 8.4 The Province shall be permitted to take a sample of material at any time after the material is loaded.

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

9. MEASUREMENT

- 9.1 All types of asphalt shall be measured in kilograms.
- 9.2 The Supplier shall measure the material on weigh scales which have a current approval by Measurement Canada. Proof of such approval shall be provided to the Province on request.
- 9.3 The Province may check weight measurements.
- 9.4 The scales shall be of a size to weigh the entire delivery vehicle at once. The scale shall provide an automatic printout which identifies the gross weight, tare weight and net weight of the load. The gross and tare weights must be measured for each load.

10. REPORTING DELIVERIES

- 10.1 By 10:00 a.m. on each Tuesday, the Supplier shall deliver a written report of all asphalt deliveries to MHI or its contractors in the preceding week ending on 11:59 p.m. Saturday. The report shall be delivered to Materials and Testing at 1610 Park Street, Regina and may be delivered by facsimile transmission to (306) 787-4582.
- 10.2 Delivery reports shall include the following information for each load shipped:
- (a) manufacturer's name;
 - (b) the product type;
 - (c) the point of delivery and delivery code;
 - (d) the date shipped;
 - (e) the Supplier's bill of lading number.
- 10.3 Bills of lading shall include the following information:
- (a) manufacturer's name
 - (b) product type
 - (c) the point of delivery and delivery code
 - (d) the date shipped
 - (e) the tare, gross and net weight on automated printout

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

- (f) a unique bill of lading number

11. INVOICES

11.1 Invoices must show:

- (a) the price for asphalt per tonne f.o.b. the delivery point as indicated on the GS standing offer or purchase order;
- (b) delivery code and bill of lading number;
- (c) the net weight of the load;
- (d) if the material has been delivered after hours, the amount of the deduction pursuant to section 7.7; and
- (e) the calculation of compensation pursuant to section 15.2 for less than capacity loads.

12. TERMINATION OF CONTRACT

12.1 By notice to the Supplier this contract may be terminated in whole or with respect to any product or products or with respect to any delivery point or points if:

- (a) the Supplier fails to deliver product on time;
- (b) the Supplier fails to deliver product which meets specifications;
- (c) notwithstanding that the product meets specifications, the product fails to handle or perform in a manner satisfactory to the Province;
- (d) the Province, in its absolute discretion, decides to use another product for the project; or
- (e) the Supplier breaches any term or condition of this contract.

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

13. OBLIGATIONS OF THE PROVINCE

- 13.1 Subject to sections 12, 13.2 and 13.3 all product required by the Province at the delivery point before December 31 in the year in which this contract is awarded shall be purchased from the Supplier and the Supplier shall supply the product at the unit price bid.
- 13.2 The quantities shown on the tender form are estimates prepared for the purpose of comparing bids. Payment to the Supplier will be made for the actual quantities of material delivered in accordance with the contract. The Province reserves the right to increase or decrease the quantity of material to be delivered. The unit price shall not change except as provided in section 14.
- 13.3 The Province may purchase, by a separate tender, additional quantities of product required at the delivery point which exceed the estimated quantity by 200 tonnes or more.
- 13.4 The Province shall exercise reasonable diligence in informing Suppliers of expected changes to the estimated quantities.
- 13.5 Subject to the unit price adjustments in section 14 and the pay reduction specified for the product in the section of SMM 100 applicable to the product, the Province shall pay to the Supplier within 60 days of delivery of each load, an amount equal to the unit price for the product multiplied by the number of units of product delivered.

14. UNIT PRICE ADJUSTMENT

- 14.1 Except as provided in this section, the unit price shall be the Unit Price Bid and shall apply to all product required by the Ministry at each delivery point until December 31 in the year the contract is awarded, at which time the Supplier's obligation to supply and deliver the product shall end.
- 14.2 The unit price of the product shall be adjusted upward to reflect increases which occur after the date of opening of tenders in federal and provincial taxes on crude oil used in the manufacture of products in accordance with the following formula:

$$I = TC$$

Where I = the amount of the increase to the unit price in cents.

T = the tax increase in cents per barrel; and

$$C = 4.72$$

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

14.3 The adjustment pursuant to 14.2 shall only be applied to payments for products supplied after a date designated by the Director of Purchasing appointed pursuant to The Purchasing Act, R.S.S., c. P-49.

15. OTHER PAYMENTS AND ADJUSTMENTS

15.1 Payment for demurrage charges shall be made at the rate of \$80.00 per hour for units with six or fewer axles and \$100.00 per hour for all two trailer unit combinations. Demurrage time shall be measured to the nearest one-quarter hour. The payment shall be calculated in accordance with section 7.10.

15.2 Payment for utilizing the delivery truck as a nurse truck shall be made at the rate of \$120.00 per hour for units with six or fewer axles and \$150.00 per hour for all two trailer unit combinations. A nursing rate will be applied if the asphalt is delivered to a project that does not have sufficient on-site storage to unload the entire load at one time, if the delivery truck is used to apply the asphalt directly on the road and/or if the asphalt is unloaded at any time into a distributor or delivery system that does not have the capacity to receive the full load at one time. There will be no free unloading time allowed if nursing occurs.

15.3 If a Contractor or a Ministry employee requests a shipment of asphalt in a quantity less than the net capacity of the delivery vehicle, the Province shall pay to the shipper, as compensation for the incremental costs of shipping, an amount calculated by the following formula:

$$P = \frac{(C - Q) \times D}{C}$$

Where P = the amount of compensation to be paid by the Province;

C = the lesser of:

- (a) the capacity of the delivery vehicle;
- (b) i) 20 000 kg on a secondary highway; or
ii) 22 500 kg on a primary highway.

Q = the quantity of product actually shipped (measured in kilograms);

D = the cost of delivery to the shipper.

Section:

PURCHASE OF ASPHALT

Subject:

GENERAL PROVISIONS FOR ASPHALT
SUPPLY CONTRACTS

- 15.4 No payment will be made for the supply and delivery of asphalt returned to the Supplier if the asphalt is unacceptable pursuant to the terms of this contract or is delivered contrary to the requirements of this contract.
- 15.5 The pay reductions specified in the sections of SMM 100 relating to the particular product represent liquidated damages for the material which does not meet specification and the Province shall not be entitled to recover actual damages to repair or replace the surfacing material unless:
- (a) the provisions respecting liquidated damages are unenforceable; or
 - (b) the pay adjustment exceeds 100%.

16. NOTICES

- 16.1 Unless otherwise specifically provided in this contract, any notices or communications required or permitted to be given pursuant to this Contract shall be in writing and may be delivered to, or sent by prepaid registered or certified mail addressed to:

- (a) in the case of a notice or communication to the Province:

Fleet Services
Ministry of Highways and Infrastructure
Procurement Officer
Shelley O'Hare
Phone: (306) 662-5456
Fax: (306) 662-5496

- (b) in the case of a notice or communication to the Supplier, to the address stated on the Tender;
or to such other address as either party may notify the other in accordance with this section, and if so delivered shall be deemed to have been given when delivered, and if so mailed shall be deemed to have been given on the third business day after the date of mailing except in the case of a mail strike or other disruption of postal service in which case it shall be deemed to have been given on the third business day after such strike or disruption ceases.
- 16.2 Notices and communications may also be given by facsimile transmission provided that the party to whom the notice or communication is given acknowledges receipt by return facsimile transmission.