

National Energy  
Board



Office national  
de l'énergie

**REQUEST FOR PROPOSAL**

**Management Systems Auditor – Pipeline Integrity and Emergency Management**

**Enquiries:** All enquiries and bid submissions are to be directed to:

Papa Thierno Ndiaye  
Telephone: (403) 472-4058  
Facsimile: (403) 299-3637  
Email: [papathierno.ndiaye@neb-one.gc.ca](mailto:papathierno.ndiaye@neb-one.gc.ca)

Issuing Office  
National Energy Board  
444 7<sup>th</sup> Ave. S.W.  
Calgary, Alberta  
T2P 0X8

Vendor

TBD

**VENDORS NAME AND SIGNATURE**

\_\_\_\_\_  
*Name (please print)*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

**Procurement Business Number (PBN)**

1. For procurement purposes, Canada uses a unique Procurement Business Number (PBN) to identify a company and its branches, divisions, or offices, where appropriate. The PBN is created using the entity's Canada Revenue Agency Business Number.
2. All companies are strongly encouraged to obtain a PBN.
3. Companies may register for a PBN in the Supplier Registration Information (SRI) service on line at the Contracts Canada Internet site at: <http://contractscanada.gc.ca>. In order for companies to be sourced by government buyers, they must complete the registration process and activate their account in the SRI service.
4. For non-Internet registration, contact the Contracts Canada InfoLine at 1-800-811-1148 or (819) 956-3440, in the National Capital Area, to obtain the telephone number of the nearest Supplier Registration Agent.

**NOTE: Security Requirements** - All Contractor personnel may be required to undergo security clearances prior to commencing any work on the National Energy Board (NEB) premises.

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**PART 1: BIDDER INSTRUCTIONS, INFORMATION AND CONDITIONS****1.0 STANDARD INSTRUCTIONS AND CONDITIONS****1.1 CONDITIONS APPLICABLE TO BID SOLICITATION****1.1.1 Submission of Bids**

(1) It is the Bidder's responsibility to:

- (a) return a signed original of the bid solicitation, duly completed, IN THE FORMAT REQUESTED;
- (b) direct its bid ONLY to the Bid Receiving address specified;
- (c) ensure that the Bidder's name, the bid solicitation reference number, and bid solicitation closing date and time are clearly visible;
- (d) provide a comprehensive and sufficiently detailed bid, including all requested pricing details, that will permit a complete evaluation in accordance with the criteria set out in the bid solicitation.

Timely and correct delivery of bids to the specified bid delivery address is the sole responsibility of the Bidder. The National Energy Board (NEB) will not assume or have transferred to it those responsibilities. All risks and consequences of incorrect delivery of bids are the responsibility of the Bidder.

- (2) Bids may be accepted in whole or in part. The lowest or any bid will not necessarily be accepted. In the case of error in the extension of prices, the unit price will govern. Canada may enter into contract without negotiation.
- (3) Bids will remain open for acceptance for a period of not less than sixty (60) days from the closing date of the bid solicitation, unless otherwise indicated by Canada in such bid solicitation.

Notwithstanding the bid validity period stipulated in this solicitation, Canada reserves the right to seek an extension from all responsive bidders, within a minimum of three (3) days prior to the end of such period. Bidders shall have the option to either accept or reject the extension.

If the extension referred to above is accepted, in writing, by all those who submitted responsive bids, then Canada shall continue immediately with the evaluation of the bids and its approval processes.

If the extension referred to above is not accepted, in writing, by all those who submitted responsive bids then Canada shall, at its sole discretion: either continue to evaluate the responsive bids of those who have accepted the extension and seek the necessary approvals; or cancel the solicitation; or cancel and reissue the solicitation.

- (4) While Canada may enter into contract without negotiation, Canada reserves the right to negotiate with bidders on any procurement.
- (5) Bid documents and supporting information may be submitted in either English or French.
- (6) Bids received on or before the stipulated bid solicitation closing date and time will become the property of Canada and will not be returned. All bids will be treated as CONFIDENTIAL, subject to the provisions of the Access to Information Act and the Privacy Act.

### 1.1.2 Late Bids

It is NEB's policy to return, unopened, bids delivered after the stipulated bid solicitation closing date and time, unless they qualify as a delayed bid as described below.

### 1.1.3 Delayed Bids

(1) A bid delivered to the specified Bid Receiving area after the closing date and time but before the contract award date may be considered, provided the delay can be proven to have been due solely to a delay in delivery that can be attributed to the Canada Post Corporation (CPC) (or national equivalent of a foreign country). The only pieces of evidence relating to a delay in the CPC system that are acceptable to NEB are:

- (a) a CPC cancellation date stamp;
- (b) a CPC Priority Courier Bill of Lading; and
- (c) a CPC Xpresspost Label,

that clearly indicate that the bid was mailed prior to the bid closing date.

Example: If the bid closing date was May 15, 1995, then the CPC cancellation date stamp should read no later than May 14, 1995, to be accepted.

- (2) Please request the postal employee to date-stamp your envelope.
- (3) For bids transmitted by facsimile, only the date and the time of receipt recorded by NEB at the Bid Receiving number stated in the bid solicitation will be accepted as evidence of a delayed bid.
- (4) Misrouting, traffic volume, weather disturbances, or any other causes for the late delivery of bids are not acceptable reasons for the bid to be accepted by NEB.

### 1.1.4 Postage Meters

Postage meter imprints, whether imprinted by the Supplier, the CPC or the postal authority outside Canada, are not acceptable as proof of timely mailing. It should be noted that CPC does not normally apply a cancellation date stamp to metered mail; this is usually done only when postage stamps are used.

### 1.1.5 Responses Transmitted by Facsimile

(1) If you are in doubt that your bid will be delivered on time at the specific location designated for the receipt of the bid, you may use a facsimile, unless otherwise instructed in the bid solicitation.

NOTE: Due to the volume of technical material required for some bids, certain bid solicitations may specify that submissions by facsimile are not acceptable (e.g. science solicitations).

- (2) Unless otherwise instructed in the bid solicitation, the only acceptable facsimile number for responses to bid solicitations issued by NEB is (403) 299-3637.
- (3) The facsimile number for responses to bid solicitations issued by NEB is identified on the front page of the bid solicitation.

If the bidder chooses to submit a bid by facsimile, Canada will not be responsible for any failure attributable to the transmission or receipt of the faxed bid including, but not limited to the following:

- (a) receipt of garbled or incomplete bid;
  - (b) availability or condition of the receiving facsimile equipment;
  - (c) incompatibility between the sending and receiving equipment;
  - (d) delay in transmission or receipt of the bid;
  - (e) failure of the Bidder to properly identify the bid;
  - (f) illegibility of the bid; or
  - (g) security of bid data.
- (4) Bids submitted by facsimile will constitute your formal bid and must contain:
- (a) the bid reference number;
  - (b) the closing date and time;
  - (c) sufficient data to allow evaluation, such as unit prices, country of currency in the event that the bid is submitted in a foreign currency, sales tax, duty, technical data (where applicable) and any deviation(s) from the bid solicitation document.
- (5) For responses transmitted by facsimile, written confirmation is required within two (2) working days after bid closing, unless otherwise specified in this solicitation. All documents confirming bids should bear the word "CONFIRMATION".
- (6) Bid submitted electronically will be accepted.

### **1.1.6 Customs Clearance**

It is the responsibility of the Bidder to allow sufficient time to obtain customs clearance, where required, before the scheduled bid closing date and time. Delays related to the obtaining of customs clearance cannot be construed as "undue delay in the mail" and will not be accepted under the Late Bids Policy.

### **1.1.7 Further Information**

For further information, please contact the Contracting Authority identified on page one of the bid solicitation.

### **1.1.8 Identity or Legal Capacity of Bidder**

In order to establish the legal capacity under which a bidder proposes to enter into the Contract, any bidder who carries on business in other than its own personal name shall, if requested by the Contracting Authority, provide proof of the legal capacity under which it carries on business to the Contracting Authority prior to contract award. Such proof may be in the form of a copy of the articles of incorporation or of the registration of the business name of a sole proprietor, of a trade name, of a partnership, etc.

## **1.2 CONDITIONS APPLICABLE TO RESULTANT CONTRACT**

### **1.2.1 Municipal Taxes**

Municipal taxes are not applicable.

**1.2.2. Provincial Taxes**

- (1) Excluding legislated exceptions (see subsection (5) below), federal government departments and agencies are not required to pay any ad valorem sales tax levied by the province in which the taxable goods or services are delivered. This exemption has been provided to federal government departments and agencies under the authority of one of the following:
  - (a) Provincial Sales Tax (PST) Exemption License Numbers, for the provinces of:

Prince Edward Island	OP-10000-250
Ontario	11708174G
Manitoba	390-516-0
British Columbia	R005521
  - (b) An Exemption Certification, for Quebec, Saskatchewan, the Yukon Territory, the Northwest Territories and Nunavut, which certifies that the property and/or services ordered/purchased hereby are for the use of, and are being purchased by the federal government with Canada funds, and are therefore not subject to provincial/territorial sales and consumption taxes.
- (2) Currently, in Alberta, the Yukon Territory, the Northwest Territories and Nunavut, there is no general PST. However, should a PST be introduced in the Northwest Territories, Nunavut, or Yukon Territory, the sales tax exemption certificate would be required on purchase orders or purchasing documents.
- (3) Federal departments are required to pay the Harmonized Sales Tax (HST) in the participating provinces of British Columbia, Newfoundland and Labrador, Nova Scotia, New Brunswick and Ontario.
- (4) The Contractor is not exempt from paying PST under the above Exemption Licence Numbers or Exemption Certification. The Contractor is required to pay the PST on taxable goods or services used or consumed in the performance of the Contract (as per appropriate provincial legislation), including material incorporated into real property.
- (5) Exceptions

The following exceptions are provided as examples and may not represent a complete list of all exceptions under the law:

- (a) tobacco products subject to tobacco taxes (except in Alberta);
- (b) petroleum products subject to gasoline and motive fuel taxes;
- (c) vehicle registration fees (except in Alberta, Northwest Territories, Nunavut and Yukon Territory);
- (d) amusement/admission (Nova Scotia and New Brunswick);
- (e) insurance premiums (Quebec);
- (f) tires/batteries subject to environmental levies; and
- (g) transient living accommodation subject to hotel room taxes (British Columbia).



**1.2.3. Condition of Material**

Unless otherwise specified elsewhere in the Contract, material supplied shall be new and conform to the latest issue of the applicable drawing, specification and/or part number that is in effect on the solicitation closing date.

**1.2.4. Labour and Health Conditions**

The Contractor shall comply with all labor and health conditions applicable to the Work.

**1.2.5. Transportation Charges**

If transportation charges are payable by Canada under the terms of the Contract, shipments are to be made by the most direct and economical means consistent with normal shipping practice, unless otherwise directed (as in the case when transportation costs are part of the unit price). They are to be shown as a separate item on the invoice.

**1.2.6. Valuation**

The federal government's policy of underwriting its own risks precludes payment of insurance or valuation charges for transportation beyond the point at which ownership of goods passes to the federal government (determined by the FOB point or Incoterms). Where increased carrier liability is available without charge, the Contractor must obtain the increased liability for shipment.

**1.2.7. Foreign Shipments**

Goods shipped into Canada from another country are to be consigned to destination, in bond, unless otherwise directed.

**1.2.8. Bill of Lading**

The transportation bill of lading must accompany the original invoice, except for "collect" shipments (if and when stipulated), in which event it shall accompany the shipment; in addition, a packing slip must accompany each shipment, showing item, quantity, part or reference numbers, description of supplies and contract reference numbers, including the Client Reference Number (CRN) and Procurement Business Number (PBN). If the supplies have been inspected at the Contractor's plant, the signed inspection voucher must be attached to the packing slip normally enclosed in the packing note envelope.

**1.2.9. Invoice Submission**

Invoices shall be submitted in the name of the Contractor and shall not be submitted prior to the delivery of supplies or the performance of the services. They must show the name and address of the consignee, together with date, method of shipment, the case numbers if applicable, item, quantity, unit of issue, unit price, additional charges if applicable, and the Goods and Services Tax or the Harmonized Sales Tax if applicable, part or reference numbers, description of supplies as shown in the Contract, Contract number, requisition number, CRN, PBN and financial code(s). Separate invoices must be submitted for each shipment and must apply to one contract only. Each invoice must indicate whether it covers partial or final shipment.

### 1.2.10. Inspection and Acceptance

The goods/services are subject to inspection and acceptance by consignee at destination, unless otherwise indicated in the contractual document.

### 1.2.11. Standard Clauses, Conditions and Instruction Sets

Any standard clause, and any condition or instruction set, used or referenced in a bid solicitation or contract may be updated from time to time. When this happens, the version used in an already-issued document will remain in effect in that document, unless the updated version is legally incorporated.

## 2.0 ENQUIRIES - SOLICITATION STAGE

All enquiries regarding the bid solicitation must be submitted in writing to the Contracting Authority named on page one (1) of this document as early as possible within the bidding period. **Enquiries must be received no less than five (5) calendar days prior to the bid closing date to allow sufficient time to provide a response.** Enquiries received after that time may not be able to be answered prior to the bid closing date.

Issues concerning this procurement may be raised prior to bid closing date with the Contracting Authority in order to obtain general guidance. Canada will examine the issues and will decide whether or not to amend the solicitation document.

To ensure consistency and quality of information provided to bidders, the Contracting Authority will provide, simultaneously to all companies to which this solicitation has been sent, any information with respect to significant enquiries received and the replies to such enquiries without revealing the sources of the enquiries.

**All enquiries and other communications with government officials throughout the solicitation period are to be directed ONLY to the Contracting Authority named on page one of the bid solicitation. Non-compliance with this condition during the bid solicitation period can (for that reason alone) result in disqualification of your bid.**

## 3.0 RIGHTS OF CANADA

Canada reserves the right to:

- a) reject any or all proposals received in response to this Request for Proposal (RFP);
- b) enter into negotiations with bidders on any or all aspects of their proposal;
- c) accept any proposal in whole or in part without prior negotiation;
- d) cancel and/or reissue this RFP at any time;
- e) award one or more contracts;
- f) retain all proposals submitted in response to this RFP.

## 4.0 VENDOR PERFORMANCE

**4.1** Canada may reject a bid where any of the following circumstances is present:

- (a) the Bidder, or any employee or subcontractor included as part of the bid, has been convicted under section 121 ("Frauds on the government" & "Contractor subscribing to election fund"),

124 "Selling or purchasing office"), or 418 ("Selling defective stores to Her Majesty") of the *Criminal Code*; or

- (b) the Bidder is subject to a Vendor Performance Corrective Measure, under the Vendor Performance Policy, which renders the Bidder ineligible to bid on the Work;
- (c) an employee or subcontractor included as part of the bid, is subject to a Vendor Performance Corrective Measure, under the Vendor Performance Policy, which would render that employee or subcontractor ineligible to bid on the Work, or the portion of the Work the employee or subcontractor is to perform;
- (d) with respect to current or prior transactions with the Government of Canada
  - (1) the Bidder is bankrupt or where, for whatever reason, its activities are rendered inoperable for an extended period;
  - (2) evidence, satisfactory to Canada, of fraud, bribery, fraudulent misrepresentation or failure to comply with any law protecting individuals against any manner of discrimination, has been received with respect to the Bidder, any of its employees or any subcontractor included as part of its bid;
  - (3) Canada has exercised its contractual remedies of suspension or termination for default with respect to a Contract with the Bidder, any of its employees or any subcontractor included as part of its bid; or
  - (4) Canada determines that the Bidder's performance on other contracts, including the efficiency and workmanship as well as the extent to which the Bidder executed the work in accordance with contractual terms and conditions, is sufficiently poor to jeopardize the successful completion of the requirement being bid on.

**4.2** Where Canada intends to reject a bid pursuant to a provision of paragraph 1, other than 1(b), the Contracting Authority will so inform the Bidder and provide the Bidder ten (10) days within which to make representations, prior to making a final decision on the bid rejection.

## **5.0 VALIDITY OF BID**

It is requested that proposals submitted in response to this Request for Proposal (RFP) be:

- (a) valid in all aspects, including price, for not less than one hundred and twenty (120) days from the closing date of this RFP; and,
- (b) signed by an authorized representative of the Bidder in the space provided on the RFP; and,
- (c) provide the name and telephone number of a representative who may be contacted for clarification or other matters relating to the Bidder's proposal.

***PART 2: PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION PROCEDURES*****Chapter 1 APPLICABLE LAWS**

The Contract shall be interpreted and governed, and the relations between the Parties determined, by the laws in force in Alberta, Canada.

The Bidder may, at its discretion, substitute the applicable laws of a Canadian province or territory of its choice without affecting the validity of its bid, by deleting the Canadian province or territory specified and inserting the Canadian province or territory of its choice. If no change is made, it acknowledges the applicable law specified is acceptable to the Bidder.

**Chapter 2 SUBMISSION OF BIDS**

The proposal **MUST** be delivered to the following location, by the time and date indicated on page 1 of this solicitation document:

**National Energy Board  
Supply Management  
444 Seventh Avenue SW.  
Calgary, Alberta T2P 0X8**

Bidders shall ensure that the solicitation closing date and time, and the Solicitation number are clearly marked on their envelopes or parcels. Proposals submitted in response to this solicitation will **NOT** be returned.

**Chapter 3 PROPOSAL PREPARATION INSTRUCTIONS**

**3.1. The front page of this Request For Proposal should be properly completed and signed by the Bidder or by an authorized representative of the Bidder with the submission of their proposal. The signed front page of this RFP must be provided within 5 days of notice of contract award.** The Bidder's signature indicates acceptance of the terms and conditions governing the resulting contract as stated herein. No modification or other terms and conditions included in the Bidder's proposal will be applicable to the resulting contract notwithstanding the fact that the Bidder's proposal may become part of the resulting contract.

**3.2** Bidders are requested to prepare their proposal in three (3) separately bound sections as follows:

**SECTION I - TECHNICAL PROPOSAL (with no reference to price) (3 copies)**

**SECTION II - FINANCIAL PROPOSAL (2 copies)**

**SECTION III - CERTIFICATIONS (See Appendix "C") (1 copies)**

**3.3** It is requested that proposals follow the response format / instructions as detailed below:

(a) Use 8 ½ x 11 inch bond paper.

(b) Use a numbering system corresponding to that of the Request for Proposal and Statement of Work. All references to descriptive material, technical manuals and brochures are to be included in the Bidder's proposal.

- 3.4** It is the responsibility of the Bidder to obtain clarification of the requirements contained herein, if necessary prior to submitting a bid.
- 3.5** It is essential that the elements contained in a proposal be stated in a clear and concise manner. Failure to provide complete information as requested will be to the Bidder's disadvantage.
- 3.6** All information regarding the terms and conditions, financial and technical aspects of the Bidder's proposal which, in its opinion, are of a proprietary or confidential nature should be clearly marked "PROPRIETARY" or "CONFIDENTIAL" at each relevant item or page, or in a statement covering the entire proposal.

## **SECTION I - TECHNICAL PROPOSAL**

In the Technical Proposal, the Bidder should demonstrate how the bidder intends to satisfy the requirements stated within the Statement of Work, **Appendix "A"**, as well as demonstrate how the Bidder will meet the requirements of **Appendix "D"**.

## **SECTION II - FINANCIAL PROPOSAL**

1. This section of the proposal shall include a cost summary of the services requested or required in accordance with **Appendix "A"**, and **Appendix "D"**.
2. COSTS SHALL NOT APPEAR IN ANY OTHER AREA OF THE PROPOSAL EXCEPT IN THE FINANCIAL PROPOSAL SECTION.
3. In the event that the Bidder's proposal is the sole bid received, Canada may request one or more of the following as acceptable price support:
  - (a) a current published price list indicating the percentage discount available to the Department of Public Works and Government Services; and/or
  - (b) paid invoices for like services sold to other customers; and/or
  - (c) a price certification statement; and/or
  - (d) any other supporting documentation as requested.

**SECTION III: CERTIFICATION REQUIREMENTS (See Appendix “C”)**

1. In order to be awarded a contract, the certifications attached in **Appendix “C”** will be required. The certifications should be submitted with the bid. Canada may declare a bid non-responsive if the certifications are not submitted or completed as required. Where Canada intends to reject a bid pursuant to this paragraph, the Contracting Authority will so inform the Bidder and provide the Bidder with a time frame within which to meet the requirement. Failure to comply with the request of the Contracting Authority and meet the requirement within that time period will render the bid non-responsive.
2. Compliance with the certifications the Bidder provides to Canada is subject to verification by Canada. The Contracting Authority shall have the right to ask for additional information to verify the Bidder’s compliancy to the applicable certifications before and after award of a contract. If it is determined that any certification made by the Bidder is untrue, whether made knowingly or unknowingly, or any failure to comply with the certifications or comply with the request of the Contracting Authority for additional information will render the bid non-responsive.

**Chapter 4 EVALUATION PROCEDURES AND METHODOLOGY**

Proposals will be evaluated in accordance with the Evaluation Procedures and Criteria specified in **Appendix “D”**. Proposals received will be compared separately against the evaluation criteria identified therein for the total requirement of this Request for Proposal (RFP) and in conjunction with the accompanying Statement of Work, **Appendix “A”**.

An evaluation team composed of representatives of the National Energy Board will evaluate the proposals.

The evaluation team reserves the right but is not obliged to perform any of the following:

- (a) seek clarification or verify any or all information provided by the Bidder with respect to this RFP;
- (b) contact any or all of the references supplied and to interview, at the sole costs of the Bidder, the Bidder and/or any or all of the resources proposed by the Bidder to fulfill the requirement, at NEB in Calgary, Alberta, on 48 hours notice, to verify and validate any information or data submitted by the Bidder.

**SECTION I: EVALUATION OF MANDATORY AND POINT RATED REQUIREMENTS**

1. Proposals will be evaluated to ensure that they meet each Mandatory requirement as identified throughout this RFP. Proposals must comply with each and every mandatory requirement. If a Proposal does not comply with a Mandatory requirement, the Proposal will be considered NON-COMPLIANT and will receive no further consideration.
2. Proposals will then be evaluated to determine compliance with the Point Rated requirements detailed in Appendix “D”. Point Rated requirements will be assessed by the Evaluation Committee according to the criteria detailed therein.
3. Obtain the required minimum of 70 percent of the total Point Rated Requirement sections as specified in Appendix “D”, herein, otherwise the proposal will be considered NON-COMPLIANT and will receive no further consideration.

**Chapter 5 EVALUATION OF PRICE**

Canada's total liability under this contract shall not exceed **\$230,000** (or \$115,000 per Fiscal Year) Goods and Services Tax or Harmonized Sales Tax extra, excluded.

For Canadian-based bidders, prices must be firm with Canadian customs duties and excise taxes as applicable included, and Goods and Services Tax (GST) or Harmonized Sales Tax (HST) as applicable, excluded.

For foreign-based bidders, prices must be firm and exclude Canadian customs duties, excise taxes and GST or HST as applicable. Canadian customs duties and excise taxes payable by the consignee will be added, for evaluation purposes only, to the prices submitted by foreign-based bidders.

Proposals will then be evaluated as specified in Appendix "D".

**Chapter 6 BASIS OF SELECTION**

To be considered responsive, a bid must

- (a) meet all the mandatory requirements of this solicitation and
- (b) obtain the required minimum of 70% percent of for the Point Rated Requirement sections specified in this solicitation.

Bids not meeting Section 1 above will be given no further consideration.

Bids not meeting (a) or (b) above will be given no further consideration. The lowest priced responsive bid will be recommended for award of a contract.

Should two or more compliant bids propose the same price, the bid offering the **BEST OVERALL VALUE** to the NEB will be recommended for Contract award.

**Chapter 7 OFFER COST**

No payment shall be made for costs incurred in the preparation and submission of your offer in response to this request.

**CHAPTER 8 STORES CERTIFICATIONS**

The item(s) offered conform(s) strictly with the purchase description, including packaging requirements and quality assurance provisions if applicable, contained in the bid solicitation.

**PART 3: RESULTING CONTRACT CLAUSES****1.0 SECURITY REQUIREMENTS**

All Contractor personnel may be required to undergo security clearances prior to commencing any work on NEB premises.

**1.1 Security and Protection of Work**

**1.1.1** The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the work, and all information developed by the Contractor as part of the work, and shall not disclose any such information to any person without the written permission of the Crown, except that the Contractor may disclose to a subcontractor, authorized in accordance with this contract, information necessary to the performance of the subcontract. This section does not apply to any information that:

- (a) is publicly available from a source other than the Contractor; or
- (b) is or becomes known to the Contractor from a source other than Canada, except any source that is known to the Contractor to be under an obligation to Canada not to disclose the information.

**1.1.2** When the Contract, the work, or any information referred to in subsection 1.1.1 is identified as TOP SECRET, SECRET, CONFIDENTIAL OR PROTECTED by Canada, the Contractor shall, at all times, take all measures reasonably necessary for the safeguarding of the material so identified.

**1.1.3** Without limiting the generality of subsections 1.1.1 and 1.1.2, when the Contract, the work, or any information referred to in subsection 1.1.1 is identified as TOP SECRET, SECRET, CONFIDENTIAL or PROTECTED by Canada, the Crown shall be entitled to inspect the Contractor's premises and the premises of a subcontractor at any tier for security purposes at any time during the term of the Contract, and the Contractor shall comply with, and ensure that any such subcontractor complies with, all written instructions issued by the Crown dealing with the material so identified, including any requirement that employees of the Contractor or of any such subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

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### 2.1.01 Interpretation

1. In the contract, unless the context otherwise requires, "Canada", "Crown", "Her Majesty" or "the Government" means Her Majesty the Queen in right of Canada;

"Contract" means the written agreement between the Parties, these general conditions, any supplemental general conditions specified in the written agreement and every other document specified or referred to in any of them as forming part of the Contract, all as amended by agreement of the Parties from time to time;

"Contracting Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Board in the management of the Contract;

"Contractor" means the person or entity whose name appears on the signature page of the written agreement and who is to supply goods or services to Canada under the Contract;

"Contract Price" means the amount expressed in the Contract to be payable to the Contractor for the Work;

"Government Property" means all materials, parts, components, Specifications, equipment, software, articles and things supplied to the Contractor by or on behalf of Canada for the purposes of performing the Contract and anything acquired by the Contractor in any manner in connection with the Work the cost of which is paid by Canada under the Contract and, without restricting the generality of the foregoing, includes Government Issue as defined in the Defence Production Act, R.S.C. 1985, c. D-1, Government Furnished Equipment and Government Supplied Material;

"Inspection Authority" means the person designated as such in the Contract, or by notice to the Contractor, to act as the representative of the Board for whose department or agency the Work is being carried out in matters concerning the inspection of the Work, and for purposes of section 16

(Inspection of the Work) includes a Quality Assurance Authority if such an authority is mentioned in the Contract;

"the Board" means the National Energy Board and any other person duly authorized to act on behalf of that Energy Board;

"Moral Rights" has the same meaning as in the Copyright Act, R.S.C. 1985, c. C-42;

"Party" means Canada or the Contractor or any other signatory to the Contract and "Parties" means all of them;

"Specifications" means the functional or technical description of the Work set out or referred to in the Contract, including drawings, samples and models, and further includes, except to the extent inconsistent with anything set out or referred to in the Contract, any such description set out or referred to in any brochure, product literature or other documentation furnished by the Contractor in relation to the Work or any part thereof;

"Subcontract" includes a contract let by any subcontractor at any tier for the performance or supply of a part of the Work, and the derivatives of the word shall be construed accordingly;

"Technical Authority" includes Project Authority and means the person designated in the Contract, or by notice to the Contractor, to act as the representative of the Board for whose department or agency the Work is being carried out in matters concerning the technical aspects of the Work;

"Work" means the whole of the activities, services, materials, equipment, software, matters and things required to be done, delivered or performed by the Contractor in accordance with the terms of the Contract.

2. The headings used in these general conditions are inserted for convenience of reference only and shall not affect their interpretation.
3. If the Contract is a defence contract within the meaning of the Defence Production Act, R.S.C. 1985, c. D-1, it is subject to that Act and shall be governed accordingly.
4. In the Contract, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine gender and the neuter.

#### **2.1.02 Powers of the Board**

Every right, remedy, power and discretion vested in or acquired by Canada or the Board under the Contract or by law shall be cumulative and non-exclusive.

#### **2.1.03 Status of the Contractor**

1. The Contractor is engaged as an independent Contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of Canada. The Contractor is responsible for all deductions and remittances required by law in relation to its employees including those required for Canada or Quebec Pension Plans, unemployment insurance, workers' compensation, or income tax.

2. Without restricting the terms and conditions of the Contract, and particularly section 19 of these general conditions, it is hereby understood and agreed that, except to the extent caused by or due to Canada, Canada shall not be liable for any losses, claims, damages, or expenses relating to any injury, disease, illness, disability or death of the Contractor or any employee, agent or representative of the Contractor caused or alleged to be caused as a result of performing the Contract. The Contractor agrees to fully protect and indemnify Canada and not to make any claims or demands against Canada in respect of any of the foregoing contingencies.

#### **2.1.04 Amendments and Waivers**

1. No design change, modification to the Work, or amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment or design change memorandum executed by the authorized representatives of the Board and of the Contractor.
2. While the Contractor may discuss any proposed changes or modifications to the scope of the Work with the Technical Authority, Canada shall not be liable for the cost of any such change or modification until it has been incorporated into the Contract in accordance with subsection 1.
3. No waiver shall be valid, binding or affect the rights of the Parties unless it is made in writing by, in the case of a waiver by Canada, the Contracting Authority and, in the case of a waiver by the Contractor, the authorized representative of the Contractor.
4. The waiver by a Party of a breach of any term or condition of the Contract shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or construed a waiver of any subsequent breach.

#### **2.1.05 Conduct of the Work**

1. The Contractor represents and warrants that:
  - (a) it is competent to perform the Work; and
  - (b) it has the necessary qualifications, including knowledge, skill and experience to perform the Work, together with the ability to use those qualifications effectively for that purpose.
2. Except for Government Property specifically provided for in the Contract, the Contractor shall supply everything necessary for the performance of the Work, including all the resources, facilities, labour and supervision, management, services, equipment, materials, drawings, technical data, technical assistance, engineering services, inspection and quality assurance procedures, and planning necessary to perform the Work.
3. The Contractor shall:
  - (a) carry out the Work in a diligent and efficient manner;
  - (b) select and employ on the Work a sufficient number of properly qualified personnel, provide efficient and effective inspection and quality control procedures and provide administration and other support to its employees to the extent necessary to properly carry out the work;
  - (c) perform the Work in accordance with standards of quality acceptable to the Board and in full conformity with the Specifications and all the requirements of the Contract; and

- (d) provide effective and efficient supervision to ensure that the quality of workmanship is as stated in the Contract.
4. The Work shall not be performed by any person who, in the opinion of the Board or the Technical Authority, is incompetent or has been conducting himself/herself improperly.
  5. The Contractor warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. If the Contractor is required to correct or replace the Work or any portion thereof, it shall be at no cost to Canada, and any work corrected or replaced by the Contractor pursuant to this subsection shall be subject to all provisions of this Contract to the same extent as Work initially performed.
  6. The Contractor shall adhere to the Technical Authority's reasonable interpretation of the requirements of the Contract insofar as such an interpretation is not inconsistent with any other part of the Contract.
  7. Unless the Board orders the Work or part thereof to be suspended pursuant to section 22 (Suspension of the Work), the Contractor shall not stop or suspend any part of the Work pending the settlement or resolution of any difference between the Parties arising out of the Contract.
  8. The Contractor shall provide such reports on the performance of the Work as are required by the Contract and such other reports as may reasonably be required by the Board or the Technical Authority.
  9. The Contractor shall be fully responsible for performing the Work and Canada shall not be liable for any negative consequences or extra costs arising out of the Contractor's following any advice given by Canada, whether given without or upon invitation by the Contractor, unless the advice was provided to the Contractor in writing by the Contracting Authority and was accompanied by a statement specifically relieving the Contractor of any responsibility for negative consequences or extra costs that might arise from following the advice.

#### **2.1.06 Compliance with Applicable Laws**

The Contractor shall comply with all laws applicable to the performance of the Work or any part thereof including, without limitation, all laws concerning health and labour conditions and the protection of the environment, and shall require compliance therewith by all of its subcontractors. Evidence of compliance with such laws shall be furnished by the Contractor to the Contracting Authority at such times as the Contracting Authority may reasonably request.

#### **2.1.07 Subcontracting**

1. Unless otherwise provided in the Contract, the Contractor shall obtain the consent of the Board in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any tier.
2. Notwithstanding subsection 1, the Contractor may, without prior consent of the Board, subcontract such portions of the Work as is customary in the carrying out of similar contracts.
3. In any subcontract, the Contractor shall, unless the Board otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions compatible with and, in the opinion of the Board, not less favorable to Canada than the terms and conditions of the Contract. Deviations in any subcontract

from the terms of the Contract, including any right of termination of the Contract, shall be entirely at the risk of the Contractor.

4. The Contractor is not obliged to seek consent to subcontracts specifically authorized in the Contract.
5. Any consent to a Subcontract shall not relieve the Contractor from its obligations under the Contract or be construed as authorizing any liability on the part of Canada or the Board to a subcontractor.

#### **2.1.08 Replacement of Personnel**

1. When specific persons have been named in the Contract as the persons who must perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
2. If, at any time, the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person who is of similar ability and attainment.
3. The Contractor shall, before replacing any specific person named in the Contract, provide notice in writing to the Board containing:
  - (a) the reason for the removal of the named person from the Work;
  - (b) the name, qualifications and experience of the proposed replacement person; and
  - (c) proof that the person has the required security clearance granted by Canada, if applicable.
4. The Contractor shall not, in any event, allow performance of the Work by unauthorized replacement persons and acceptance of a replacement person by the Technical Authority and the Contracting Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.
5. The Board may order the removal from the Work of any such replacement person and the Contractor shall immediately remove the person from the Work and shall, in accordance with subsection 2 and paragraphs 3(b) and (c), secure a further replacement.
6. The fact that the Board does not order the removal of a replacement person from the Work shall not relieve the Contractor from its responsibility to meet the requirements of the Contract.

#### **2.1.09 Assignment**

1. The Contract shall not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the Board and any purported assignment made without that consent is void and of no effect.
2. No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability upon Canada or the Board, unless otherwise agreed to in writing by the Board.

#### **2.1.10 Time of the Essence**

Time is of the essence of the Contract.

**2.1.11 Excusable Delay**

1. A delay in the performance by the Contractor of any obligation under the Contract which is caused solely by an event that

- (a) was beyond the reasonable control of the Contractor,
- (b) could not reasonably have been foreseen,
- (c) could not reasonably have been prevented by means reasonably available to the Contractor, and
- (d) occurred without the fault or neglect of the Contractor

shall, subject to subsections 2, 3 and 4, constitute an "Excusable Delay" provided that the Contractor invokes this section by notice under subsection 4.

2. If any delay in the Contractor's performance of any obligation under the Contract is caused by a delay of a Subcontractor, such a delay may constitute an Excusable Delay for the Contractor, but only if the delay of the Subcontractor meets the criteria set out in this section for an Excusable Delay by the Contractor and only to the extent that the delay has not been contributed to by the Contractor.
3. Notwithstanding subsection 1, any delay caused by lack of financial resources of the Contractor or an event that is a ground for termination provided for in subsection 23(2) (Default by the Contractor), or any delay in the Contractor fulfilling an obligation to deliver a bond, guarantee, letter of credit or other security relating to performance or the payment of money, shall not qualify as an Excusable Delay.
4. The Contractor shall not benefit from an Excusable Delay unless the Contractor has:
  - (a) used its best efforts to minimize the delay and recover lost time;
  - (b) advised the Board of the occurrence of the delay or of the likelihood of a delay occurring as soon as the Contractor has become aware of it;
  - (c) within 15 working days of the beginning of a delay or of the likelihood of a delay coming to the attention of the Contractor, advised the Board of the full facts or matters giving rise to the delay, and provided to the Board for approval (which approval shall not be unreasonably withheld) a clear "work-around" plan indicating in detail the steps that the Contractor proposes to take in order to minimize the impact of the event causing the delay; this plan shall include alternative sources of materials and labour, if the event causing the delay involves the supply of them; and
  - (d) carried out the work-around plan approved by the Board.
5. In the event of an Excusable Delay, any delivery date or other date that is directly affected shall be postponed for a reasonable time not to exceed the duration of the Excusable Delay. The Parties shall amend the Contract, as appropriate, to reflect any such change in dates.
6. Notwithstanding subsection 5, the Board may, after an Excusable Delay has continued for thirty (30) days or more, in the Board's absolute discretion terminate the Contract. In such a case, the Parties agree that neither will make any claim against the other for damages, costs, expected profits or any other loss arising out of the termination or the event that gave rise to the Excusable Delay. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Subsections 23(4), (5) and (6) (Default by the Contractor) apply in the event of a termination under this subsection.

- 7 Except to the extent that Canada is responsible for the delay for reasons of failure to meet an obligation under the Contract, Canada shall not be liable for any costs or charges of any nature incurred by the Contractor or any of its subcontractors or agents as a result of an Excusable Delay.

#### **2.1.12 Security and Protection of the Work**

1. The Contractor shall keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work where copyright or any other intellectual property rights in such information (except a licence) vests in Canada under the Contract. The Contractor shall not disclose any such information to any person without the written permission of the Board, except that the Contractor may disclose to a subcontractor authorized in accordance with section 07 (Subcontracting) information necessary for the performance of the Subcontract, on the condition that the subcontractor agrees that it will be used solely for the purposes of such Subcontract. Information provided to the Contractor by or on behalf of Canada shall be used solely for the purpose of the Contract and shall remain the property of Canada or the third party, as the case may be. Unless the Contract otherwise expressly provides, the Contractor shall deliver to Canada all such information, together with every copy, draft, working paper and note thereof that contains such information, upon completion or termination of the Contract or at such earlier time as the Board may require.
2. Subject to the Access to Information Act, R.S.C. 1985, c. A-1 and to any right of Canada under this Contract to release or disclose, Canada shall not release or disclose outside the Government of Canada any information delivered to Canada under the Contract that is proprietary to the Contractor or a Subcontractor.
3. The obligations of the Parties set out in this section do not apply to any information where the same information:
  - (a) is publicly available from a source other than the other Party; or
  - (b) is or becomes known to a Party from a source other than the other Party, except any source that is known to be under an obligation to the other Party not to disclose the information, or
  - (c) is developed by a Party without use of the information of the other Party.
4. Wherever practical, the Contractor shall mark or identify any proprietary information delivered to Canada under the Contract as "Property of (Contractor's name), and Canada shall not be liable for any unauthorized use or disclosure of information that could have been so marked or identified and was not.
5. When the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL, or PROTECTED by Canada, the Contractor shall at all times take all measures reasonably necessary for the safeguarding of the material so identified, including those set out in the PWGSC Industrial Security Manual and its supplements and any other instructions issued by the Board.
6. Without limiting the generality of subsections 1 and 2, when the Contract, the Work, or any information referred to in subsection 1 is identified as TOP SECRET, SECRET, CONFIDENTIAL", or PROTECTED by Canada, the Board shall be entitled to inspect the Contractor's premises and the premises of a subcontractor at any tier for security purposes at any time during the term of the Contract, and the Contractor shall comply with, and ensure that any such subcontractor complies with,

all written instructions issued by the Board dealing with the material so identified, including any requirement that employees of the Contractor or of any such subcontractor execute and deliver declarations relating to reliability screenings, security clearances and other procedures.

7. Any proposed change in the security requirements after the effective date of the Contract that would involve a significant increase in cost to the Contractor shall require an amendment to the Contract under the provisions of section 04 (Amendments and Waivers).

### **2.1.13 Payment**

1. Notwithstanding any other provision of the Contract, no payment shall be made to the Contractor unless and until:
  - (a) an invoice, inspection notes, certificates and any other documents required by the Contract have been submitted in accordance with the terms of the Contract and the instructions of the Board;
  - (b) all such documents have been verified by the Board;
  - (c) with respect to all parts of the Work in respect of which payment is claimed, the Contractor, where required to do so, establishes to the satisfaction of the Board that such parts of the Work will be free from all claims, liens, attachments, charges or encumbrances; and
  - (d) in the case of payment in respect of finished work, the finished work has been inspected by Canada and accepted as being in accordance with the Contract, including the Specifications.
2. The Board shall notify the Contractor, within 15 days of receipt of an invoice, of any inadequacy of the invoice or of the supporting documentation, and where any such notice is given within that period the date for payment of the amount invoiced shall be postponed until the Contractor remedies the inadequacy to the satisfaction of the Board.
3. Where a delay referred to in section 11 (Excusable Delay) has occurred, the Board may, at the Board's discretion, withhold all or a portion of any payment due to the Contractor until a "work-around" plan approved by the Board has been implemented in accordance with that section. Section 14 (Interest on Overdue Accounts) shall not apply to any amount withheld under this subsection.

### **2.1.14 Interest on Overdue Accounts**

1. For the purposes of this section:

"Average Rate" means the simple arithmetic mean of the Bank Rates in effect at 4:00 p.m. Eastern Standard Time each day during the calendar month which immediately precedes the calendar month in which payment is made, where the "Bank Rate" means the rate of interest established from time to time by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to members of the Canadian Payments Association.

"date of payment" means the date of the negotiable instrument drawn by the Receiver General for Canada and given for payment of an amount due and payable;

an amount is "due and payable" when it is due and payable by Canada to the Contractor in accordance with the terms of the Contract; and



an amount becomes "overdue" when it is unpaid on the first day following the day upon which it is due and payable.

2. Subject to the Contract, Canada shall be liable to pay to the Contractor simple interest at the Average Rate plus 3 percent per annum on any amount that is overdue, from the date such amount becomes overdue until the day prior to the date of payment, inclusive. Interest shall be paid without notice from the Contractor.
3. Canada shall not be liable to pay interest in accordance with this section if Canada is not responsible for the delay in paying the Contractor.
4. Canada shall not be liable to pay interest on overdue advance payments.

#### **2.1.15 Changes in Taxes and Duties**

1. In this section, "bid" includes a proposal, tender or offer submitted by the Contractor in response to an invitation from the Board.
2. Subject to subsection 3, in the event of any change (including a new imposition or repeal), on or after the date of submission of the bid, of any tax, customs or other duty, charge, or any similar imposition that is imposed under sales or excise tax legislation of the Government of Canada and which affects the Cost to the Contractor of the Work, the Contract Price shall be adjusted to reflect the increase or decrease in the Cost to the Contractor.
3. There shall be no adjustment under subsection 2 in respect of any change that would increase the Cost to the Contractor of the Work if public notice of the change was given before the bid submission date in sufficient detail to permit the Contractor to have calculated the effect on its Cost before that date.
4. The Contractor shall forward to the Board a certified statement showing the increase or decrease in Cost to the Contractor that is directly attributable to the change in the imposition. The Board may verify the increase or decrease in Cost by audit before or after the Contract Price is adjusted.
5. Notwithstanding subsections 2 to 4, no adjustment to the Contract Price in respect of the Work or a part thereof shall be made for a change in any imposition referred to in this section that occurs after the date required by the Contract for delivery of the Work or that part of the Work.

#### **2.1.16 Inspection of the Work**

The Work and any and all parts thereof shall be subject to such Inspection as the Technical or Inspection Authority determines to be appropriate, consistent with the relevant provisions of the Contract, if any, prior to acceptance by Canada. The Contracting Authority and the Technical or Inspection Authority, or their representatives, shall have access to the Work at any time during working hours where any part of the Work is being carried out and may make examinations and such tests of the Work as they may think fit. Should the Work or any part thereof not be in accordance with the requirements of the Contract, the Technical or Inspection Authority shall have the right to reject the Work and require its correction or replacement at the Contractor's expense. The Technical or Inspection Authority shall inform the Contractor of the reasons for any such rejection. Inspection by the Technical or Inspection Authority shall not relieve the Contractor from responsibility to meet the requirements of the Contract.

**2.1.17 Title**

1. Except as otherwise provided in the Contract, and except as provided in subsection 2, title to the Work or any part thereof shall vest in Canada upon delivery and acceptance thereof by or on behalf of Canada.
2. Upon any payment being made to the Contractor in respect of the Work or any portion of the Work, either by way of progress payments or accountable advances or otherwise, title to the Work so paid for shall vest in and remain in Canada unless already so vested under any other provision of the Contract.
3. Notwithstanding any vesting of title referred to in this section and except as otherwise provided in the Contract, the risk of loss or damage to the Work or part thereof so vested shall remain with the Contractor until its delivery to Canada in accordance with the Contract.
4. Any vesting of title referred to in subsection 2 shall not constitute acceptance by Canada of the Work and shall not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.
5. If the Contract is a defence Contract within the meaning of the Defence Production Act, R.S.C. 1985, c. D-1, title to the Work or to any materials, parts, work-in-process or finished work shall vest in Canada free and clear of all claims, liens, attachments, charges or encumbrances, and the Board shall be entitled at any time to remove, sell or dispose of it or any part of it in accordance with section 20 of that Act.

**2.1.18 Government Property**

1. Unless otherwise provided in the Contract, all Government Property shall be used by the Contractor solely for the purpose of the Contract and shall remain the property of Canada, and the Contractor shall maintain adequate accounting records of all Government Property, and, whenever feasible, shall mark the same as being the property of Canada.
2. The Contractor shall take reasonable and proper care of all Government Property while the same is in, on, or about the plant and premises of the Contractor or otherwise in its possession or subject to its control, and shall be responsible for any loss or damage resulting from its failure to do so other than loss or damage caused by ordinary wear and tear.
3. All Government Property, except such as is installed or incorporated into the Work, shall, unless otherwise specifically provided in the Contract, be returned to Canada on demand.
4. At the time of completion of the Contract, and if requested by the Contracting Authority, the Contractor shall provide an inventory of all Government Property relating to the Contract to both the Contracting Authority and the Technical Authority.

**2.1.19 Indemnity Against Third-Party Claims**

1. The Contractor shall indemnify and save harmless Canada, the Board and their servants and agents from and against any damages, costs or expenses or any claim, action, suit or other proceeding which they or any of them may at any time incur or suffer as a result of or arising out of
  - (a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the performance of the Work or any part thereof, except that Canada and the Board shall not claim indemnity under this

section to the extent that the injury, loss or damage has been caused by Canada, and

- (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by, Canada.
2. The Board shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 1 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify Canada for payment of any settlement unless it has consented to the settlement.

### **2.1.20 Royalties and Infringement**

1. In this section, "Royalties" includes
- (a) license fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, trade mark, copyrighted work, trade secret, or other intellectual property right, and
  - (b) any costs or expenses incurred as a result of the exercise by any person of Moral Rights.
2. Subject to subsection 4, the Contractor shall indemnify and save harmless Canada, the Board and their servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the carrying out of the Contract or the use or disposal by Canada of anything furnished by the Contractor under the Contract.
3. Canada shall indemnify and save harmless the Contractor and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the use by the Contractor in performing the Contract of equipment, Specifications or other information not prepared by the Contractor and supplied to the Contractor by or on behalf of Canada, provided that the Contractor notifies the Board immediately of any such claim, action, suit or other proceeding, but Canada shall not be liable to indemnify or save harmless the Contractor for payment of any settlement unless Canada has consented to the settlement.
4. The Board shall give notice to the Contractor of any claim, action, suit or proceeding referred to in subsection 2 and the Contractor shall, to the extent requested by the Attorney General of Canada, at its own expense participate in or conduct the defence of any such claim, action, suit or proceeding and any negotiations for settlement of the same, but the Contractor shall not be liable to indemnify and save harmless Canada for payment of any settlement unless it has consented to the settlement.
5. The Contractor shall notify the Board of all Royalties which it or any of its subcontractors will or may be obligated to pay or propose to pay in respect of carrying out the Contract, and the basis thereof, and the parties to whom the same are payable, and shall promptly advise the Board of any and all claims which would or might result in further or different payments by way of Royalties being made by the Contractor or any of its subcontractors.
6. Where and to the extent that the Board so directs, the Contractor shall not pay and shall direct its subcontractors not to pay any Royalties in respect of the carrying out of the Contract.

7. After the giving of any direction provided for in subsection 6, and subject to compliance by the Contractor with the foregoing provisions, Canada shall indemnify the Contractor and its subcontractors from and against all claims, actions, suits or proceedings for payment of such Royalties as are covered by the direction.
8. The Contractor shall not be entitled to any payment in respect of any Royalties included in the Contract Price to which the indemnity provided in subsection 7 applies.

### **2.1.21 Copyright**

1. In this section,

"Material" means anything that is created or developed by the Contractor as part of the Work under the Contract, and in which copyright subsists, including software developed by the Contractor for the Board.

2. Copyright in the Material shall vest in Canada and the Contractor shall incorporate in all Material the copyright symbol and either of the following notices, as appropriate:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA (year)

or

SA MAJESTÉ LA REINE DU CHEF DU CANADA (year)

3. At the completion of the Contract, or at such other time as the Contract or the Board may require, the Contractor shall fully and promptly disclose to the Board all Material created or developed under the Contract.
4. Where copyright in any Material vests in Canada under the Contract, the Contractor shall execute such conveyances and other documents relating to title or copyright as the Board may require.
5. The Contractor shall not use, copy, divulge or publish any Material except as is necessary to perform the Contract.
6. At the request of the Board, the Contractor shall provide to Canada, at the completion of the Work or at such other time as the Board may require, a written permanent waiver of Moral Rights, in a form acceptable to the Board, from every author that contributed to the Material.
7. If the Contractor is an author of the Material, the Contractor hereby permanently waives the Contractor's Moral Rights in respect of the Material.

### **2.1.22 Suspension of the Work**

1. The Board may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract for a period of up to 180 days. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. While such an order is in effect, the Contractor shall not remove any part of the Work from any premises without the prior written consent of the Contracting Authority. At any time prior to the expiration of the 180 days, the Board shall either rescind the order or terminate the Contract, in whole or in part, under section 23 (Default by the Contractor) or section 24 (Termination for Convenience).

2. When an order is made under subsection 1, unless the Board terminates the Contract by reason of default by the Contractor or the Contractor abandons the Contract, the Contractor shall be entitled to be paid its additional costs incurred as a result of the suspension plus a fair and reasonable profit thereon.
3. When an order is made under subsection 1 and is rescinded:
  - (a) the Contractor shall as soon as practicable resume work in accordance with the Contract;
  - (b) if the suspension has affected the Contractor's ability to meet any delivery date under the Contract, the date for the performance of that part of the Work affected by the suspension shall be extended for a period equal to the period of suspension plus a period, if any, which in the opinion of the Board following consultation with the Contractor is reasonably necessary for the Contractor to resume the Work; and
  - (c) subject to section 04 (Amendments and Waivers), an equitable adjustment shall be made as necessary to affected terms and conditions of the Contract.

### **2.1.23 Default by the Contractor**

1. Where the Contractor is in default in carrying out any of its obligations under the Contract, the Board may, upon giving written notice to the Contractor, terminate for default the whole or any part of the Contract, either immediately, or at the expiration of a cure period specified in the notice if the Contractor has not cured the default to the satisfaction of the Board within that cure period.
2. Where the Contractor becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Contractor, or an order is made or a resolution passed for the winding up of the Contractor, the Board may, to the extent permitted by the laws of Canada, upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
3. Upon the giving of a notice provided for in subsection 1 or 2, the Contractor shall have no claim for further payment other than as provided in this section, but shall be liable to Canada for any amounts, including milestone payments, paid by Canada and for all losses and damages which may be suffered by Canada by reason of the default or occurrence upon which the notice was based, including any increase in the cost incurred by Canada in procuring the Work from another source. The Contractor agrees to repay immediately to Canada the portion of any advance payment that is unliquidated at the date of the termination. Nothing in this section affects any obligation of Canada under the law to mitigate damages.
4. Upon termination of the Contract under this section, the Board may require the Contractor to deliver to Canada, in the manner and to the extent directed by the Board, any completed parts of the Work which have not been delivered and accepted prior to the termination and any material, equipment or work-in-process which the Contractor has acquired or produced specifically in the fulfilment of the Contract.
5. Subject to the deduction of any claim that Canada may have against the Contractor arising under the Contract or out of the termination, Canada shall pay or credit to the Contractor the value, determined on the basis of the Contract Price including the proportionate part of the Contractor's profit or fee included in the Contract Price, of all completed parts of the Work delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, and shall pay or credit to the Contractor the Cost to the

Contractor that the Board considers reasonable in respect of all material, equipment or work-in-process delivered to Canada pursuant to a direction under subsection 4 and accepted by Canada, but in no event shall the aggregate of the amounts paid by Canada under the Contract to the date of termination and any amounts payable pursuant to this subsection exceed the Contract Price.

6. Title to all material, equipment, work-in-process and finished work in respect of which payment is made to the Contractor shall, upon such payment being made, pass to and vest in Canada unless already so vested under any other provision of the Contract, and such material, equipment, work-in-process and finished work shall be delivered according to the order of the Board, but Canada will not accept and will not pay for material, equipment or work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
7. Where, subsequent to issuance of a notice pursuant to subsection 1, the Board is satisfied that grounds did not exist for a termination under this section, the notice shall be deemed a notice of termination for convenience issued under subsection 24(1) (Termination for Convenience).

#### **2.1.24 Termination for Convenience**

1. Notwithstanding anything contained in the Contract, the Board may, at any time prior to the completion of the Work, by giving notice to the Contractor (in this section sometimes referred to as a "termination notice"), terminate the Contract as regards all or any part of the Work not completed. Upon a termination notice being given, the Contractor shall cease work in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Work as are not affected by the termination notice. The Board may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Work not terminated by any previous termination notice.
2. In the event of a termination notice being given pursuant to subsection 1, the Contractor shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Contract and to the extent that the Contractor has not already been so paid or reimbursed by Canada including the unliquidated portion of any advance payment:
  - (a) on the basis of the Contract Price, for all completed work that is inspected and accepted in accordance with the Contract, whether completed before, or after and in compliance with the instructions contained in, the termination notice;
  - (b) the cost to the Contractor plus a fair and reasonable profit there on, for all work terminated by the termination notice before completion, the Cost to the Contractor being determined in accordance with the terms of the Contract and with Contract Cost Principles 1031-2;
  - (c) the amount of any capital expenditures actually incurred only if they were specifically authorized under the Contract or approved in writing by the Board for the purpose of the Contract, less any depreciation in respect thereof already taken into account in determining cost, to the extent that the capital expenditures are properly apportionable to the performance of the Contract;
  - (d) all costs of and incidental to the termination of the Work or part thereof, including the cost of cancellation of obligations incurred by the Contractor with respect to the terminated work or part thereof, the Cost of and incidental to the taking of an inventory of materials, components, work-in-process and finished work on hand related to the Contract at the date of the termination, and the cost of preparation of necessary accounts and statements with respect to Work performed to the effective date of the termination and commitments made by the Contractor with respect to the

terminated portions of the Work; but not including the cost of severance payments or damages to employees whose services are no longer required by reason of the termination except wages that the Contractor is obligated by statute to pay them and except for reasonable severance payments or damages paid to employees hired to perform the Contract whose hiring was expressly required by the Contract or approved in writing by the Board for the purpose of the Contract.

3. In paragraph 2(c), "capital expenditures" includes the entry into leases of real property and equipment.
4. The Board may reduce the payment in respect of any of the Work to the extent that, upon inspection, it is deficient in meeting the requirements of the Contract.
5. Notwithstanding anything in subsection 2, the total of the amounts to which the Contractor is entitled under paragraphs 2(a) to (c) inclusive, together with any amounts paid or due or becoming due to the Contractor under other provisions of the Contract, shall not exceed the Contract Price or the portion thereof that is applicable to the part of the Work that is terminated, and shall not exceed the proportion of the price quoted by the Contractor for all of the Work that is reasonably attributable to the proportion of the Work performed to the effective date of the termination.
6. In the procuring of materials and parts required for the performance of the Contract and in the subcontracting of any of the Work, the Contractor shall, unless otherwise authorized by the Minister, place purchase orders and subcontracts on terms that will enable the Contractor to terminate the same upon terms and conditions similar in effect to those provided in this section, and generally the Contractor shall co-operate with the Board and do everything reasonably within its power at all times to minimize the amount of Canada's obligations in the event of a termination under this section.
7. Title to all material, equipment, work-in-process and finished work in respect of which payment is made to the Contractor shall, upon such payment being made, pass to and vest in Canada unless already so vested under any other provision of the Contract, and such material, equipment, work-in-process and finished work shall be delivered according to the order of the Board, but Canada will not accept and will not pay for material, equipment or work-in-process that would not have been required to perform the Work or that exceed what would have been required to perform the Work.
8. The Contractor shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the Board under this section, except to the extent that this section expressly provides.

#### **2.1.25 Accounts and Audit**

1. The Contractor shall keep proper accounts and records of the cost to the Contractor of the Work and of all expenditures or commitments made by the Contractor in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto. The Contractor shall not, without the prior written consent of the Board, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of 6 years after final payment under this Contract, or until the settlement of all outstanding claims and disputes, whichever is later.
2. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in subsection 1 be open to audit, inspection and examination by the authorized representatives of the Board, who may make copies and take extracts thereof. The Contractor shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of the Board may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.

**2.1.26 Notice**

Any notice shall be in writing and may be delivered by hand or by courier, by registered mail, or by facsimile or other electronic means that provides a paper record of the text of the notice, addressed to the Party for whom it is intended at the address in the Contract or at the last address of which the sender has received notice in accordance with this section. Any notice shall be deemed to be effective on the day it is received at that address.

**2.1.27 Members of the House of Commons**

No member of the House of Commons shall be admitted to any share or part of the Contract or to any benefit arising from the Contract.

**2.1.28 Conflict of Interest**

The Contractor agrees that it is a term of the Contract that no person who is not in compliance with the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Values and Ethics Code for the Public Service (20030), shall derive any direct benefit from this Contract.

**2.1.29 No Bribe**

The Contractor represents and covenants that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of Canada or to a member of the family of such a person, with a view to influencing the entry into the Contract or the administration of the Contract.

**2.1.30 Survival**

All of the Contractor's obligations of confidentiality and all of the Contractor's representations and warranties set out in the Contract as well as the provisions concerning Government Property, indemnity against third party claims, royalties and infringement, intellectual property rights and accounts and audit shall survive the expiry of the Contract or the termination of the Contract for default, for convenience, pursuant to subsection 11(6) (Excusable Delay), or by mutual consent, as shall any other provision of the Contract which, by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to so survive.

**2.1.31 Severability**

If any provision of the Contract is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from the Contract and all other provisions of the Contract shall remain in full force and effect.

**2.1.32 Successors and Assigns**

The Contract shall ensure to the benefit of, and shall be binding upon, the successors and permitted assignees of Canada and of the Contractor.



**2.1.33 Entire Agreement**

The Contract constitutes the entire and sole agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.

**2.1.34 Certification - Contingency Fees**

1. The Contractor certifies that it has not directly or indirectly paid or agreed to pay and covenants that it will not directly or indirectly pay a contingency fee for the solicitation, negotiation or obtaining of this Contract to any person other than an employee acting in the normal course of the employee's duties.
2. All accounts and records pertaining to payments of fees or other compensation for the solicitation, obtaining or negotiation of the Contract shall be subject to the Accounts and Audit provisions of the Contract.
3. If the Contractor certifies falsely under this section or is in default of the obligations contained therein, the Board may either terminate this Contract for default in accordance with the termination for default provisions of the Contract or recover from the Contractor by way of reduction to the Contract Price or otherwise the full amount of the contingency fee.
4. In this section:

"contingency fee" means any payment or other compensation that is contingent upon or is calculated upon the basis of a degree of success in soliciting or obtaining a government contract or negotiating the whole or any part of its terms;

"employee" means a person with whom the Contractor has an employer/employee relationship;

"person" includes an individual or group of individuals, a corporation, a partnership, an organization and an association and, without restricting the generality of the foregoing, includes any individual who is required to file a return with the registrar pursuant to section 5 of the Lobbyist Registration Act, R.S. 1985 c.44 (4th Supplement) as the same may be amended from time to time.

**3.0 REQUIREMENT**

The Contractor shall provide Executive Search Services for the National Energy Board, as described in Appendix "A" - Statement of Work.

**4.0 CONTRACT PERIOD**

- 4.1 The period of the contract is from the date of award to March 31, 2016 inclusive.

**5.0 BASIS OF PAYMENT**

- 5.1 The Contractor shall be paid in accordance with the attached Appendix "B" for Work performed pursuant to the Contract.

## 6.0 METHOD OF PAYMENT

**6.1** Canada will pay the Contractor on a monthly basis for work performed during the month covered by the invoice in accordance with the payment provisions of the Contract if:

**6.1.1** an accurate and complete invoice and any other documents required by the Contract have been submitted in accordance with the invoicing instructions provided in the Contract;

**6.1.2** all such documents have been verified by Canada;

**6.1.3** the Work performed has been accepted by Canada.

## 7.0 INVOICING INSTRUCTIONS

The Contractor must provide the original of each invoice to the Technical Authority and as indicated at Section 1.2.9. - Invoice Submission.

On request, the Contractor must provide a copy of any invoices requested by the Contracting Authority

## 8.0 T1204 GOVERNMENT SERVICE CONTRACT PAYMENTS

Pursuant to paragraph 221 (1)(d) of the Income Tax Act, payments made by departments and agencies to contractors under applicable services contracts (including contracts involving a mix of goods and services) must be reported on a T1204 Government Service Contract Payments slip. To enable departments and agencies to comply with this requirement, the Contractor is required to provide its Procurement Business Number (PBN) or its Social Insurance Number. For the PBN, the Contractor is to ensure the accuracy of its information in the Supplier Registration Information service.

## 9.0 T1204 GOVERNMENT SERVICE CONTRACT PAYMENTS

The Contractor shall provide the information listed below, or its Procurement Business Number, with its first invoice. Where the required information includes a Social Insurance Number (SIN) (when the contractor is an individual or in partnership), the information should be provided in a separate envelope marked "PROTECTED" and attached to the invoice:

- (a) the legal name of the entity or individual, as applicable, i.e. the name associated with the Social Insurance Number (SIN) or Business Number (BN), as well as the address and the postal code;
- (b) the status of the Contractor, i.e. individual, partnership, or corporation;
- (c) for individuals, the Contractor's SIN and, if applicable, the BN, or if applicable, the Goods and Services Tax/Harmonized Sales Tax (GST/HST) number;
- (d) for partnerships and corporations, the BN, or if this is not available, the GST/HST number. If there is no BN or GST/HST number, corporations must provide their T2 Corporation Tax number, while partnerships must provide the SIN of the partner who has signed the contract; and,

(e) the following certification signed by the Contractor or an authorized officer:

"I certify that I have examined the information provided above, including the legal name, address, and Canada Revenue Agency identifier, (c) or (d) as applicable, and that it is correct and complete, and fully discloses the identification of this Contractor."

## 10.0 CONTACTS

### 10.1 Project Authority

National Energy Board  
444 - 7th Ave S.W.  
Calgary, Alberta T2P 0X8

Attn: (to be determined)  
Telephone:  
Email:

Should the work or any portions thereof not be satisfactory, the Project Authority reserves the right to reject it, in part or in its entirety, and to require its correction before recommending payment.

### 10.2 Contracting Authority

Any enquiries regarding this Contract shall be directed to:

National Energy Board  
Supply Management Advisor  
444, Seventh Avenue SW  
Calgary, Alberta T2P 0X8

Attn.: (to be determined)  
Telephone:  
Facsimile:  
E-mail:

Any changes to the Contract must be authorized in writing by the Contracting Authority. The Contractor is not to perform work in excess of or outside the scope of this Contract based on verbal or written requests or instructions from any government personnel other than the Contracting Officer.

### 10.3 Supplier Contact

Company: (to be determined)  
Attn.:  
Telephone:  
Facsimile:  
E-mail:

## 11.0 PRIORITY OF DOCUMENTS

**11.1** The documents listed below form part of and are incorporated into this Contract. If there is a discrepancy between the wording of one document and the wording of any other document which appears on the list, the wording of the document which first appears on the list shall prevail over the wording of any document which subsequently appears on the list:

- (i) these articles of agreement;
- (ii) General Conditions - Services, DSS-MAS 9676 (2004/05/14);
- (iii) Appendix "A" - Statement of Work
- (iv) Appendix "B" - Basis of Payment
- (v) Contractor's Proposal dated, (to be determined).

## 12.0 EXPENDITURE, LIMITATION OF

**12.1** Canada's total liability under this contract shall not exceed - **To be determined** - Goods and Services Tax or Harmonized Sales Tax extra, as appropriate.

**12.2** No increase in the total liability of Canada or in the price of Work resulting from any design changes, modifications or interpretations of specifications, made by the Contractor, will be authorized or paid to the Contractor unless such changes, modifications or interpretations, have been approved, in writing, by the Contracting Authority, prior to their incorporation into the Work. The Contractor shall not be obliged to perform any work or provide any service that would cause the total liability of Canada to be exceeded without the prior written approval of the Contracting Authority. The Contractor shall notify the Contracting Authority in writing as to the adequacy of this sum when:

- (a) it is 75 percent committed, or
- (b) four (4) months prior to the Contract expiry date, or
- (c) if the Contractor considers the funds provided are inadequate for the completion of the Work, whichever comes first.

**12.3** In the event that the notification refers to inadequate funds, the Contractor shall provide to the Contracting Authority, in writing, an estimate for the additional funds required. Provision of such notification and estimate for the additional funds does not increase Canada's liability.

## 13.0 LICENSING

The Contractor must obtain and maintain all permits, licences and certificates of approval required for the Work to be performed under any applicable federal, provincial or municipal legislation. The Contractor shall be responsible for any charges imposed by such legislation or regulations. Upon request, the Contractor shall provide a copy of any such permit, licence, or certificate to Canada.

**14.0 PERSONNEL, REPLACEMENT OF SPECIFIED**

- 14.1** When specific persons have been named in the Contract as the persons who must perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
- 14.2** If at any time the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person with similar qualifications and experience. The Contractor shall, within ten (10) calendar days, give notice to the Board of:
- (a) the reason for the removal of the named person from the Work;
  - (b) the name, qualifications and experience of the proposed replacement person; and
  - (c) proof that the person has the required security clearance granted by Canada, if applicable.
- 14.3** The Board may order the removal from the Work of any such replacement person and the Contractor shall immediately remove the person from the Work and shall, in accordance with subsection 15.2, secure a further replacement.
- 14.4** The fact that the Board does not order the removal of a replacement person from the Work shall not relieve the Contractor from its responsibility to meet the requirements of the Contract.

**15.0 SUITABILITY OF SERVICES**

- 15.1** All services rendered may be evaluated within a reasonable time from commencement of the Contract on the basis of quality and adherence to the NEB's schedule and standards. Personnel assigned must be capable of performing this Contract at a level of competence deemed acceptable by the Project Authority.
- 15.2** Should personnel be found unsuitable to perform the services, and upon written advice from NEB through the Contracting Authority, the Contractor shall implement suitable corrective action within five (5) working days after written notice by the Contracting Authority. The replacement proposed must be of adequate ability and attainment. Any cost associated with such replacement shall be to the Contractor's own account.

**16.0 EXPERIENCE AND EDUCATION**

The Contractor certifies that all statements made with regard to the education and the experience of individuals proposed for completing the subject Work are accurate and factual, and the Contractor agrees that the Board reserves the right to verify any information provided in this regard and that untrue statements may result in the Contract being terminated for default pursuant to the terms of the general conditions forming part of this Contract.

**17.0 TIME VERIFICATION**

Time charged and the accuracy of the Contractor's time recording system may be verified by Canada's representatives before or after payment is made to the Contractor under the terms and conditions of the

Contract. If verification is done after payment, the Contractor agrees to repay any overpayment immediately upon demand by Canada.

## **18.0 ACCESS TO CANADIAN FACILITIES**

**18.1** Access to the following Canada facilities, equipment, documentation and personnel may be required during the Contract period in order to perform the Work:

- (a) client's premises;
- (b) client's computer systems (micro computer network);
- (c) documentation;
- (d) personnel for consultation;
- (e) office space, telephones, desk space, manuals and terminals.

**18.2** Canada's facilities, equipment, documentation and personnel are not automatically at the disposal of the Contractor. The Contractor is responsible for timely identification of the need for access to the referenced facilities, equipment, documentation and personnel.

**18.3** The NEB is responsible for the timely provision of said facilities, equipment, documentation and personnel to the Contractor when such access is approved. Access may be provided on a one-time or on-going basis, as the Project Authority may determine, and as on-going operational needs and cooperative working arrangements between the Contractor and NEB personnel shall reasonably require. Access to and sharing of said facilities, equipment, documentation shall be carried out in good faith between the parties in order to optimize the conduct of the work.

## **19.0 CROWN PROPERTY, DAMAGE TO OR LOSS OF**

The Contractor shall reimburse Canada any cost or expenses due to the damage to or loss of Crown-owned property resulting from the Contract or the carrying out thereof, or shall, upon reasonable notice, promptly repair such damage or substitute such loss to Canada's satisfaction.

## **20.0 SITE REGULATIONS**

The Contractor undertakes and agrees to comply with all standing orders or other regulations, in force on the site where the work is to be performed, relating to the safety of persons on the site or the protection of property against loss or damage from any and all causes including fire.

## **21.0 PRIVACY**

It is understood and agreed that all information obtained and all records, research, working papers, submissions and reports, final or otherwise, prepared in connection with this contract shall be submitted to the Board/Department and shall be the sole and exclusive property of the Board/Department. Furthermore, this information shall be subject to the application of the Access to Information Act. The Contractor shall not use or release this information without the written consent of the Department. Privacy Act applies to all personal information recorded in any form by the Contractor in connection with any services rendered pursuant to this agreement.

**22.0 OWNERSHIP AND DISCLOSURE OF INFORMATION**

It is understood and agreed that the Contractor shall, during and after the period of the contract, treat as confidential and not divulge, unless authorized in writing by the Project Authority, any information obtained in the course of the performance of the contract.

The Contractor understands and agrees that all information or reports obtained with respect to research, working papers, submissions and reports, final or otherwise, prepared in connection with this contract shall be submitted to the Crown and shall be the sole and exclusive property of the Crown.

**23.0 INFORMATION STORAGE AND RETRIEVAL**

All information storage and retrieval disks and tapes are to be electronically scanned for computer viruses and other coding intended to cause malfunctions, prior to being used on Crown equipment. The Contractor or Contractor's personnel shall immediately inform the Project Authority or Project Authority designate, if disks or tapes used for work on this requirement are found to contain computer viruses or coding intended to cause malfunctions. The program used by the Contractor to scan for computer viruses shall be subject to the approval of the Project Authority or Project Authority designate.

**24.0 TIMELY PROBLEM IDENTIFICATION AND RESOLUTION**

- 24.1** The Contractor shall immediately advise the Contracting and Project Authorities in writing of any and all situations or difficulties which the Contractor considers will have a significant impact upon the scope of the Work, expected technical achievement, delivery schedule, person-power or cost to the Crown.
- 24.2** Such reports must include proposed detailed remedial action plans to resolve or alleviate such situations or difficulties. The plans must set out the Contractor's detailed estimates of any increase in time, resources and cost to effect such plans. Such plans shall include all reasonable options for consideration by the Crown plus the costs and consequences to the Crown of taking no remedial action and must also provide a reasonable amount of time for the Crown to review these options and obtain any necessary funding authorization.
- 24.3** The Contractor shall be prohibited from claiming for any additional costs incurred in remedying a problem not reported as described above in a timely fashion, but shall be required, to remedy such problems at its own expense.

**25.0 COMMERCIAL GENERAL LIABILITY**

Commercial General Liability insurance shall be effected by the Contractor and maintained in force throughout the duration of the Contract, in an amount usual for a contract of this nature, but, in any case, for a limit of liability NOT LESS THAN \$1,000,000 per accident or occurrence.

**26.0 AUDIT**

The amount claimed under the terms and conditions of this Contract, as computed in accordance with the Basis of Payment, is subject to government audit. Any payments made pending completion of the audit shall be regarded as interim payments only and shall be adjusted to the extent necessary to reflect the results of the said audit. If there has been an overpayment, it shall be refunded promptly to Canada. Supporting information for each element of cost shall be available and shall be in sufficient detail that an in-depth audit can be performed.

## 27.0 CONTRACTOR'S RESPONSIBILITY

It shall be the sole responsibility of the Contractor to decide whether or not any other insurance coverage, in addition to the insurance requirements stipulated in the bid solicitation and resulting contract, is necessary for its own protection or to fulfill its obligations under the Contract. Any such additional insurance shall be provided and maintained by the Contractor at its own expense.

The following insurance provisions shall not limit any insurance required by federal, provincial or municipal law.

## 28.0 TERMINATION FOR CONVENIENCE

Canada reserves the right to terminate the services at any time during the Contract period upon giving the Contractor thirty (30) days written notice of its intent. In the event of any such termination, Canada's liability to the Contractor shall be limited to the payment of the services which have accrued up to and including the date of termination.

## 29.0 INTERNATIONAL SANCTIONS

- 29.1** Persons in Canada, and Canadians outside of Canada, are bound by economic sanctions imposed by Canada. As a result, the Government of Canada cannot accept delivery of goods or services that originate, either directly or indirectly, from the countries or persons subject to economic sanctions.
- 29.2** Details on existing sanctions can be found at:  
[Http://www.dfait-maeci.gc.ca/trade/sanctions-e.asp](http://www.dfait-maeci.gc.ca/trade/sanctions-e.asp)
- 29.3** It is a condition of this Contract that the Contractor not supply to the Government of Canada any goods or services which are subject to economic sanctions.
- 29.4** By law, the Contractor must comply with changes to the regulations imposed during the life of the Contract. During the performance of the Contract, should the imposition of sanctions against a country or person or the addition of a good or service to the list of sanctioned goods or services cause an impossibility of performance for the Contractor, the situation will be treated by the Parties as a force majeure. The Contractor shall forthwith inform Canada of the situation; the procedures applicable to force majeure shall then apply.

## 30.0 APPLICABLE LAWS

This Contract shall be interpreted and governed, and the relations between the Parties determined, by the laws in force in the Province of Alberta, Canada.



**31.0 WORK FORCE REDUCTION PROGRAMS**

**31.1** It is a term of this contract:

- a. that the Contractor has declared to the Contracting Authority whether the Contractor has received a lump sum payment made pursuant to any work force reduction program, including but not limited to the Work Force Adjustment Directive, the Early Departure Incentive Program, the Early Retirement Incentive Program or the Executive Employment Transition Program, which has been implemented to reduce the public service;
- b. that the Contractor has informed the Contracting Authority of the terms and conditions of that work force reduction program, pursuant to which the Contractor was made a lump sum payment, including the termination date, the amount of the lump sum payment and the rate of pay on which the lump sum payment was based, and
- c. that the Contractor has informed the Contracting Authority of any exemption in respect of the abatement of a contract fee received by the Contractor under the Early Departure Incentive Program Order or paragraph 4 of Policy Notice 1995-8, of July 28, 1995.

**31.2** The Contractor represents and warrants that the information submitted with its bid is accurate and complete. The Contractor acknowledges that the Board has relied upon such representation to enter into this Contract. Such representation may be verified in such manner as the Board may reasonably require.

**32.0 MANDATORY CERTIFICATIONS**

Compliance with the Certifications the Contractor has provided Canada is a condition of this Contract and subject to verification by Canada during the entire period of the Contract. In the event that the Contractor does not comply with any certification or that it is determined that any certification made by the Contractor is untrue, whether made knowingly or unknowingly, the Board shall have the right, pursuant to the default provisions of the Contract, to terminate the Contract for default.

**33.0 TAX WITHHOLDING OF 15 PERCENT**

The Contractor agrees that, pursuant to the provisions of the Income Tax Act, Canada is empowered to withhold an amount of 15 percent of the price to be paid to the Contractor, if the Contractor is a non-resident contractor as defined in said Act. This amount will be held on account with respect to any liability for taxes which may be owed to Canada.

**34.0 GOODS AND SERVICES TAX / HARMONIZED SALES TAX**

All prices and amounts of money in the Contract are exclusive of Goods and Services Tax (GST) or Harmonized Sales Tax (HST), as applicable, unless otherwise indicated. The GST or HST, whichever is applicable, is extra to the price herein and will be paid by Canada.

The estimated GST or HST is included in the total estimated cost. GST or HST, to the extent applicable, will be incorporated into all invoices and progress claims and shown as a separate item on invoices and progress claims. All items that are zero-rated, exempt or to which the GST or HST does not apply, are to be identified as such on all invoices. The Contractor agrees to remit to Canada Revenue Agency any amounts of GST and HST paid or due.

**35.0 LIABILITY**

Without restricting the terms and conditions of the Contract, it is hereby understood and agreed that, except to the extent caused by or due to Canada, Canada shall not be liable for any losses, claims, damages, or expenses relating to any injury, disease, illness, disability or death of the Contractor or any employee, agent or representative of the Contractor caused or alleged to be caused as a result of performing the Contract. The Contractor agrees to fully protect and indemnify Canada and not to make any claims or demands against Canada in respect of any of the foregoing contingencies.

**APPENDIX “A”****STATEMENT OF WORK****1.0 Background**

The National Energy Board (NEB), an independent federal regulator, located in Calgary, Alberta, is a court of record, with the powers, rights and privileges of a superior court, established in 1959 by the *National Energy Board Act*. The mandate of the NEB is to promote safety and security, environmental protection and economic efficiency in the Canadian public interest, in the regulation of pipelines, energy development and trade.

The Board reports to Parliament through the Minister of Natural Resources. The Board regulates inter-provincial and international pipelines, international power lines, the export and import of energy, and tolls and tariffs, as well as oil and gas activities on frontier lands. The Board deals with highly visible, publicly debated matters of strategic importance to Canada and its economic, social and environmental future.

This contract will provide the Operation Business Unit with access to qualified auditors to complete the six audits that are required by the Parliament to be completed each fiscal year. The Board has an immediate need for a qualified contractor to assist with and conduct the audits of pipeline company integrity management programs. The contractor may also be required to conduct or assist on audits of company safety management, emergency management, environmental protection or damage prevention programs. The Contractor may be required to provide coaching/mentoring to NEB audits (as noted in the statement of work below).

**2.0 Scope of Work**

This contract will provide the Operation Business Unit with access to qualified auditors to complete the six audits that are mandated by the Parliament to be completed each fiscal year. As such, a qualified contractor is needed to assist with the audits and provide coaching/mentoring to NEB audits.

The contract should achieve appropriate assessment of NEB regulated company management systems, in particular with respect to company pipeline integrity management systems. The contractor may also be required to assist or audit safety management, emergency management, environmental protection or damage prevention programs. The contract should provide the support as outlined in the statement of work.

The Contractor needs to:

- Be familiar with NEB regulations, other applicable legislation and NEB audit protocols;
- Be knowledgeable of CSA Z662 Oil and Gas Pipeline Systems, CSA Z276 Liquefied Natural Gas (LNG); Production, Storage, and Handling, CSA Z246.1 Steel Pipe and CSA Z341 Storage of hydrocarbons in underground formations;
- Be experienced with the design, evaluation or implementation of integrity management programs for hydrocarbon pipelines;
- Conduct a review of company documentation;
- Conduct audit interviews and accompany NEB staff on audit-related inspections;

- Draft portions of the audit report;
- Provide coaching and guidance to NEB audit staff on general audit practices and principals with respect to auditing integrity management programs;
- Assist in development of audit plans;
- Attend Board Meetings as required and provide advice to the Board with respect to the areas/topics that the contractor was involved in; and
- If required, transition the hand-off of work to the remaining resource(s).

(Note: Includes travel as requested.)

### **3.0 Deliverables**

- a. Portions of the Draft and Final Audit Reports for audits conducted during the contract period for which the Operations Business Unit requires the assistance of the contractor;
- b. Provision of coaching and mentoring during audits conducted during the contract period;
- c. Review of the entire Draft and Final Audit Reports for audits conducted during the contract period; and
- d. Advice to the Board with respect to the areas/topics that the contractor was involved in.

**APPENDIX “B”****1.0 BASIS OF PAYMENT**

- 1.1** The Contractor shall be paid the firm lot price at Appendix “B”, stated herein, to complete all work and services required to be performed in relation to the Contract extensions.

<b>Basis of Payment</b>		
	<b>GST/HST</b>	<b>Firm Lot Price</b>
<b>Firm Lot Price</b>		
Fiscal Year 2014/2015	\$ _____	\$ _____
Fiscal Year 2015/2016	\$ _____	\$ _____
<b>TOTAL</b>		

- 1.2** All deliverables are F.O.B Destination, and Canadian Customs Duty included, where applicable.
- 1.3** The Crown will not accept any Travel and Living expenses incurred by any contractor as a consequence of any relocation required to satisfy the terms of any resulting contract.
- 1.4** All prices and amounts of money in the Contract are exclusive of Goods and Services Tax (GST) or Harmonized Sales Tax (HST), as applicable, unless otherwise indicated. The GST or HST, whichever is applicable, is extra to the price herein and will be paid by Canada.

**2.0 Travel**

Actual travel expenses will be reimbursed in accordance with the Treasury Board Travel Directive ([http://www.tbs-sct.gc.ca/travel/travel\\_e.html](http://www.tbs-sct.gc.ca/travel/travel_e.html))

- a. All payments are subject to Federal Government Audit
- b. All travel must have prior authorization of the Project Authority

**3.0 Estimates:**

Where a cost estimate has been submitted and accepted by the Project Authority, fully completed work or services will be performed or provided at a cost no greater than 110% of such estimate.

**APPENDIX "C"****CERTIFICATIONS****1.0 CERTIFICATIONS**

**NOTE TO BIDDERS: BIDDERS ARE REQUESTED TO COMPLETE THESE CERTIFICATIONS BY FILLING IN THE APPROPRIATE SPACES BELOW AND INCLUDE IT WITH THEIR PROPOSAL.**

**2.0 AVAILABILITY AND STATUS OF PERSONNEL****AVAILABILITY OF PERSONNEL**

The Bidder certifies that, should it be authorized to provide services under any contract resulting from this solicitation, the persons proposed in its bid will be available to commence performance of the work within a reasonable time from contract award, or within the time specified herein, and will remain available to perform the work in relation to the fulfillment of this requirement.

**STATUS OF PERSONNEL**

If the Bidder has proposed any person in fulfillment of this requirement who is not an employee of the Bidder, the Bidder hereby certifies that it has written permission from such person (or the employer of such person) to propose the services of such person in relation to the work to be performed in fulfillment of this requirement and to submit such person's résumé to the Contracting Authority.

During the bid evaluation, the Bidder MUST upon the request of the Contracting Authority provide a copy of such written permission, in relation to any or all non-employees proposed. The Bidder agrees that failure to comply with such a request may lead to disqualification of the Bidder's proposal from further consideration.

**3.0 EDUCATION / EXPERIENCE CERTIFICATION**

The Bidder hereby certifies that all statements made with respect to education and experience are true and that any person proposed by the Bidder to perform the Work or part of the Work is either an employee of the Bidder or under a written agreement to provide services to the Bidder.

**4.0 FORMER PUBLIC SERVANT CERTIFICATION**

Contracts with former public servants (FPS) in receipt of a pension or of a lump sum payment must bear the closest public scrutiny and reflect fairness in spending public funds. In order to comply with Treasury Board policies and directives on contracts with FPS, bidders must provide the information required below.

**Definitions**

For the purposes of this clause, "former public servant" means a former member of a department as defined in the *Financial Administration Act*, R.S., 1985, c. F-11, a former member of the Canadian Armed Forces or a former member of the Royal Canadian Mounted Police and includes:

- (a) an individual;
- (b) an individual who has incorporated;
- (c) a partnership made up of former public servants; or
- (d) sole proprietorship or entity where the affected individual has a controlling or major interest in the entity.

"lump sum payment period" means the period measured in weeks of salary, for which payment has been made to facilitate the transition to retirement or to other employment as a result of the implementation of various programs to reduce the size of the Public Service. The lump sum payment period does not include the period of severance pay, which is measured in a like manner.

"pension" means, a pension or annual allowance paid under the Public Service Superannuation Act (PSSA), R.S., 1985, c.P-36, and any increases paid pursuant to the Supplementary Retirement Benefits Act, R.S., 1985, c.S-24 as it affects the PSSA. It does not include pensions payable pursuant to the Canadian Forces Superannuation Act, R.S., 1985, c.C-17, the Defence Services Pension Continuation Act, 1970, c.D-3, the Royal Canadian Mounted Police Pension Continuation Act, 1970, c.R-10, and the Royal Canadian Mounted Police Superannuation Act, R.S., 1985, c.R-11, the Members of Parliament Retiring Allowances Act, R.S., 1985, c.M-5, and that portion of pension payable to the Canada Pension Plan Act, R.S., 1985, c.C-8.

#### 4.1 Former Public Servant in Receipt of a Pension

As per the above definitions, is the Bidder a FPS in receipt of a pension? YES ( ) NO ( )

If so, the Bidder must provide the following information, for all FPS in receipt of a pension, as applicable:

- a) name of former public servant;
- b) date of termination of employment or retirement from the Public Service.

By providing this information, Bidders agree that the successful Bidder's status, with respect to being a former public servant in receipt of a pension, will be reported on departmental websites as part of the published proactive disclosure reports in accordance with [Contracting Policy Notice: 2012-2](#) and the [Guidelines on the Proactive Disclosure of Contracts](#).

Is the Bidder a FPS in receipt of a pension as defined above? YES ( ) NO ( )

If so, the Bidder must provide the following information:

- (a) Name of former public servant;
- (b) Date of termination of employment or retirement from the Public Service.

#### 4.2 Work Force Reduction Program

Is the Bidder a FPS who received a lump sum payment pursuant to the terms of a work force reduction program? YES ( ) NO ( )

If so, the Bidder must provide the following information:

- (a) name of former public servant;
- (b) conditions of the lump sum payment incentive;
- (c) date of termination of employment;
- (d) amount of lump sum payment;
- (e) rate of pay on which lump sum payment is based;
- (f) period of lump sum payment including start date, end date and number of weeks;
- (g) number and amount (professional fees) of other contracts subject to the restrictions of a work force reduction program.

For all contracts awarded during the lump sum payment period, the total amount of fee that may be paid to a FPS who received a lump sum payment is \$5,000, including the Goods and Services Tax or Harmonized Sales Tax.

**5.0 COMPLIANCE WITH THE CERTIFICATIONS**

The Bidder certifies that it is compliant with all the articles, clauses, terms and conditions contained or referenced in the Request for Proposal (RFP) including the following certifications detailed below:

- 2. Availability and Status of Personnel
- 3. Education / Experience Certification
- 4. Former Public Servant Certification
  - 4.1 Former Public Servant in Receipt of a Pension
  - 4.2 Work Force Reduction Program
- 5. Compliance with the Certifications

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_



**APPENDIX “D”  
EVALUATION PROCEDURES & CRITERIA**

**1.0 EVALUATION PROCEDURES**

- 1.1** To be considered responsive, a bid must
- i. Meet all the mandatory requirements of this solicitation and
  - ii. Obtain the required minimum of 70% percent of for the Point Rated Requirement sections specified below in this solicitation.
- 1.2** Bids not meeting Section 1 above will be given no further consideration.
- 1.3** Bids not meeting (a) or (b) above will be given no further consideration.
- 1.4** Should two or more compliant bids propose the same price, the bid offering the higher point rated score will be recommended for Contract award.

**OVERALL PROPOSAL SCORE AND BASIS OF SELECTION**

Selection of the successful bidder will be on the basis of BEST OVERALL VALUE to the Board, taking into consideration Rated Requirements and Price. Price will be the total dollar amount that the bidder proposed to charge for each category. The weights to be given will be:

Mandatory Requirements	Met/Not Met
Point Rated Requirements	70 %
Total Proposed Price	<u>30</u> %
Total Weighting	100 %

An example of the calculation the Overall Proposal Score for each category is as follows:

<b>Highest Combined Rating of Point Rated Requirements (75%) and Price (25%)</b>			
<b>Bidder</b>	<b>Bidder 1</b>	<b>Bidder 2</b>	<b>Bidder 3</b>
<b>Total Point Rated Requirement</b>	78	76	70
<b>Total Proposed Price</b>	\$75,000	\$66,000	\$63,200
<b>Calculation</b>	<b>Points Rated Points</b>	<b>Price Points</b>	<b>Total Points</b>
<b>Bidder 1</b>	$78/100 \times 75 = 58.5$	$63,200/75,000 \times 25 = 21.1$	79.6
<b>Bidder 2</b>	$76/100 \times 75 = 57$	$63,200/66,000 \times 25 = 23.9$	80.9
<b>Bidder 3</b>	$70/100 \times 75 = 52.5$	$63,200/63,200 \times 25 = 25$	77.5

In this example, this would be the total points for on category. A combined category points will be the successful bidder.

**2.0 EVALUATION CRITERIA****NOTE TO BIDDERS:**

The Technical Proposal should address, but not necessarily be limited to, each rated criteria listed herein. The rated criteria will be used to evaluate the relative merits of your proposal. The evaluation will be based solely on the contents of your proposal. It is essential that the elements contained in your bid be stated clearly and in a concise manner. Failure to provide complete information will be to your disadvantage. It is recommended that your proposal address the rated criteria in sufficient depth to permit a proper and complete evaluation of your submission. Items not addressed will be given a score of zero.

Listing experience without providing any supporting data to prescribe where and how such experience was obtained will result in the experience not being included for evaluation purposes.

**References, including the name, address and a current telephone number, of an individual(s) who may be contacted are to be provided in order to verify experience claimed.**

**2.1 MANDATORY REQUIREMENT**

	<b>Mandatory Requirement</b>	<b>Met or Not Met (Yes/No)</b>	<b>Bidder to Provide Cross-Reference to its Proposal Where Criteria is Met</b>
<b>M1</b>	All bidders must provide previous samples of the work proposed in the SoW and demonstrate in writing experience they have in completing previous work as noted in the SoW.		
<b>M2</b>	Bidders must certify that all the information provided in the attached resumes and supporting material, particularly as this information pertains to the education, achievements, experience and work history, has been verified by us to be true and accurate.		
<b>M3</b>	The bidder is to provide references from the two most recent organizations for which activities of a similar nature were provided.		

**2.2 POINT RATED REQUIREMENTS**

	<b>Point Rated Requirement</b>	<b>Points</b>
<b>R1</b>	The bidder should demonstrate their ability in meeting the required service for this specific job requirement and its competencies as stated in the SoW.	/30
<b>R2</b>	The bidder should provide a detailed account of two previously and successfully completed audits in the last four years.	/20
<b>R3</b>	The bidder should demonstrate extensive experience with design, evaluation or implementation of pipeline integrity management systems.	/20
<b>R4</b>	The bidder should demonstrate experience with design, evaluation or implementation of emergency management, environmental protection, safety management or damage prevention programs.	/10
<b>R5</b>	The bidder should demonstrate familiarity with the National Energy Board, its regulations and its role.	/20
<b>Total</b>		<b>/100</b>

**2.3 FINANCIAL EVALUATION**

The bidder must submit a firm lot price for the financial evaluation. The bidder

<b>Basis of Payment</b>		
	<b>GST/HST</b>	<b>Firm Lot Price</b>
<b>Firm Lot Price</b>  (not exceed a total of <b>\$230,000</b> Goods and Services Tax or Harmonized Sales Tax extra, excluded / <u>or \$115,000 per Fiscal Year</u> )	\$ _____	\$ _____

**Please note that all submitted prices should include all administration costs, management personnel costs and any other related costs**

## **2.4 AUDITED FINANCIAL STATEMENTS**

In order to confirm a Bidder's financial capability to perform the subject requirement, the Contracting Authority reserves the right to have access, during the bid evaluation phase, to current Bidder financial information. If requested, the financial information to be provided shall include, but not limited to, the Bidder's most recent audited financial statements or financial statements certified by the Bidder's chief information officer.

Should the Bidder provide the requested information to Canada in confidence while indicating that the disclosed information is confidential, then Canada will treat the information in a confidential manner as provided in the *Access to Information Act*.

In the event that a bid is found to be non-responsive on the basis that the Bidder is considered NOT to be financially capable of performing the subject requirement, official notification shall be provided to the Bidder.

## **2.5 CONFIDENTIALITY**

Should the Bidder provide the information requested above to Canada in confidence while indicating that the disclosed information is confidential, then Canada will treat the information in a confidential manner as permitted by the *Access to Information Act*, Section 20 (1) (b) and (c).