



Gouvernement du Canada

Government of Canada

Commission des champs
de bataille nationaux

The National Battlefields
Commission

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Québec (Québec) G1R 2L7

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Quebec (Quebec) G1R 2L7

GENERAL CONDITIONS

Constructions and Repairs

**1. Definition of Terms**

In the Contract,

.1 “the head” means such person as may be specifically designated by or on behalf of the National Battlefields Commission upon the award of the contract and includes a person specially authorized by the head to act on his behalf;

.2 “National Battlefields Commission” includes a person authorized by the NBC to act on its behalf to represent it for the purpose of the contract;

.3 “work” includes the whole of the works, materials, matters and things to be done, furnished and performed by the Contractor under the contract.

2. Assignment and Subcontracting

The contract may not be assigned without the written consent of the National Battlefields Commission and neither the whole nor any part of the work may be subcontracted by the Contractor without the consent of the head. Every subcontract shall incorporate all the terms and conditions of the contract which can reasonably be applied thereto.

3. 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 therefrom.

4. Indemnification

The Contractor shall indemnify and save harmless Her Majesty from and against all claims, losses, costs, damages, suits, proceedings, or actions arising out of or related to the Contractor’s activities in executing the work, other than those arising from a defect in title to the site of the work or the infringement of a patent arising from a design supplied by Her Majesty, but including his omissions, improper acts or delays in executing the work under the contract.

The Contractor must protect itself and indemnify and save harmless the Commission against all claims that could result from its operations or acts, or from those of its employees, in executing the work under the contract when resulting in personal injuries, including death and property damage, including the Commission property and to this end, the Contractor shall, without restricting the generality of what precedes, keep an insurance acceptable for the Commission and that is up to two (2) million dollars.

Previous to the beginning of all the works hereunder, the Contractor must file to the Commission a copy of each insurance policy and required certificate. All insurances must be maintained until works completion.

The Contractor must commit to maintain this insurance in effect during all the time of works.

5. Property of Her Majesty

The Contractor shall be responsible for any loss of damage, excluding reasonable wear and tear, to any property of Her Majesty arising out of the performance of the work whether or not such loss arises from causes beyond his control. Such property shall only be used by the Contractor as may be directed by the head and the Contractor shall, at any time when requested to do so, account to the head for the use of such property.



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- 6. Permits and By-Laws**
- The Contractor shall comply with all laws and regulations relating to the work, whether federal, provincial or municipal, as if the work was being constructed for a person other than Her Majesty, and shall pay for all permits and certificates required in respect of the execution of the work.
- 7. Canadian Labour and Materials**
- In so far as is practicable, the Contractor shall employ and use only Canadian labour and materials in the execution of the work, and employ labour from the region where works will be performed.
- 8. Publicity**
- The Contractor will neither permit any public ceremony, nor erect or permit the erection of any sign or advertising in connection with the work without the approval of the head.
- 9. Materials, Equipment, etc. to become Property of Her Majesty**
- All materials and equipment used or provided for the work shall be the property of Her Majesty, shall not be removed from the site of the work and shall be used only for the purpose of the work, until the head shall certify that they are, if not incorporated in the work, no longer required for the purpose of the work. The Contractor shall be liable for all loss or damage to material or equipment that is the property of Her Majesty by virtue of this section.
- 10. Contractor's Superintendent, Foreman and Workmen**
- The Contractor will keep a competent superintendent or foreman on the site of the work at all times during the progress of the work unless otherwise authorized by the head. The superintendent or foreman must be acceptable to the head and have the authority to receive on behalf of the Contractor any order or communication in respect of the contract. Any superintendent, foreman and workman not acceptable to the head because of incompetence, improper conduct or security risk will be removed from the site of the work and replaced forthwith.
- 11. Co-operation with other Contractors**
- The Contractor will co-operate fully with other contractors or workmen sent onto the site of the work by the head. If the sending onto the work of other contractors and workmen could not have been reasonably foreseen by the Contractor when entering into the contract, and if, in the opinion of the head, the Contractor has incurred additional expense by such action, and if the Contractor has given written notice of claim within thirty days of such action, Her Majesty will pay the cost of such additional expense to the Contractor calculated in accordance with Section 20.
- 12. Claims Against and Obligations of the Contractor or Subcontractor**
- .1 The Contractor shall ensure that all his lawful obligations and lawful claims against him arising out of the execution of the work are discharged and satisfied, at least as often as this contract requires Her Majesty to discharge Her obligations to the Contractor and shall supply the head with a Statutory Declaration deposing to the existence and condition of such claims and obligations when called upon to do so.
- .2 Her Majesty may, in order to discharge lawful obligations of and satisfy lawful claims against the Contractor or a subcontractor arising out of the execution of the work, pay any amount, which is due and payable to the Contractor under the contract and from a conversion or a negotiation of the security referred to in Section 18 hereof, if any, directly to the obligees of and the claimants against the Contractor or the subcontractor.
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**13. Architect / Engineer's Rights and Obligations**

The head shall –

- .1 have access to the work at all times during its execution and the Contractor will provide the head with full information and assistance in order that he may ensure that the work is executed in accordance with the contract;
- .2 decide any question as to whether anything has been done as required by the contract or as to what the Contractor is required by the contract to do, including questions as to the acceptability of, the quality or quantity of any labour, equipment or material used in the execution of the work, and the timing and scheduling of the various phases of the work;
- .3 have the right to order additional work, dispense with, or change the whole or any part of the work provided for in the plans and specifications. The head shall decide whether anything done or not done as a result of directions given under this sub-section has increased or decreased the cost of the work to the Contractor and the amount payable under the contract to the Contractor will be increased or decreased accordingly by an amount calculated in accordance with Section 20 hereof.

The Contractor shall comply with any decision or direction of the head given under this section.

14. Delay, Non-compliance, or Default by the Contractor

If the Contractor delays in the commencement, execution or completion of the work, fails to comply with a direction or decision of the head properly given, or is in default in any other manner under the contract, the head may do such things as he deems necessary to correct the Contractor's default. The Contractor will reimburse Her Majesty for all costs, expenses and damages incurred or sustained by Her Majesty, by reason of the Contractor's default, or in correcting the default. In addition to the aforementioned remedies in this section, the National Battlefields Commission may, if the default continues for 6 days after notice in writing of default has been given to the Contractor by the head, terminate the contract in accordance with Section 17.3

15. Changes in Soil Conditions, Delay by Her Majesty, etc.

- .1 No extra payment will be made to the Contractor for any extra expense, loss or damage for any reason unless the head shall certify that such extra expense, loss or damage is directly attributable to:

- .1 a substantial difference between the soil conditions at the site of the work indicated by the plans and specifications and the actual soil conditions found there;
- .2 neglect or delay by Her Majesty, occurring after the date of contract, in providing any information or doing any act which is required expressly by the contract or by usage of the trade, or suspension of the work by the National Battlefields Commission;

and the Contractor has within 30 days of encountering such soil conditions or of the commencement of such neglect or delay, given written notice to the head of a claim for such extra expense, loss or damage. The amount of any extra payment to be made under this Section will be calculated in accordance with Section 20.



**15. Changes in Soil Conditions,
Delay by Her Majesty, etc.
(continued)**

.2 If, in the opinion of the head, any difference in soil conditions referred to in subsection .1.1 hereto results in a saving of expenditure to the Contractor, the amount of such saving shall be paid to Her Majesty by the Contractor.

16. Protesting head Decision

If the Contractor, within 10 days of receiving any decision or direction of the head, gives written notice to the head that the decision or direction is accepted under protest, Her Majesty will pay to the Contractor the cost, calculated according to Section 20, of anything that the Contractor was required to do, as a result of the decision or direction, beyond what the contract correctly understood would have required him to do.

**17. Suspension or Termination of
the Contract**

.1 The National Battlefields Commission may upon notice in writing to the Contractor suspend or terminate the contract at any time. The Contractor will comply with such notice immediately.

.2 If the National Battlefields Commission suspends the work for 30 days or less the Contractor must, subject to his remedy under Section 15 hereof, complete the work when called upon to do so. If the National Battlefields Commission suspends the work for a period in excess of 30 days the Contractor may request the National Battlefields Commission to terminate work under sub-section .4 hereof.

.3 If the National Battlefields Commission terminates the contract because of default by the Contractor, the insolvency of or the commission of an act of bankruptcy by the Contractor, the obligation of Her Majesty to make payments to the Contractor shall cease and no further payments shall be made to the Contractor unless the head shall certify that no financial prejudice will result to Her Majesty from such further payments. Termination under this sub-section shall not relieve the Contractor of any legal or contractual obligations other than the physical completion of the work. In such circumstances, the head may complete or have the work completed as he sees fit, and all costs and damages incurred by Her Majesty due to the non-completion of the work by the Contractor shall be payable by the Contractor to Her Majesty.

.4 If the National Battlefields Commission terminates the work other than in accordance with sub-section .3 hereof, Her Majesty will pay to the Contractor an amount calculated in accordance with Section 20 hereof subject to any additions or deductions otherwise provided by the General Conditions or Labour Conditions less any payments made pursuant to Section 26.3 hereof. In no event, however, shall such amount be greater than the amount which would have been payable to the Contractor had the contract been completed.

18. Security Deposit

If any security deposit is provided by the Contractor pursuant to this contract, it shall be dealt with in accordance with the Government Contract Regulations; however, if the Contractor is in breach or default under the contract, Her Majesty may convert or negotiate such security to Her own use. If a Labour and Material Payment Bond is provided pursuant to the contract, the Contractor shall post on the site of the work a notice to that effect which shall include the name and address of the Surety, definition of those persons protected therein and an outline of the procedure for submitting a claim.

**19. No Additional Payments**

The amount payable to the Contractor under this contract will not be increased or decreased by reason of any increase or decrease in the cost of the work brought about by any increase or decrease in the cost of equipment, labour or material, except that, in the event of a change in any tax, that affects the cost of any materials incorporated in or to be incorporated in the work, imposed under the Excise Act, the Excise Tax Act, the Old Age Security Act, the Customs Act or Customs Tariff, made public after the date of the submission of the tender, an appropriate adjustment may be made.

20. Determination of Costs

For the purposes of Sections 11, 13.3, 15, 16 and 17.4 the amount payable to the Contractor shall, subject to the provisions of Section 26.2.2 hereof, be based on the unit prices, if any, set out in the bid voucher. If such unit prices are not applicable, the head and the Contractor may mutually agree on the amount payable. Failing such agreement the amount payable shall be the reasonable and proper expenses paid or legally payable by the Contractor directly attributable to the work plus 10% of such expenses to cover overhead, including finance and interest charges, and profit, as certified by the head.

21. Records to be Kept

The Contractor shall, for a period of two years from the date of the Final Certificate of Completion, maintain and keep full records, vouchers, other writings and information in respect of his estimates and actual cost of the work and shall make them available for copy, audit or inspection by any persons acting on behalf of the National Battlefields Commission.

22. Extension of Time

The National Battlefields Commission may, on the application of the Contractor made before the day fixed for the completion of the work, extend the time for the completion of the work. Whether or not the National Battlefields Commission grants an extension, the Contractor shall, except to the extent that the Council is of the opinion that the need for an extension was due to causes beyond the control of the Contractor, pay to Her Majesty

.1 an amount equal to the Commission inspection costs relating to the work incurred after the original completion date, and

.2 compensation for any loss or damage resulting to Her Majesty from failure by the Contractor to complete the work by the original completion date.

23. Cleaning of Work

Upon completion of the work, the Contractor will clear and clean the work and its site to the satisfaction of and in accordance with any directions of the head.

24. Head Certificates

On the day that the work has been completed and the Contractor has complied with the contract and all orders and directions pursuant thereto to the satisfaction of the head, the head will issue to the Contractor a Final Certificate of Completion. In the case of a unit price contract, the head will at the same time issue a Final Certificate of Measurement setting out the final quantities used or employed in respect of the classes and units set out in the bid voucher, and any subsequent amendments thereto, such certificate to be binding upon the Contractor and Her Majesty.

25. Rectification of Defects

The Contractor will, upon notice from the head and within such time as specified in said notice, rectify at his own expense any defect or fault, however caused, which appears within 12 months of the date of the Final Certificate of Completion.

**26. Payment**

.1 Final payment by Her Majesty to the Contractor will take into account all dispositions included in these General Conditions.

.2 In the case of a unit price contract:

.1 The amount to be paid will be deemed to be the amount computed by totalling the products of the unit prices set out in the bid voucher, as amended pursuant to sub-paragraph .2.2 hereof, if applicable, and the actual quantities of such units as set out in the head Final Certificate of Measurement, subject to any adjustment provided for in sub-paragraph .2.2 of this section.

.2 The head and the Contractor may by agreement in writing add to the aforesaid Unit Price Table other classes of labour, etc., units of measure, estimated quantities and prices per unit, and may if the actual quantities as set out in the aforesaid Final Certificate of Measurement exceed or fall short of the estimated quantities in respect of any item(s) shown on the aforesaid Unit Price Table by more than 15% amend the unit prices shown in the Unit Price Table for such items, provided that in the event the actual quantities exceed the estimated quantities by more than 15% the aforementioned amendment to the unit prices shall apply only to the actual quantities in excess of 115% of the estimated quantities. Where the head and the Contractor fail to agree on the amount of any adjustment as contemplated by this subsection, the revised or new prices per unit shall be determined in accordance with Section 20 hereof.

.3 If the amount of the Contract is in excess of \$5,000, the Contractor shall be entitled to receive progress payments upon submitting Progress Claims which must be approved by Progress Reports issued by the head at monthly intervals. The amount to be paid to the Contractor for a progress payment shall be 90% of the value of the work certified by the head in the Progress Report as having been completed since the date of the immediately preceding Progress Claim, if any. When a Labour and Material Payment Bond has been furnished under the contract, the amount to be paid under this subsection shall be 95% of the value certified by the head.

.4 Forty-five days after receipt by the head of the Progress Claim, and if the Contractor has made and delivered to the head his Statutory Declaration pursuant to Section 12, the amount of the Progress Claim, subject to subsection .3 of this section, shall become due and payable.

26. Payment (continued)

.5 60 days after the issue by the head of the Final Certificate of Completion there shall become due and payable to the Contractor the amount described in subsection .1 of this section less the aggregate of the amounts, if any, paid pursuant to subsection .3 of this section.

.6 Notwithstanding subsections .3, .4 and .5 of this section, no payments shall be due or payable to the Contractor if he has failed to supply any Statutory Declaration pursuant to Section 12, surety bond or security deposit pursuant to the Instructions to Tenderers.

.7 A payment by Her Majesty pursuant to this section shall not be construed as evidence that the work is satisfactory or in accordance with the contract.



- .8 Delays in making a payment by Her Majesty under this section shall not be deemed to be a breach of the contract. However, subject to subsection .6 of this section if payment of any Progress Claim under subsection .3 of this section is not made within fifteen days of the date upon which it becomes due and payable, the Contractor shall be entitled to interest on the amount overdue and Her Majesty will, when making payment of the amount overdue, pay to the Contractor interest on the amount overdue, calculated for the period of the said delay at 1½ % plus the average accepted tender rate of Government of Canada three month treasury bills, as announced each week by the Bank of Canada on behalf of the Minister of Finance, which rate shall be that which is announced immediately preceding the date on which payment was originally due to the Contractor.
- .9 Her Majesty may set-off against any amount payable or debt due by Her Majesty under this contract the amount of any debt due to Her Majesty under this contract or any other contract between the Contractor and Her Majesty.