

## **1 REJECTION OF A TENDER**

The Tenderer acknowledges that the Owner shall have the right to reject any, or all Tenders for any reason, or to accept any Tender which the Owner in its sole unfettered discretion deems most advantageous to itself. The lowest price, or any Tender will not necessarily be accepted and the Owner shall have the unfettered right to:

- a) Accept a Tender which is not the lowest price Tender;
- b) Reject a Tender that is the lowest price Tender even if it is the only Tender received; and
- c) Reject a Tender that is the highest price Tender even if it is the only Tender received.

In no event will the Owner be responsible for the costs of preparation or submission of a Tender.

Tenders which contain exceptions to, or otherwise fail to conform to the Tender Documents including Contract Terms and Conditions, may be rejected. The Owner may waive any minor non-conformance with the Tender Documents and may at its sole discretion consider as compliant, Tenders which are non-conforming but substantially contain the content and form required by the Tender Documents or substantially comply with the process for submissions of Tenders set out herein. A waiver by the Owner under this section shall be final and binding and Tenderers, by submitting Tenders, accept such determination by the Owner may not be challenged in any judicial forum for any reason whatsoever.

## **2 ENQUIRIES**

All enquiries regarding the Tender Documents shall be in writing by facsimile, and addressed as indicated in the RFQ and must include the following information:

Buyer  
Reference: RFQ #

## **3 INTERPRETATION**

No oral interpretation shall be made to any of the Tender Documents, or be effective to modify any of the provisions of the Tender Documents. Every request for an interpretation shall be made in writing, addressed and forwarded as described in Section 2 entitled "Enquiries".

## **4 OMISSIONS AND DISCREPANCIES**

Should the Tenderer find discrepancies in, or omissions from the Tender Documents, or should it be in doubt as to their meaning, the Tenderer should at once make an enquiry in accordance with Section 2, entitled "Enquiries".

The Tenderer shall be solely responsible for any errors, omissions or misunderstandings resulting from the Tenderer's failure to make a thorough examination of the Tender Documents. The Tenderer shall obtain all required information and shall not claim at any time after the submission of the Tender or the subsequent award of a Contract that there was any misunderstanding with regard to the conditions imposed by the Contract.

Mention within the Tender Documents or indication on the drawings, of articles, materials, operations or methods, requires that the Contractor provide each item mentioned or indicated, perform each operation prescribed, and provide all necessary labour, plant, materials, equipment and incidentals for the complete and proper execution, of the Work

## **5 ALTERNATIVES TO THE TENDER DOCUMENT**

The Tenderer is instructed to Tender in accordance with all technical, quality and commercial requirements of the Tender Documents.

## **6 AWARD OF CONTRACT**

A Tender may be accepted by a letter or facsimile sent by a duly authorized representative of the Owner, which shall be effective as of the time of the dispatch or mailing.

The Owner reserves the right to award a separate contract for each or any items listed in the Tender Submission.

A Purchase Order for the Work will be issued by the Owner. The Contract can be changed or modified by subsequent Change Orders.

## **7 ADDENDA**

Any interpretation of, or change in the Tender Documents prior to the latest date specified for receipt of Tenders, shall be made only by written, facsimile, or electronically transmitted addenda issued by the Owner to each Tenderer and such addenda shall become part of the Tender Documents. No other interpretation or explanation shall be valid. **It is the sole responsibility of the Tenderer, to receive**

notification/addenda posted on the New Brunswick Opportunities Network website. Reasons of not having received a notification/addenda posted on the New Brunswick Opportunities Network website shall not be accepted as valid reasons for non compliance with addenda.

#### **8. LOCATION**

As stated on the RFQ.

#### **9. TERMS OF PAYMENT**

Payment shall be net thirty (30) days (unless otherwise stated in the Tender Documents) following receipt of an approved invoice and acceptance of the item(s) at the designated delivery location.

The Tenderer is requested to submit its Tender based on acceptance of the Owner's terms of payment. If the Tenderer wishes to propose alternative terms of payment, it shall also submit these together with reasons why it is advantageous to the Owner to accept the alternative terms.

#### **10. INVOICES**

All invoices to be rendered in a format satisfactory to the Owner regardless of shipping destination to: New Brunswick Power Corporation, PO Box 2000, 515 King Street, Fredericton, NB, Canada E3B 4X1. Attention: Accounts Payable Department. The Owner's PURCHASE ORDER NO. and PO ITEM NO. **MUST** appear on all invoices. A separate invoice must be issued for each Purchase Order and shipment. Invoices **MUST** show VENDOR'S GST/HST REGISTRATION NO. and any applicable GST/HST as a separate item. Invoices must match Purchase Order. Invoices cannot be paid unless they match line for line, unit of measure, and value.

The Owner will not be responsible for any delay in payment of invoices because of difficulties in identifying shipments due to lack of information. Quantities in excess of those shown on the purchase order will not be accepted without the prior approval of the Owner. Discounts will be calculated from the date an acceptable invoice is received or date goods are delivered, whichever is the later date.

#### **11. TENDER VALIDITY PERIOD**

Tenders shall be irrevocable for a period of thirty (30) days from date of closing.

#### **12. ESTIMATED QUANTITIES**

The quantities given are estimates only. The Owner makes no guarantee of the accuracy of the estimate, and quantities shall be governed by the Owner's actual requirements. It must be recognized that actual quantities, which shall be the basis of payment, may be less than or may exceed these quantities. The Contractor shall have no entitlement to claim for additional compensation due to variation in actual quantities as compared to estimated quantities.

#### **13. WAIVER**

By submitting a Tender, the Tenderer acknowledges the Owner's rights under this Tender and absolutely waives any right, or cause of action against the Owner, its officers, directors, employees and or agents by reason of the Owners failure to accept the Tender submitted by the Tenderer, whether such right or cause of action arises in contract, negligence or otherwise. A waiver by the owner under this Subsection 13 shall be final and binding and Tenderers, by submitting Tenders, accept that such determination by the Owner may not be challenged in any judicial forum for any reason whatsoever.

#### **14. PRICING**

Pricing shall be firm and in Canadian funds, and shall not be subject to adjustment due to changes in the cost of labour and materials or fluctuations in currency exchange rates. For each item being tendered, the Tenderer shall indicate a unit price and a delivery date. Harmonized Sales Tax and Goods and Services Tax (collectable by the supplier) shall not be included in item price(s). When applicable, unit price(s) shall include all costs for the materials and equipment specified along with Canadian Custom, Duties, Brokerage fees, the supplier's overhead and profit and any other costs detailed or implied in this tender. Where the Owner identifies manufacturer(s) and part number(s) as specified for each item, the Tenderer shall indicate the manufacturer(s) and part number(s) applicable to the quoted unit price. To ensure consideration, the sum total price of all items being tendered shall be shown on the attached Tender Submission Pricing Summary.

#### **15. CUSTOMS AND DUTIES**

**The Contractor shall be the importer of record for all goods provided under this Contract that are not of Canadian origin. The Contractor will be required to pay the Goods and Services Tax (GST) to Canada Customs at the time of entry into Canada.**

When requested on the Tender Submission, the Contactor shall quote separately the amount of Canadian Customs Duty and Canada Customs Tariff Schedule number if applicable. Any applicable Canadian Customs Duty is to be paid by the Contractor to Canada Customs and will not be included in the Tender Price and will not be reimbursed to the Contractor by the Owner

The Owner reserves the right to review any and all customs documentation respecting imported goods specified in the Tender. The Contractor shall provide all such documentation to the Owner in a timely manner.

Any increased charges for duty due to redetermination or a reappraisal of Materials and Equipment value under provisions of the Customs Act or assessment under the provisions of the Special Import Measures Act, shall be the responsibility of the Contractor and not chargeable to the Owner.

Applicable taxes on the Contract Price shall be subject to adjustment for any new Canadian Federal or Provincial sales, use or excise taxes, or for any legislated changes in the rates of such taxes applicable to the Work, which becomes effective subsequent to the Tender closing date and prior to the earlier of the scheduled delivery date or actual delivery date.

All goods must be coded by using the Harmonized Tariff Schedule. For all foreign shipments being imported into Canada the Canadian Customs Tariff Schedule must be used. If the Contractor is uncertain as to the type of description required for the product(s), the Contractor should contact its customs broker or the federal customs office prior to exporting the goods

## **16. SHIPPING / PACKING INSTRUCTIONS**

The Contractor shall prepare all Materials and Equipment for shipment and storage in such a manner as to protect them from damage or deterioration and shall be responsible for and make good any and all damage due to improper preparation for loading and unloading. Every piece of Materials and Equipment and / or its shipping container shall be marked with a reference number or symbol to agree with the parts numbering system on drawings and parts lists. All shipping packages shall be marked with the Owner's Purchase Order number and addressed to the Owner's agent at Site. All field assembly pieces shall be factory preassembled and match marked prior to shipment.

All parts shall be carefully boxed, or otherwise suitably prepared for shipment to ensure no damage shall be caused during shipment. All openings in the

Materials and Equipment shall be tightly closed before shipment.

The Contractor shall take appropriate action to protect all parts for outdoor storage at the Site. Small components, if so noted may be marked for indoor heated, or unheated storage, as required.

The Owner shall be notified no less than seven working days in advance of shipment, of the beginning date of shipment, method, dimensions and weights of each shipment and anticipated date of arrival at Site. Each crate shall be labelled with its contents and any special handling instructions.

The Contractor shall deliver all Materials and Equipment to the Site Stores Receiving Warehouse (unless otherwise stated in the RFQ).

All parts shall be tagged with the following information:

- (1) The Owner's Purchase Order Number
- (2) The Owner's Material Number (SCN)
- (3) Manufacturer's Drawing Number and Reference or Mark Number
- (4) Quantity
- (5) Any required additional information

The Contractor shall supply the appropriate Quality Assurance records identified in the Contract Documents within each package used for shipment.

Any Materials and Equipment **which contain a radiation source** shall be shipped in accordance with the CNSC Packaging and Transportation of Nuclear Substances Regulations, SOR/2000-208.

The vendor, when shipping to the Owner any product which is categorized as a hazardous material (ie, compressed gas, flammable or combustible material, oxidizing material, poisonous and infectious material, corrosive material or dangerously reactive material), shall conform with relevant Federal and Provincial Legislation and Regulations pertaining to such materials. The Workplace Hazardous Materials Information System (WHMIS) shall apply and all such materials shall be properly identified with WHMIS type warning labels. All shipments of such material to the Owner's sites shall include a Material Safety Data Sheet (MSDS) with a copy to: New Brunswick Power Corporation, The MSDS Centre Shared Services, PO Box 2000, 515 King Street NB Canada E3B 4X1

## **17. EVALUATION CRITERIA**

In evaluating compliant Tenders, price will be the only criterion. The Owner will also consider, among other items in this Specification, the following items in order to determine whether the Tender is compliant:

- a) Tenderer's previous safety record.
- b) Past Experience of Similar Work by the Contractor and Proposed Subcontractors.

By submitting a Tender, the Tenderer acknowledges and accepts that the Owner, using its sole unfettered discretion, will consider non-price criteria first, based upon the Tender requirements, Owner experience and the information submitted with the Tenders. The information submitted by the Tenderers will be considered by the Owner's evaluation team to determine if, in the Owner's opinion, the Tenderer is capable of performing the Work safely and in compliance with the Tender requirements. Only those Tenders considered capable and compliant will be further considered. The only criterion for award of Tender for Tenders considered capable and compliant will be price.

All acceptable Tenderers will be evaluated fairly, in the same manner, by the same evaluation team using the same evaluation criteria, on the basis of their submitted Tenders.

#### **18. ASSIGNMENT**

The Contract shall inure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns. The Contractor may not assign this Contract, nor any of its responsibilities or obligations hereunder without prior written consent from the Owner.

#### **19. DELIVERY SECURITY REQUIREMENTS**

All Contractors and delivery persons arriving at Site may be required to produce at least one picture ID that contains the person's name and address plus one other piece of supporting ID.

All vehicles arriving at the outer gate will be screened before entering the Site. Screening will include an inspection of the contents of the cab and the cargo areas.

To facilitate the inspection of goods arriving at Site, the Owner requests that all suppliers clearly label all boxes and provide detailed bills of lading. Normal delivery hours are between 8:00 am and 3:00 pm.

#### **20. TENDERER'S PREVIOUS EXPERIENCE**

The Tenderer shall submit with its Tender, or within two working days of receiving a request from the Owner, one copy of a list of contracts awarded and carried out by the Tenderer and similar in scope to the Work of this Tender Document.

The listing shall include the name of the entity that awarded the contract, location, contract value, contract date, or date of commencement of work and note as to whether the contract is complete or in progress.

Only Tenderers capable of providing adequate proof of ability to provide a safe working environment, appropriate management and supervisory staff, labour, equipment and the financial resources to perform the Work in a timely manner, in the Owner's sole unfettered discretion, will be considered.

#### **21. DELETING MATERIALS AND EQUIPMENT**

The Owner reserves the right to delete any Materials and Equipment, or parts of the equipment, or the service in the Tender without having any change in the prices of the remaining items.

#### **22. FOREIGN WORKERS**

Only Canadian citizens and legal permanent residents have the right to work in Canada. Contractors or visitors who wish to work in Canada require an employment authorization in the form of a Visa, or authorization from an Immigration Officer with the Canada Employment Centre. It is the responsibility of the Tenderer to ensure that, if awarded the Contract, such authorization is to be obtained prior to its workers arrival at the Canadian border. Otherwise, the successful Tenderer's foreign workers may be denied entry into Canada, notwithstanding the prior acceptance of the Tender by the Owner.

#### **23. SITE CONDITIONS AND INVESTIGATIONS**

For Tenders requiring Site Service Work, each Tenderer shall have a personal knowledge of the location of the proposed Work and shall be deemed to have made a careful examination of the Site of the Work so as to satisfy itself as to the working conditions, the nature and extent of the Work to be done, the special risks, if any, associated therewith, the obstacles or difficulties likely to be encountered, and any other matters and things which are necessary or desirable to gain a proper understanding of the Work and the conditions under which it shall be performed.

A Tenderer shall be solely responsible for any errors, omissions or misunderstandings resulting from the Tenderer's failure to make a thorough examination of the Site. The Tenderer shall obtain all required information and shall not claim at any time after the submission of the Tender or the subsequent award of the Contract that there was any misunderstanding with regard to the conditions imposed by the Contract.

#### **24. FEDERAL WITHHOLDING TAX**

The Canadian Income Tax Act, Section 153, and Income Tax Regulation 105 require the Owner to withhold 15% from a non-resident Contractor for **Work performed in Canada**, unless the Contractor has obtained a waiver of withholding taxes in writing from Canada Customs and Revenue Agency. This amount shall be withheld from every payment made to the Contractor by the Owner.

REVENUE CANADA  
126 Prince William Street  
Saint John, New Brunswick  
Canada E2L 1C9  
Attention: Mr. Shrikant Mehta or Ms. Wendy Lockhart  
Telephone: 506-636-5904 / 506-636-5356  
Fax: 506-636-3898

#### **INVOICING INSTRUCTIONS:**

Invoices shall be accompanied by a copy of any waiver, obtained from Revenue Canada, relating to Federal Withholding Tax special rates or exemptions. If invoicing prior to ruling, vendor should mention company has applied for waiver. Invoices must indicate the portion of labour completed in Canada, foreign labour portion, and travel time substantiated by travel/accommodation receipts.

#### **25. SUBCONTRACTING**

Tenderers shall provide the following information in the Tender Submission:

(a) A list of all activities and the scope of each activity associated with the Work which the Tenderer proposes to subcontract and the proposed subcontractor for each activity.

(b) A list of all materials and equipment which the Tenderer proposes to purchase for the Work and the proposed supplier for each item.

#### **26. EQUIPMENT SCHEDULE**

The Tenderer shall submit with its Tender, or within two (2) working days of receiving a request from the Owner, a comprehensive equipment schedule listing details of all equipment which the Tenderer shall provide to properly execute the Work.

#### **27. JOB SUPERVISORY PERSONNEL**

The Tenderer shall submit with its Tender, or within two (2) working days of receiving a request from the Owner, two copies of a resume of experience of its proposed job supervisory personnel.

#### **28. THIRD PARTIES**

Nothing in this Contract is intended for the benefit of third parties and not third party may claim for damages or otherwise to enforce any such benefit.

#### **29. ADDITIONAL INFORMATION**

The Tenderer shall provide details, with the Tender Submission, or within two (2) working days of receiving a request from the Owner, all information which may be requested elsewhere in this Tender Document.

#### **30. DOCUMENT QUESTIONS AND CLARIFICATIONS**

**Questions, or any clarification requests by the Tenderer may be submitted to the Owner, a minimum of seven (7) calendar days prior to the closing date of this Request for Tender document. Questions or clarification requests submitted within six (6) calendar days prior to the closing date may not be considered.**

#### **31. DISCOUNTS**

##### **Terms of Payment**

The Owner's standard Terms of Payment require the Owner to pay the successful Tenderer net thirty (30) days after receipt of an acceptable invoice. The Owner is prepared to pay earlier however, if the Tenderer is willing to apply a corresponding discount to its invoiced amounts.

The Tenderer shall indicate in the Tender Submission which, if any, alternative terms of payment is acceptable.

Discount offered in Tender Submission will be considered in addition to the Tender Price in evaluating the price referenced Section 17

The Contractor shall indicate which of the following terms of payment is acceptable (if any).

Discount 3% net 10 Days	yes / no
Discount 2% net 15 Days	yes / no
Discount 1% net 20 Days	yes / no

Payments if not discounted will be made Net 30 Days