

**1. DEFINITIONS**

In the documents forming the Contract, unless the context otherwise requires, the following meanings shall apply:

- “Award of Contract” - The date on which the Tender of the successful Tenderer is accepted or the purchase order for this Contract is formally placed, or, if preceded by a letter of intent to purchase, this earlier date shall apply.
- “Contract” –The Contract between NB Power Corporation (Nuclear only), hereinafter referred to as the Owner and the Contractor for the performance of the Work evidenced by the Contract Documents;
- “Contract Documents” –The Tender Documents, Tenderers Submission, Purchase Order and any Purchase Order changes;
- “Contractor” – The party or parties to whom the Owner has awarded a Contract for the Work to be performed. This term shall also include any Subcontractors associated with the Contractor.
- “day” – Unless otherwise specified, a day shall mean a calendar day.
- “Engineer” – The Design Authority, NB Power Corporation, Point Lepreau Generating Station and includes any person authorized by the Design Authority to perform on its behalf any function under the Contract;
- “Materials” and “Equipment” –All materials, commodities, articles and things required for incorporation in the Work;
- “Owner” New Brunswick Power Corporation, or its legally appointed representatives, successors and assigns, sometimes referred to as NB Power;
- “Plant” –All tools, implements, machinery, vehicles, buildings, structures, articles and things required for the execution of the Work;
- “RFQ” – Request for Quotation and is a Tender Document.
- “Site” – Point Lepreau Generating Station.
- “Subcontractor” – A person, firm, corporation, or any other entity of any tier directly having a contract with the Contractor for the supply and/or performance of any part of the Work;
- “Tender” – The binding offer to perform the Work submitted by the Tenderer.
- “Tenderer” – Any party or parties tendering on the Work.
- “Tender Documents” The Request for Quotation, Instructions to Tenderers, General Conditions for the Supply of Materials, Technical Specifications and Addendums;
- “Work” All labour, materials, equipment, structures, services, supplies and acts required to be done,

furnished or performed by the Contractor under the Contract.

Words in singular includes the plural and vice versa. Words implying gender include other genders when the context so requires.

**2. SCOPE**

Supply all materials, manufacture, acceptance test, preparation and packing for shipment, deliver to destination and guarantee as detailed in the Contract Documents.

**3. TIME**

Time is of the utmost importance of the Contract

**4. INTENT**

The Work described herein is to be fully completed in every detail for the purpose designated herein, and it is hereby understood that the Contractor, in accepting a Contract, agrees to furnish any and everything necessary for such purposes, notwithstanding any omission in the drawings or specifications.

**5. ENGINEER’S AUTHORITY**

Subsequent to award, if any discrepancies are discovered in the drawings and specifications, the same shall be referred to the Engineer before proceeding with the Work

**During the execution of the Work**, the Engineer shall decide on interpretation of drawings and specifications, shall judge quality and quantity of the Work and shall make decisions and give instructions and orders, where required, within a reasonable time. All decisions, instructions and orders of the Engineer shall be final and binding upon the Contractor.

The Engineer has authority to stop the progress of the Work whenever in his opinion such stoppage may be necessary to ensure its proper execution.

**6. SUBCONTRACTING BY CONTRACTOR**

Neither the whole nor any part of the Work may be subcontracted by the Contractor without the consent of the Owner.

It shall be the Contractors’ responsibility for each subcontract issued that the Subcontractor comply with all terms and conditions of this Contract.

The Contractor shall be held responsible to the Owner for the acts and omissions of its Subcontractors for their portion of the Work and of persons directly or indirectly employed by them, as for the acts and omissions of persons directly employed by them.

Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.

**7. FORCE MAJEURE**

Neither the Owner or Contractor shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered, or prevented by force majeure. Force majeure

shall be any cause beyond the control of the parties hereto which they could not reasonably have foreseen and guarded against.

Force majeure includes, but is not limited to Acts of God, strikes, lockouts, fires, riots, incendiarism, interference by civil or military authorities and compliance with the regulations or order of any government authority, and acts of war (declared or undeclared).

The Contractor shall be granted an extension of time but shall not have any further recourse of claim against the Owner, nor shall the Contractor have any right to action against the Owner, for loss or damage suffered by reason of such delay.

Both the Owner and the Contractor shall be prompt and diligent to remove all causes of interruption or delay in the Work, insofar as each is able to do.

#### **8. CHANGES IN THE WORK**

The Owner may without invalidating the Contract, direct the Contractor to make changes in the Work. When a change causes an increase or decrease in the Work, the Contract price shall increase or decrease by mutual agreement of the Owner and the Contractor.

Changes in the Work shall not proceed without written authorization from the Owner.

#### **9. ADEQUACY OF LABOUR AND PLANT**

Should the Owner be of the reasonable opinion and so state in writing to the Contractor, that the Work force, or the facilities at the disposal of the Contractor for the performance of the Work is not sufficient or suitable or that the methods employed are not such as to assure that the Work shall be completed within the time specified or manner stated in the Contract, the Contractor shall forthwith take steps to increase the number of persons employed upon the Work, shall make the required additions to its Plant and shall conform to the procedure directed by the Owner.

#### **10. QUALITY**

The Contractor shall perform the Work in accordance with the Quality Assurance required as set out in the RFQ.

All work and materials supplied shall be new unless otherwise indicated in the RFQ, of the most suitable quality, and shall comply with the latest edition applicable at the Tender closing date of the codes and standards referenced in the RFQ.

The Contractor has an ongoing responsibility to provide notifications issued by the manufacturer of design changes that may impact installed equipment under this Contract.

#### **11. CONTRACTOR'S LIABILITY**

The Work – Unless otherwise specifically provided in the Contract, the Work shall be and remain at the risk of the Contractor and the Contractor shall make good loss thereof or damage thereto occurring between the date of the Award of Contract and the date of the completion certificate issued in respect thereof, or the date of final payment, whichever shall first occur.

Labour and Equipment – The Contractor shall assume the defence of and shall indemnify and save harmless the Owner from and against all suits, claims and demands which may be brought or made by any person, firm or corporation against the Owner for, or by reason, or on account of labour performed or Equipment furnished by the Contractor for the Work

#### **12. LIMITATION OF LIABILITY**

The Contractor, its subcontractors or suppliers of any tier, shall not be liable in Contract or in tort (including negligence or strict liability) for damages or loss of other property or equipment, special, indirect, incidental or consequential damages, such as, but not limited to, loss of profits or revenue, loss of use of power system, cost of capital, cost of purchased or replacement power, claims of customers of the Owner for service interruption, or claims or penalties of the Owner or its customers for environmental damages. The remedies of the Owner set forth herein are exclusive, and the liability of the Contractor with respect to any Contract, or anything done in connection therewith such as the performance or breach thereof, or from the manufacture, sale, delivery, resale, installation or technical direction of installation, repair or use of any equipment covered by or furnished under this Contract whether in Contract in tort or claims or penalties of the Owner or its customers or otherwise, shall not exceed the price of the Contract Price.

#### **13. NUCLEAR LIABILITY**

Liability in the event of a nuclear incident shall be as determined by the Nuclear Liability Act (Canada).

#### **14. INSURANCE**

Up to the time of delivery of the Material and Equipment to the Site Stores Receiving Warehouse, the Contractor shall fully insure the same against loss or damage from any cause whatsoever, in the names of the Contractor and the Owner, as their interests may appear. When requested, the Contractor shall supply the Owner with certificates or certified copies of such insurance policies.

The Owner shall indemnify the Contractor and protect the Contractor's Materials and Equipment, commencing from the time of arrival at the Site Stores Receiving Warehouse.

#### **15. RIGHT'S TO TECHNICAL DATA**

Notwithstanding any statement on drawings or other technical data produced by the Contractor, or others on its behalf, to the effect that the information may not be copied or reproduced without the Contractor's permission, the Contractor agrees that the Owner shall have the irrevocable right to produce and use without further compensation all such drawings and data for its own use and for tendering and awarding of contracts and performing work for the purposes of installation, operation, maintenance and refurbishment of the Equipment and for procurement of related materials and equipment.

#### **16. SUSPENSION OF WORK**

The Owner shall have the right, which may be exercised from time to time, without invalidating the Contract, to suspend performance by the Contractor of any part or the whole of the Work for such reasonable period of time as the Owner may notify the Contractor.

Save to the extent any such suspension arises from default by the Contractor, the Owner shall pay to the Contractor the reasonable extra expenses incurred by the Contractor arising from the suspension, provided that in no event will the Owner be liable to the Contractor for loss of profit, interest loss or any other damages or loss occasioned to the Contractor by reason of any such suspension. Such extra expenses shall be supported by audit, if necessary, carried out by auditors acceptable to both parties, prior to payment of same.

The resumption and completion of the Work after the suspension shall be governed by the schedule established by the Owner in consultation with the Contractor.

**17. TERMINATION**

The Owner shall have the right, which may be exercised at any time, terminate the Contract for any reason. In the event of such termination, the Owner and the Contractor shall negotiate a settlement, supported by audit if required by the Owner, carried out by auditors acceptable to both parties, which shall include: reimbursement at the Contract rate for all completed items; reimbursement for the costs to the Contractor for Work in progress and expenses incurred in the course of the Work, plus a reasonable return on such costs and expenses; reimbursement for costs and expenses directly caused by the termination.

The Owner shall not be liable to the Contractor for loss of anticipated profit on the cancelled portion or portions of the Work.

**18. PATENTS**

The Contractor shall indemnify the Owner against claims, actions, suits and proceedings for infringement or use of any patent based upon the use of any invention protected by such patent in carrying out the Contract, and for royalties or other payments resulting therefrom, which may be payable in connection with the Contract only; provided, however, that in respect of the Contract only, the Owner shall indemnify the Contractor against all such claims, actions, suits or proceedings in respect of anything the model, plan or design of which shall have been supplied by or on behalf of the Owner to the Contractor. The party required hereunder to indemnify the other party shall be entitled to conduct the defence of such claims, actions, suits or proceedings, so long as such defence is diligently conducted, and each party shall keep the other party promptly and fully informed of the bringing of such claims, actions, suits or proceedings, and of the steps taken or which ought to be taken in the prosecution or defence thereof accordingly.

**19. WARRANTY**

If at any time prior to one year in service or two years after delivery, whichever is sooner, any part of the Work becomes defective or fails due to defects in the design, material or workmanship, or otherwise fails to meet the requirements of the Contract, then the Contractor, upon receipt of notification from the Owner, shall make good every such defect or failure within the period of time specified by the Owner and without cost to the Owner. The Contractor shall pay all transportation charges both ways between the Contractor's factory or repair depot and the Owner's Site.

The Warranty period shall be extended on each portion of the Work which is made inoperative by the need for repair or replacement of any other portion of the Work by the amount of time it is so inoperative.

**20. NOTICES**

Every notice which may require to be given or served pursuant to the Contract, shall be in writing, dated and signed by the party giving the same. Notices to the Owner may be given or served by personal service on the Engineer or by forwarding same by registered mail, postage prepaid to:

New Brunswick Power Corporation

PO Box 2000 515 King Street

Fredericton, NB E3B 4X1

Attention: Corporate Secretary & General Counsel

Notices to the Contractor may be given or served by personal service on an officer of the Contractor, or by sending the same by registered mail, postage prepaid, addressed to the Contractor at the Contractor's principal place of business or registered office.

**22. PROPER LAW OF THE CONTRACT**

This document shall be regarded as a New Brunswick Contract and the laws of the Province of New Brunswick shall govern its interpretation and effect.

**21. INTERNATIONAL SALE OF GOODS ACT**

The International Sale of Goods Act, (New Brunswick), shall have no application and shall be of no force and effect with respect to the formation of the Contract of sale hereunder, nor shall it apply to the rights and obligations of the seller and buyer arising from such Contract.

**22. LANGUAGE**

All documentation that is to be submitted by the Contractor must be submitted in English.

**23. COUNTERFEIT, FRAUDULENT, AND SUBSTANDARD ITEMS**

The Contractor is hereby notified that the delivery or use of suspect and/or counterfeit, fraudulent, and substandard items (CFSIs) is of special concern to the New Brunswick Power Corporation (the Owner). If any parts covered by the Contract are described using a manufacturer part number or using a product description and/or specified using an industry standard, the Contractor shall be responsible to assure that the replacement parts supplied by the Contractor meet all requirements of the latest version of the applicable manufacturer data sheet, description and/or industry standard. If the Contractor is not the manufacturer of the goods, the Contractor shall make a reasonable efforts to assure that the parts and components supplied under the contract or used to manufacture the equipment covered in

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this order are made by the Original Equipment Manufacturer (OEM) and meet the applicable manufacturer data sheet or industry standard. Should the Contractor desire to supply or use a part that may not meet the requirements of this paragraph, the Contractor shall notify The Owner of any exceptions and receive The Owner's written approval prior to shipment or use of the replacement parts to The Owner. If suspect and/or CFSI parts are furnished under the contract or are found in any of the goods delivered hereunder, such items will be dispositioned by the Owner and may be returned to the Supplier. The Contractor shall promptly replace such suspect and/or CFSI parts with parts acceptable to The Owner and the Contractor shall be liable for all costs, including but not limited to The Owner's internal and external costs, relating to the removal and replacement of said parts. To mitigate the CFSI risk to The Owner's nuclear facility in particular, Point Lepreau Generating Station requires our approved contractors to recognize this risk by introducing into their Quality Assurance program a documented process to prevent, detect and disposition suspect CFSIs.