

NEW BRUNSWICK POWER CORPORATION

GENERAL CONDITIONS

FOR MISCELLANEOUS CONSTRUCTION

Instructions to Tenderers

General Requirements

Province of New Brunswick, Short Form Contract For Standard Construction Contract, Crown Construction Contracts Act

NEW BRUNSWICK POWER CORPORATION  
GENERAL CONDITIONS FOR MISCELLANEOUS CONSTRUCTION

---

INSTRUCTIONS TO TENDERERS

---

TABLE OF CONTENTS

| <u>Section</u> | <u>Title</u>                                     |
|----------------|--|
| 1              | General  |
| 2              | Crown Construction Contracts Act and Regulations |
| 3              | Acceptance of a Tender                           |
| 4              | Rejection of a Tender                            |
| 5              | Enquiries  |
| 6              | Interpretation                                   |
| 7              | Addenda  |
| 8              | Tender Price                                     |
| 9              | Bid Security                                     |
| 10             | Evaluation Criteria                              |
| 11             | WorkSafe NB                                      |
| 12             | Safety Policy                                    |
| 13             | International Sale of Goods Act                  |
| 14             | Waiver   |
| 15             | Document Questions/Clarifications                |
| 16             | Estimated Quantities                             |
| 17             | Foreign Workers                                  |
| 18             | Site Conditions and Investigations               |
| 19             | Subcontractors                                   |
| 20             | Job Supervisory Personnel                        |
| 21             | Tenderer's Previous Experience                   |

**1. GENERAL**

1.1.1 Tenders shall be submitted and shall be addressed to:

New Brunswick Power Corporation  
PO Box 2000  
515 King Street, 6th Floor  
Fredericton, New Brunswick, E3B 4X1  
Attention: Tender Coordinator

1.1.3 To ensure consideration, the Tender shall be properly completed, enclosed and sealed in an envelope stating Tenderer's Name, Tender Document Name and Number and must reach the above designated address in time for the opening.

1.1.5 The signatures of all parties tendering shall be in their respective handwriting and Tenders submitted by corporations shall be signed by a duly authorized officer of the Corporation.

**2. CROWN CONSTRUCTION CONTRACTS ACT AND REGULATIONS**

2.1 The provisions of the Crown Construction Contracts Act, Chapter C-36 of the Revised Statutes of New Brunswick, 1973 and the Regulations made thereunder apply to this Contract, and the attention of prospective Tenderers is expressly called to such provisions, including the various reasons for rejecting Tenders.

2.2 Copies of the Act and Regulations are available from the Queens Printer, Province of N.B., in Fredericton, N.B.

**3. ACCEPTANCE OF A TENDER**

3.1 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.

3.2 The acceptance of a Tender shall bind the successful Tenderer to execute the formal Contract, a specimen of which is included in the Tender Document.

3.3 A Purchase Order for the Work may be issued by the Owner for accounting purposes only and nothing therein shall have the effect of altering the terms of the Contract. However, the Contract can be changed or modified by subsequent Change Orders.

**4. REJECTION OF A TENDER**

- 4.1 The Tenderer acknowledges that the Owner shall have the right to reject any, or all Tenderers 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.

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

- 4.3 **Tenders which contain exceptions to, or otherwise fail to conform to the Tender Document including Contract terms and conditions, may be rejected.** The Owner may waive any minor non-conformance with the Tender Document 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 Document 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 that such determination by the Owner may not be challenged in any judicial forum for any reason whatsoever.

5. **ENQUIRIES**

All enquiries regarding the Tender Document shall be in writing by letter, e-mail or facsimile, and addressed as follows:

Letters

New Brunswick Power Corporation  
PO Box 2000  
515 King Street, 6th Floor  
Fredericton, New Brunswick  
E3B 4X1  
Attention: Tender Coordinator

Facsimile

New Brunswick Power Corporation  
(506) 458-4089  
Attention: Tender Coordinator

E-mail: alltenders@nbpower.com

6. **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 Subsection 5 - Enquiries.

**7. ADDENDA**

Any interpretation of, or change in the Tender Document 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, and such addenda shall become part of the Tender Document. No other interpretation or explanation shall be valid. **It is the sole responsibility of the Tenderer, to receive notification / addenda from 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. TENDER PRICE**

- 8.1 Tender Price(s) shall include all labour, plant, materials (except as otherwise specified), equipment, tools, fuel, consumables, indirect costs, insurance, Workers' Compensation, vacation pay assessments, holiday pay, Canada Pension Plan, Employment Insurance, personal protective equipment and all other payroll burdens, together with all applicable freight and duty, the Contractor's overhead (including Contractor's field and office overhead) and profit and any other costs detailed or implied in these documents including National Maintenance Council related fees if applicable. Harmonized Sales Tax collectable from the Owner by the Contractor shall not be included in the Tender Price(s).
- 8.2 Tender Price(s) shall be firm and in Canadian dollars and not be subject to adjustments due to changes in the cost of labour and materials or fluctuations in currency exchange rates.
- 8.3 Tenderers shall give complete information, separate prices and pertinent data on all Services offered as outlined in the Tender Submission. If the Tenderer fails to complete the Tender Submission to the satisfaction of the Owner, such Tender may be rejected.

**9. BID SECURITY**

- 9.1.1 The Tender shall be accompanied by a Bid Security Deposit or a Bid Bond in an amount representing ten percent (10%) of the Total Tender Price.
- 9.1.2 Where a Bid Security Deposit is provided, Subsections 9.2, 9.3 and 9.7 shall apply.
- 9.1.3 Where a Bid Bond is provided, the provisions in Subsections 9.4, 9.5 and 9.6 shall apply.

**9.2 Bid Security Deposit**

- 9.2.1 The Bid Security Deposit shall be in the form of a certified cheque or negotiable securities made payable to the New Brunswick Power Corporation. A faxed copy or photocopy of an intended bid security deposit does not constitute a negotiable security.
- 9.2.2 All such Bid Security Deposits shall be returned to the respective Tenderers after the Tenders are opened, except those which the Owner elects to hold until the successful Tenderer has executed the Articles of Agreement and commenced the Work. Thereafter, all remaining Bid Security Deposits excepting only the Bid Security Deposit of the successful Tenderer shall be returned within five (5) days.
- 9.2.3 The Bid Security Deposit of the successful Tenderer shall be held by the Owner as security for the due performance of the Work by it in accordance with the Contract, and may be dealt with by the Owner in its discretion as provided herein.

**9.3 Forfeiture of Bid Security Deposit**

- 9.3.1 Any Tenderer whose Tender shall be accepted shall be required to commence the Work on the date specified in the Contract Documents.
- 9.3.2 Failure to commence Work shall constitute a breach of Contract. The amount of the Bid Security Deposit accompanying the Tender of such Tenderer shall be retained by the Owner as liquidated damages for such breach. In the event any Tenderer whose Tender is accepted shall fail or refuse to commence Work, or fail or refuse to complete the Work as herein provided, the Owner may, at its option, elect to treat the Contract as repudiated and give written notice of such election to the Tenderer and thereupon the Owner shall be entitled to liquidated damages as above provided.

**9.4 Bid Bond**

- 9.4.1 The Bid Bond shall be executed in favour of the New Brunswick Power Corporation.
- 9.4.2 All such Bid Bonds shall be returned to the respective Tenderers after the Tenders are opened, except those which the Owner elects to hold until the successful Tenderer has executed the Articles of Agreement and commenced the Work. Thereafter all remaining Bid Bonds shall be returned within five (5) days.
- 9.4.3 The Tenderer shall provide a letter by facsimile with the original received by the Owner within three (3) working days of Tender closing date, from a New Brunswick resident agent of an insurance company licensed to do business in the Province stating that the Bid Bond has been negotiated for, procured from, and the premium paid to that agent.

**9.5**            **Performance Guarantee**

9.5.1            Upon Award of Contract, the successful Tenderer shall, within fourteen (14) calendar days of notification, provide a Performance Bond and a Labour and Material Payment Bond each equal to fifty percent (50%) of the value of the accepted Tender. The bonds shall be executed in favour of the New Brunswick Power Corporation.

9.5.2            The bonds shall be a guarantee of proper performance of the Contract and of payment of the obligations of the Contractor, and shall be worded in a manner that is acceptable to the Owner.

9.5.3            Should the successful Tenderer fail to comply with the provisions of Clause 9.5.1, the Owner shall consider such action as a refusal to enter into a Contract.

**9.6**            **Refusal to Perform**

9.6.1            Any Tenderer whose Tender is accepted, shall be required to commence the Work on the date specified in the Contract Documents.

9.6.2            Failure to commence Work shall constitute a breach of Contract. In the event any Tenderer whose Tender is accepted shall fail or refuse to commence Work, or fail or refuse to complete the Work as herein provided, the Owner may, at its option, elect to treat the Contract as repudiated and give written notice of such election to the Tenderer and thereupon, the Owner shall be entitled to notify the Surety Company and to make claim under the terms of the Bid Bond or the Performance Bond.

**9.7**            **Security Deposit Release**

Upon the expiration of sixty (60) days from the date of issuance of the Final Certificate of Completion or thirty (30) days after the Contractor has delivered to the Owner an invoice, for the balance owing under the Contract, showing the method by which the amount claimed therein was calculated, whichever is the later date, and if the Contractor has made and delivered to the Owner its Statutory Declaration or proof of payment, if required by the Owner, verifying the fact that all its lawful obligations and lawful claims against it, arising out of the Work have been discharged and satisfied and providing that there is no outstanding warranty or maintenance agreement, the security deposit shall be released.

**10.**            **EVALUATION CRITERIA**



20.1 In evaluating the Tenders, price will be the only criterion. The Owner will also consider mandatory requirements such as the following to determine compliance:

- a) Safety Policy/Program and Safety Performance
- b) Past Experience of Similar Work by the Contractor and Proposed Subcontractors

20.2 By submitting a Tender, the Tenderer acknowledges and accepts that the Owner, using its sole unfettered discretion, will evaluate 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 evaluated 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 Tenderers considered capable and compliant will be price.

20.3 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.

## **11. WORKSAFE NB**

11.1 The Tenderer shall submit with its Tender, or within two working days of receiving a request from the Owner, a letter from Worksafe NB stating that it has filed a statement of wages for that year as prescribed by the Workers' Compensation Act and that the Tenderer is in good standing.

11.2 The Tenderer shall submit with its Tender, or within two (2) days of receiving a request from the Owner, a copy of Worksafe NB Experience Rating Statement and/or the equivalent statement for the jurisdiction at which the Tenderer works for 2014.

## **12. SAFETY POLICY**

The Tenderer shall submit with its Tender, or within two working days of receiving a request from the Owner, its Safety Policy.

## **13. INTERNATIONAL SALE OF GOODS ACT**

The International Sale of Goods Act, S.N.B.c.I-12.21, 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.

**14**            **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 14 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.

**15**            **DOCUMENT QUESTIONS / CLARIFICATION**

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 that are submitted within the six (6) calendar days prior to the closing date may not be considered

**16**            **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.

**17**            **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 Contractor to ensure that such authorization is obtained prior to its workers arrival at the Canadian border. Otherwise, the foreign workers may be denied entry into Canada notwithstanding the prior acceptance of the Tender by the Owner.

**18.**            **SITE CONDITIONS AND INVESTIGATIONS**

18.1            The 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.

- 18.2 If a Tenderer requires additional information on, or explanation concerning any apparent or possible conflict, discrepancy or omission in the Tender Documents or any other data furnished by or obtained from the Owner relating to the Work, the Tenderer shall apply as described in Section 1.5, entitled Enquiries. 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 execution of the Contract that there was any misunderstanding with regard to the conditions imposed by the Contract.

**19. SUBCONTRACTING**

The Tenderer 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, the proposed subcontractor for each activity, and the experience and qualifications of the subcontractor for the scope of Work.
- Note: The Subcontractor shall have a minimum of three (3) years experience similar in scope to it's portion of the Work.
- b) A list of all materials and equipment which the Tenderer proposes to purchase for the Work and the proposed supplier for each item.

**20. JOB SUPERVISORY PERSONNEL**

The Tenderers job supervisory personnel shall have a minimum of three (3) years satisfactory experience in the Work and shall submit with its Tender or within two working days of receiving a request from the Owner, two copies of a suitable resume of experience of its proposed job supervisory personnel.

**21. TENDERER'S PREVIOUS EXPERIENCE**

- 21.1 The Tenderer shall submit with its Tender, or within two working days of receiving a request from the Owner, a list of successful projects contracted by the Tenderer and similar in scope to the Work of this Tender Document.
- 21.2 The listing shall include the project name, location, contract value, contract date or date of commencement of work and a note as to whether the contract is complete or in progress.

- END -

NEW BRUNSWICK POWER CORPORATION  
GENERAL CONDITIONS FOR MISCELLANEOUS CONSTRUCTION

---

GENERAL REQUIREMENTS

---

TABLE OF CONTENTS

| <u>Subsection</u> | <u>Title</u>                  |
|-------------------|-------------------------------|
| 1.                | Description of the Work       |
| 2.                | Schedule Dates                |
| 3.                | Purchase Order                |
| 4.                | Force Majeure                 |
| 5.                | Labour Requirements           |
| 6.                | Insurance                     |
| 7.                | Safety                        |
| 8.                | Measurement and Payment       |
| 9.                | Changes in the Work           |
| 10.               | Invoices                      |
| 11.               | Backcharges to the Contractor |
| 12.               | Warranty                      |
| 13.               | Third Parties                 |
| 14.               | Proper Law of the Contract    |
| 15.               | Environmental Protection      |
| 16.               | Contract Binding /Assignment  |
| 17.               | Termination                   |
| 18.               | Withholding Tax               |
| 19.               | Contractor Performance        |

**1. DESCRIPTION OF THE WORK**

The Work under this Section shall include the supply of all materials, tools, equipment, services and labor to perform all Work, as directed by the Owner and as specified in these documents, complete in every respect.

**2. SCHEDULE DATES**

The schedule of Work shall be as stated in the Technical Specification or Request for Quote.

**3. PURCHASE ORDER**

A purchase order for the Work may be issued by the Owner for accounting purposes and nothing therein shall have the effect of altering any of the terms of the Contract.

**4. FORCE MAJEURE**

4.1 Neither party 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.

4.2 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).

4.3 If the Contractor claims that it has been or shall be delayed by reason of force majeure in the progress of the Work, the Contractor may, within one week of the happening of the force majeure event, make a written request to the Engineer for an extension of time within which to complete the work or any portion of it. The request shall state the reasons for the delay, and the amount of additional time the Contractor considers necessary. If the Engineer considers the claim to be valid, the Engineer may grant whatever extension of time it considers reasonable, without thereby prejudicing the Owner's right or in any manner affecting the validity of the Contract. No extension of time shall be granted unless the Contractor makes a written request within one week of the happening of the event which it is claimed results in the delay.

4.4 The Contractor shall not have any further recourse or claim against the Owner, nor shall it have any right to action against the Owner, for loss or damage suffered by reason of such delay.

- 4.5 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 so to do.

**5. LABOUR REQUIREMENTS**

- 5.1 The Contractor shall conform to the labour laws of the Province of New Brunswick and the various acts amending and supplementary thereto, and to all other laws, ordinances and legal requirements applicable thereto, and in particular, to the Minimum Wage for Categories of Employees in Crown Construction Work Regulation - Employment Standards Act in effect at the time the Work is being performed.

- 5.2 It should be noted that prevailing rates are usually higher than the minimum rates set down in the aforementioned Act.

- 5.3 The Contractor shall not cause any strike, work stoppage or interruption of Work due to its actions in violation of any applicable collective agreement.

**6. INSURANCE**

**6.1 Contractor's Insurance**

- 6.1.1 The Contractor shall procure and maintain, during the course of the Work, a comprehensive policy of third party liability insurance acceptable to the Owner in which the Owner and all Subcontractors are additional named insureds and which shall have minimum limits of \$2,000,000 inclusive for both Bodily Injury including death and Property Damage, with a maximum \$10,000 deductible per occurrence for Property Damage, and which shall embody a cross liability clause.

- 6.1.2 The Contractor shall procure and maintain, during the course of the Work, Automobile Liability Insurance for all licensed motor vehicles owned or leased by the Contractor or any of its Subcontractors which shall have minimum limits of \$3,000,000 inclusive for both Bodily Injury including death and Property Damage.

- 6.1.3 Certificates or certified copies of the insurance policies shall be provided by the Contractor upon request by the Owner prior to Award of Contract.

**6.2 Owner's Insurance**

The Owner carries All Risks Property insurance on all of its property. The insurance policy carries a deductible of \$2,000,000 per occurrence. The Owner hereby waives any and all right of recovery against the Contractor for all loss in excess of \$2,000,000 occurring to the Owner's property on the Site.

**6.3**            **Claims**

- 6.3.1            From the finally determined amount of each and every loss, the deductible amount, if any, as shown in the Contractor's policy, shall be the responsibility of the Contractor.
- 6.3.2            With respect to the deductible in the Owner's All Risks Property Insurance Policy, each amount so deducted shall be charged to and payable by the party whose fault or neglect resulted in the occurrence.
- 6.3.3            The Owner may withhold from any monies due the Contractor, any deductible amounts for which it or any of its Subcontractors are liable, and may pay the same to the injured party or the party entitled thereto. Any such payment shall be deemed to be and shall constitute a payment to the Contractor.

**7.**                **SAFETY**

**7.1**                **General**

- 7.1.1            The Contractor shall observe and comply with all requirements of the New Brunswick Occupational Health and Safety Act, Chapter 0-0.2 and the General Regulation 91-191 and its associated Regulations. The Contractor shall also be familiar with and comply with all requirements of the Owner's Standards and/or Work Methods, Corporate Safety Manual, any written instructions from the Owner pertaining to Safety and any safety requirements of the NB Department of Public Safety, as well as all relevant Federal and Municipal/Civic Ordinances.
- 7.1.2            The Contractor shall take every reasonable precaution and be responsible for the safety of its employees associated with the Work and shall provide, at its own expense, its employees with the necessary personal protective equipment and/or apparel.
- 7.1.3            The Contractor shall appoint one of its capable field staff to act as safety inspector for its own forces. This safety inspector shall attend job safety meetings and shall co-operate and work with the Owner's safety inspector and the safety inspectors of other Contractors for the betterment of job working conditions and the prevention of accidents.
- 7.1.4            The Owner will direct the safety of its own personnel, and in addition may, from time to time, employ a Safety Inspector to audit whether or not the Contractor is complying with all safety requirements as specified. The Safety Inspector will advise the Superintendent of the Contractor and the Engineer of any unsafe conditions, unsafe work practices or procedures, or any other work situations that may be potentially hazardous. It is clearly understood that the employment of such Safety Inspector by the Owner in no way relieves the Contractor of its responsibility under the Contract for the safety of its operations.



- 7.1.5 Notwithstanding anything in this Contract that may appear to the contrary, no provision of this Contract shall be interpreted as an assumption by the Owner of any responsibilities of the Contractor under any Municipal, Provincial or Federal statute, regulation, rule or order.
- 7.1.6 When the Owner provides safety equipment to the Contractor's personnel to replace lost, broken or defective safety equipment, clothing, etc. that the Contractor failed to supply, the Owner reserves the right to charge the Contractor for this safety equipment, and its maintenance and calibration (including cleaning).
- 7.1.7 Failure to comply with these rules and regulations or any other written instructions from the Owner relating to safety may result in immediate suspension of the Work, without prior written notice, or termination of the Contract.

## **7.2 Accidents**

- 7.2.1 All accidents and near misses must be reported immediately by telephone or messenger to the Engineer and appropriately investigated to identify the causes and prevent a recurrence. "An accident is defined as an unplanned event that results in harm to people or damage to property (when such damage had the potential to cause harm to people)". A near miss is defined as "an unplanned event that under slightly different circumstances could have resulted in an accident".
- 7.2.2 In addition, the Contractor shall promptly report in writing to the Engineer, all accidents whatsoever arising out of or in connection with the performance of the Work, whether on or adjacent to the Site, which cause death, personal injury or property damage, giving full details and statements of witnesses.

## **8. MEASUREMENT AND PAYMENT**

### **8.1 Measurement of Quantities**

- 8.1.2 Measurement for payment of items quoted as Lump Sum shall be made as a percentage of that Work item completed.
- 8.1.3 Measurement of quantities of the portion of Work to which the Unit Price Arrangement is applicable shall be made for the items in the Tender Submission.

### **8.2 Payment**

- 8.2.1 Progress payment for Work which is payable under the Fixed Price Arrangement (Lump Sum) shall be made for the percentage of the Work completed.
- 8.2.2 Payment for items which are payable at Unit Prices only shall be made for the quantities completed at the Unit Prices.

- 8.2.3 Progress payments shall not be made to the Contractor for materials on Site but not installed. Progress invoices and payments shall be based on Work actually completed and accepted by the Engineer as of the progress invoice date.
- 8.2.4 Upon issuing the final progress claim, the Contractor shall deliver to the Owner a Statutory Declaration verifying the fact that all its lawful obligations and lawful claims arising out of the Work, including WorkSafe NB, have been discharged and satisfied. The approved invoice amount shall then become due and shall be payable by the Owner to the Contractor.
- 8.2.5 Where the Contractor has not provided the Owner with a Statutory Declaration, the Owner may withhold payment of monies which would otherwise have become due until such time as the Statutory Declaration is provided to the Owner.
- 8.2.6 Payments made hereunder, including final payment, shall not relieve the Contractor from any of its obligations or liabilities under the Contract.
- 8.2.7 Acceptance by the Contractor of the final payment shall constitute a waiver of all claims by the Contractor against the Owner except those previously made in writing in accordance with the Contract and still unsettled.
- 8.2.8 The Owner reserves the right to withhold progress payments until all Schedules and the Progress Reports, in the agreed format, have been received and approved by the Engineer.
- 8.2.9 The Owner reserves the right to withhold release of final payment until all shop drawings and as-built drawings have been received and accepted by the Engineer.

**9. CHANGES IN THE WORK**

- 9.1 The Owner may, without invalidating the Contract, direct the Contractor to make changes in the Work.
- 9.2 When a change causes an increase or decrease in the Work, the contract price shall be increased or decreased by the application of unit prices to the quantum of such increase or decrease or, in the absence of applicable unit prices, by an amount to be agreed upon between the Contractor and the Owner.
- 9.3 Changes in the Work shall not proceed without written authorization from the Owner.

**10. INVOICES**

**10.1 General**

- 10.1.1 Invoices shall be prepared in a format acceptable to the Owner and shall be submitted in accordance with the "Terms of Payment".

10.1.2 Invoices shall show:

- .1 Owner's Purchase Order Number;
- .2 Owner's Contract Name and Contract Document Number;
- .3 Date of the invoice;
- .4 Period covered by the invoice;
- .5 Percent or quantity previously invoiced for each item;
- .6 Total amount claimed on the invoice;
- .7 Amount of holdback to date;
- .8 Amount of Harmonized Sales Tax on the invoiced amount;
- .9 Total amount to be paid.

10.1.3 The Contractor's invoices shall show separately the applicable Harmonized Sales Tax (HST) on the value of work to be paid. The Contractor shall show its HST registration number on all invoices. The precise procedures shall comply with the Act and Regulations.

10.1.4 For the amount of HST included on each invoice which is for reimbursement of HST paid to Canada Customs, the Contractor must submit with the invoice, a copy of Canada Customs Form B3 which is duly stamped by Canadian Customs Officials.

10.1.5 Unless otherwise directed, the following information shall accompany invoices:

- a) With the first invoice, a letter from Worksafe NB stating that the Contractor has filed a statement of wages for that year as prescribed by the Workers' Compensation Act and that the Contractor's account is in good standing at the time of billing.
- b) With every invoice, a Statutory Declaration deposing, or if required by the Owner, documentary proof verifying the fact that all lawful obligations to Subcontractors, workmen and suppliers of equipment and material, including Union Benefits, in respect of this Contract as at a date not greater than 45 days prior to the date of the invoice, have been fully discharged.

The Owner reserves the right, at any time, to request a clearance certificate from Worksafe NB and/or a Statutory Declaration verifying the above.

10.1.6 Invoices shall be sent to:

NEW BRUNSWICK POWER CORPORATION  
PO Box 2000  
515 King Street  
Fredericton, New Brunswick  
E3B 54X1

ATTENTION: Accounts Payable

**10.2**            **Change Orders**

- 10.2.1            Invoicing for Change Orders shall be included in the progress claims and invoiced with the appropriate assigned reference number, and necessary back-up documentation.
- 10.2.2            The amount for Change Orders shall be added to or deleted from the Contract price, and the applicable Contractual holdback shall be applied.

**10.3**            **Invoice for Holdback**

- 10.3.1            The Contractor shall invoice separately for holdback.
- 10.3.2            The Owner reserves the right to request a clearance authorization from the Surety Company for any release of holdback.

**11.**            **BACKCHARGES TO THE CONTRACTOR**

In the event that the Owner performs Work which is the responsibility of the Contractor, including but not limited to, correction of deficiencies or warranty items or Site clean-up, the Owner shall backcharge the Contractor its direct cost for labour, materials and equipment, including third party costs, plus a mark-up of 15%. Equipment and vehicles utilized by the Owner shall be charged at the rates established in the Machine Rental Regulation - Crown Construction Contracts Act. The Owner shall deduct from the amount owing to the Contractor, the amount applicable to the Work performed on behalf of the Contractor.

**12.**            **WARRANTY**

- 12.1            Except where otherwise noted in the specification, the Contractor shall warrant all Contractor supplied items and the workmanship of all installations for a period of one year from the date of acceptance of the Work by the Owner.
- 12.2.1            All repairs or replacement due to faulty materials and/or workmanship within the warranty period, shall be done at no cost to the Owner and to the Owner's satisfaction.

**13.**            **THIRD PARTIES**

Nothing in this Contract is intended for the benefit of third parties and no third party may claim for damages or otherwise to enforce any such benefit.

**14.**            **PROPER LAW OF THE CONTRACT**

- 14.1            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, except that the

International Sale of Goods Act, S.N.B.c.I-12.21 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 a contract.

- 14.2 The Contractor agrees that this agreement supersedes any custom, usage, contract, agreement or term implied to the contrary.

**15. ENVIRONMENTAL PROTECTION**

- 15.1 The Owner is committed to managing its environmental affairs consistent with the applicable acts, regulations, standards, and guidelines established by the various regulatory authorities. To demonstrate this commitment, the Owner has implemented throughout its operating companies, environmental management systems (EMS) consistent with the ISO 14001 standard.

- 15.2 The Contractor is required to comply with all applicable environmental protection requirements stated above and shall take all practical measures to preserve the quality of the environment affected by the Contractor's Operations.

**16. CONTRACT BINDING / 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.

**17. TERMINATION**

In the event of a default or a failure to perform an obligation under this Contract by the Contractor, the Owner shall notify the Contractor in writing stating the nature of the default or failure to perform. If the Contractor fails to cure such default or failure within 2 days after receipt of such notification, the Owner may terminate this Contract immediately without further liability of any kind. The above Section 38 applies only to Short Form Crown Construction Contracts.

**18. WITHHOLDING TAX**

The Canadian Income Tax Act, Section 153 and Income Tax Regulation 105 requires the Owner to withhold 15% from a non-resident Contractor, 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.

**19. CONTRACTOR PERFORMANCE**

The Contractor's performance will be evaluated on a continuous basis. Quality of service aspects such as performance of Work, compliancy with safety and environmental requirements, courtesy and helpfulness of staff, accuracy and legibility of invoices, etc. will be monitored. In the event the Contractor is unable to deliver on any of the requirements of the Contract, then the Contractor is required to notify the Owner immediately, outlining the problem and the planned action taken to resolve it. Periodic meetings may be scheduled between the Contractor's representative, and the Owner to review Contractor performance and outstanding issues.

- END -

