

SUPPLY AND INSTALLATION OF TURBINES AND GENERATORS CONTRACT

SCHEDULE 12

CHANGES

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CHANGES

1 INTERPRETATION

1.1 Definitions

In this Schedule 12 [Changes], in addition to the definitions set out in Schedule 1 [Definitions and Interpretation]:

“**Change**” means a change, including an addition, deletion, alteration, substitution or otherwise, to the Work, including a change to the Supply and the Delivery Work, the Installation Work or the Testing and Commissioning Work;

“**Change Directive**” has the meaning set out in Section 2.5 of this Schedule 12 [Changes];

“**Change Order**” has the meaning set out in Section 2.4 of this Schedule 12 [Changes];

“**Change Report**” means a written report prepared by the Contractor in response to a Preliminary Change Instruction, containing the information described in Section 3.3 of this Schedule 12 [Changes];

“**Preliminary Change Instruction**” has the meaning set out in Section 3.1 of this Schedule 12 [Changes]; and

“**Small Tool**” means a small tool or equipment item with a replacement value of no more than \$1,500.00 per tool or item.

2 CHANGES

2.1 BC Hydro’s Right to Require Changes

BC Hydro may require a Change by issuing a written Change Order or a written Change Directive, and except to the extent that a Change Order or Change Directive expressly requires otherwise, the Contractor will comply with all applicable terms of the Contract Documents, including Schedule 2 [Design and Construction Protocols] and Schedule 6 [Specifications and Drawings] in implementing the Change.

2.2 Restrictions on Changes

BC Hydro will not at any time require, and the Contractor may refuse to implement, a Change which:

- (a) is not within the general scope of the Work, including the Supply and the Delivery Work, the Installation Work or the Testing and Commissioning Work;
- (b) would be contrary to Law;
- (c) would render the insurance policies required under this Contract void or voidable and BC Hydro does not agree to replacement security satisfactory to the Contractor acting reasonably;
- (d) would cause the revocation of any Permit required by the Contractor to perform its obligations under this Contract, and such Permit would not, using reasonable efforts, be capable of amendment or renewal;

- (e) would require a new Permit for the Contractor to perform its obligations under this Contract, which Permit would not, using reasonable efforts by the Contractor or BC Hydro, as applicable, be obtainable; or
- (f) would cause the Contractor to be unable to obtain a Permit required by the Contractor to perform its obligations under this Contract, provided that such Permit was previously required but at the time of the Preliminary Change Instruction had not been obtained and such Permit would not, using reasonable efforts by the Contractor or BC Hydro, as applicable, be obtainable.

If the Contractor, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then the Contractor will promptly deliver written notice to BC Hydro of its objection, with written reasons. If BC Hydro disagrees then it may deliver a Dispute Notice to the Contractor, and the parties will cooperate to have the issue resolved in a timely manner in accordance with Schedule 14 [Dispute Resolution Procedure].

2.3 No Change Without Written Direction

Except as expressly set out otherwise in the Contract Documents, the Contractor will not proceed with any Change prior to the receipt of a written Change Order or Change Directive issued by BC Hydro. No claim for an adjustment to the Contract Price or the time for the performance of the Work may be made without such written direction. The Contractor will not be entitled to, nor will the Contractor rely on, any oral representation (except in an emergency), Site meeting discussion or minutes, or other communication as approval for a Change.

2.4 Change Orders

When the adjustments, if any, to the Contract Price or the time for the performance of the Work or both with respect to a Change are agreed by BC Hydro and the Contractor, Hydro's Representative will issue a written approval (a "**Change Order**") setting out:

- (a) a description of the Work covered by the Change;
- (b) the price or method of valuation for such Work;
- (c) the total adjustment, if any, to the Contract Price (excluding only GST) on account of the Change and, for certainty, will be deemed to include all claims for compensation on account of all related costs, including all direct, indirect or "impact", overhead, and all other costs, and all mark-ups and profits, even if the Change Order does not specifically mention such items; and
- (d) the net effect on the time for the performance of the Work on account of the Change and, for certainty, will be deemed to include all effects on the time for the performance of the Work, and if there is no mention in the Change Order of a required adjustment to the time for the performance of the Work, then the Change Order will be interpreted to mean that the Contractor will complete the performance of the Work covered by the Change Order without any adjustment to the time for the performance of the Work.

Hydro's Representative and the Contractor's Representative will sign the Change Order to confirm agreement and, upon receipt of a signed Change Order, the Contractor will proceed with the Change without delay.

2.5 Change Directives

Subject to Section 2.2 of this Schedule 12 [Changes] but notwithstanding any other provision of this Schedule, BC Hydro may at any time issue a written direction (a "**Change Directive**") to the Contractor,

signed by Hydro's Representative, directing the Contractor to proceed with a Change as described in the Change Directive, and for certainty BC Hydro may issue a Change Directive:

- (a) in the absence of a Preliminary Change Instruction;
- (b) at any time following issuance of a Preliminary Change Instruction, if the Contractor fails to provide a Change Report;
- (c) if a Change Report or Change Order is not promptly agreed upon by the parties; or
- (d) if there is a Dispute in relation to a Preliminary Change Instruction, Change Report or Change Order.

Upon receipt of a Change Directive the Contractor will proceed with the Work, including the Change, without delay, without prejudice to the Contractor's and BC Hydro's rights to claim an adjustment to the Contract Price and the time for the performance of the Work or both as a result of the Change, and the following will apply:

- (e) the valuation of the cost of the Change and impact on the Work Program and Schedule will be evaluated in the same manner as described in Section 5 of this Schedule 12 [Changes], calculated as soon as reasonably possible after the delivery of the Change Directive;
- (f) pending a final determination as to any adjustments to the Contract Price or the time for the performance of the Work or both for the Change BC Hydro will make a monthly payment to the Contractor of amounts the Contractor substantiates that it incurred on account of the Change and that BC Hydro, acting reasonably, agrees are owing on account of the Change;
- (g) if the parties reach agreement on adjustments to the Contract Price or the time for the performance of the Work or both for the Change BC Hydro will issue a signed Change Order confirming the valuation of the Change and the impact on the Work Program and Schedule; and
- (h) if within 30 Business Days after the delivery of a Change Directive to the Contractor, or such other time as the parties acting reasonably may agree in writing, the parties have not reached agreement on a Change Order covering all Changes implemented by the Change Directive, then Hydro's Representative will deliver to the Contractor's Representative a draft Change Order acceptable to BC Hydro covering all Changes in the Change Directive, and if the Contractor does not agree to the draft Change Order within 10 Business Days of receipt by the Contractor, or such other time as the parties acting reasonably may agree in writing, then either party may refer the valuation of the cost of the Change and impact on the Work Program and Schedule to be settled in accordance with Schedule 14 [Dispute Resolution Procedure].

3 POTENTIAL CHANGES

3.1 Preliminary Change Instruction

BC Hydro may at any time issue to the Contractor a written instruction (a "**Preliminary Change Instruction**") describing a contemplated Change that BC Hydro is considering. A Preliminary Change Instruction will include sufficient description of the contemplated Change, including any requirements under Section 3.8(b) of this Schedule 12 [Changes], to permit the Contractor to prepare a Change Report.

3.2 Delivery of Change Report

Subject to Section 2.2 of this Schedule 12 [Changes], as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of a Preliminary Change Instruction, or such other period as the parties may agree in writing acting reasonably, the Contractor will, at its cost,

prepare and deliver to BC Hydro a Change Report, signed by the Contractor's Representative, for the contemplated Change described in the Preliminary Change Instruction.

3.3 Change Report Contents

A Change Report will include:

- (a) a description of the scope of the contemplated Change;
- (b) a comparison of the scope of Work as a result of the contemplated Change as compared to the scope prior to the Change;
- (c) subject to the Contractor's duties under Section 29.2 of Schedule 2 [Design and Construction Protocols], a description of any adjustments to the Work Program and Schedule which the Contractor will require as a result of the implementation of the contemplated Change (including details of any corresponding adjustments required by any Subcontractor); and
- (d) an estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Change, including the following (which will be shown separately if requested by Hydro's Representative), as applicable:
 - (i) the cost of all Design, if any (based on the estimated number of hours reasonably required to perform any such Design);
 - (ii) a breakdown of all labour, material and equipment costs (quotations from proposed Subcontractors are not required to be provided unless requested by Hydro's Representative and only if the Change is proposed to be on a time and materials basis);
 - (iii) all additional costs of direct management of the Work, including supervision of trade foremen and Site overheads;
 - (iv) all costs of Permits required on account of the Change, including any required new Permit(s) or amendment or renewal of an existing Permit(s);
 - (v) all costs associated with services provided by third party professional advisors or subcontractors;
 - (vi) an estimate of the cost savings, if any, resulting for any reason (including reduction in scope of Work or reduction in the time for the performance of the Work) from the contemplated Change;
 - (vii) any proposal(s) as to how the contemplated Change could be accomplished at a lower or zero net cost;
 - (viii) a description of the extent to which the contemplated Change would interfere with the Contractor's ability to comply with any of its obligations under the Contract, any Subcontracts and any Permits;
 - (ix) the name of the Subcontractor(s) (if any) which the Contractor intends to engage for the purposes of implementing the contemplated Change together with a description of the qualifications of any such Subcontractor(s) so as to demonstrate the ability of such Subcontractor(s) to implement the contemplated Change;
 - (x) a description of any further effects (including benefits and impairments) which, the Contractor foresees as being likely to result from the contemplated Change;

- (xi) a description of any actions that would be reasonably required by BC Hydro to implement the contemplated Change; and
- (xii) a description of the steps the Contractor will take to implement the contemplated Change, in such detail as is reasonable and appropriate in all the circumstances.

The cost or impact on the Work Program and Schedule of the correction of a Defect or Deficiency will not be included in the valuation of a Change.

All of the costs described in this Section 3.3 will be provided in the dollar amounts applicable as of the date of the Change Report. There will be no indexation of any cost amounts unless specifically agreed to by BC Hydro.

3.4 Change Report to Cover all Cost and Time

Any Change Report submitted by the Contractor will, except as expressly set out otherwise in the Change Report, be interpreted to represent the proposed total adjustment to the Contract Price (excluding only GST) and the net effect on the time for the performance of the Work on account of such contemplated Change, and, for certainty, will be deemed to include:

- (a) all claims for compensation on account of all related costs, including all direct, indirect or “impact”, overhead, and all other costs, and all mark-ups and profits, even if the Change Report does not specifically mention such items; and
- (b) all effects on the time for the performance of the Work, and if there is no mention in the Change Report of a required adjustment to the time for the performance of the Work, then the Change Report will be interpreted to mean that the Contractor will complete the performance of the Work as covered by the Change Report without any adjustment to the time for the performance of the Work.

3.5 Third Party Costs to Prepare Change Report

If the Contractor is unable to prepare a Change Report without the assistance of third party professional advisors or subcontractors, and if the Contractor wishes to be reimbursed for the costs of such third parties pursuant to Section 3.7 of this Schedule 12 [Changes], then the Contractor will only be entitled to make a claim for such costs if the Contractor obtains Hydro’s Representative’s prior written approval to retain such third parties.

3.6 Justification and Supporting Documentation for Contemplated Change Estimates

The cost estimates included in a Change Report will be in sufficient detail to allow evaluation by BC Hydro and will include such supporting information and justification as is necessary to demonstrate that:

- (a) the Contractor has used all reasonable efforts, including utilizing competitive quotes or tenders, to minimize the cost of a contemplated Change and maximize potential related cost savings;
- (b) the Contractor and Subcontractors have valued the Change as described in Section 5.1 of this Schedule 12 [Changes], and have not included margins or mark-ups not provided for in Section 5.2 of this Schedule 12 [Changes];
- (c) the full amount of any and all expenditures that have been reduced or avoided have been fully taken into account; and

- (d) the Contractor has mitigated or will mitigate, in accordance with Section 29.2 of Schedule 2 [Design and Construction Protocols], the impact of the contemplated Change, including on the Work Program and Schedule and the direct costs to be incurred.

3.7 Contractor's Costs to Prepare Change Report

If, following receipt of a Change Report:

- (a) BC Hydro elects to proceed with the contemplated Change, then all costs incurred by the Contractor to prepare the Change Report will be paid by the Contractor, and the Change Order issued with respect to the contemplated Change will be deemed to be the entire compensation payable by BC Hydro for such Change; or
- (b) BC Hydro, for any reason, elects not to proceed with a contemplated Change, then:
- (i) if the Contractor retained third parties pursuant to Section 3.5 of this Schedule 12 [Changes], then BC Hydro will pay the Contractor for the reasonable and substantiated direct costs paid to all such third parties who were approved in advance by Hydro's Representative; and
- (ii) the Contractor will bear all other costs incurred by the Contractor to prepare the Change Report.

3.8 Agreement on a Change

Following receipt by BC Hydro of a Change Report prepared in accordance with Section 3.3 of this Schedule 12 [Changes]:

- (a) as soon as practicable, and in any event within 15 Business Days after BC Hydro receives a Change Report, or such longer period as the parties acting reasonably may agree in writing, BC Hydro will deliver to the Contractor any requests for clarifications or amendments, and on request from Hydro's Representative the parties' Representatives will meet without delay and use all reasonable efforts to reach agreement on the Change Report;
- (b) if BC Hydro is required by applicable Law or Governmental Authority to require the Contractor to competitively tender any contract in relation to a contemplated Change, the Contractor will, to BC Hydro's satisfaction acting reasonably, obtain and evaluate competitive tenders for the proposed Change; and
- (c) BC Hydro may in writing modify a Preliminary Change Instruction at any time prior to the parties reaching an agreement on the Change Report in which case the Contractor will, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification (or such longer period as the parties acting reasonably may agree in writing), notify BC Hydro of any consequential changes to the Change Report.

If Hydro's Representative accepts the Change Report in response to a contemplated Change, or the parties otherwise agree to proceed with the contemplated Change on terms different from those in the Change Report, then the Change Report or such other agreed to terms will be recorded in a Change Order, signed by the parties and issued pursuant to Section 2.4 of this Schedule 12 [Changes].

3.9 Disagreement on Change Report

If the parties do not agree on a Change Report, then BC Hydro may:

- (a) elect not to proceed with the Change described in the Preliminary Change Instruction; or

- (b) issue a Change Directive with respect to some or all of the Change described in the Change Report.

4 CLAIM FOR A CHANGE

4.1 Claim for a Change

If the Contractor at any time wishes to claim that a Change has occurred, then:

- (a) if the Contractor receives a direction, instruction or decision from Hydro's Representative for which a Change Order or Change Directive was not given, then the Contractor may only claim an adjustment to the Contract Price or an adjustment to the time for the performance of the Work or both as follows:
 - (i) prior to proceeding with such direction, instruction or decision, the Contractor will give written notice to Hydro's Representative of its intention to make such a claim with sufficient detail to permit Hydro's Representative to be able to understand the basis for the claim as well as the anticipated impact on the Contract Price, if any, and the time for the performance of the Work, if any; and
 - (ii) the Contractor will maintain daily records of the resources used in connection with the claimed Change, including labour, equipment and materials, prepared contemporaneously with the performance of the affected Work, and submit such records, together with the amount claimed for such affected Work, to Hydro's Representative on a rolling two business day basis;
- (b) upon receipt of a notice under Section 4.1(a)(i) of this Schedule 12 [Changes] from the Contractor, Hydro's Representative will promptly investigate the conditions giving rise to the claimed Change;
- (c) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work on account of any circumstance, condition or event that entitles the Contractor to make a claim under Section 4.1 of this Schedule:
 - (i) that occurs more than seven days prior to the notice delivered by the Contractor to Hydro's Representative as provided by Section 4.1(a)(i) of this Schedule 12 [Changes]; or
 - (ii) notwithstanding Section 4.1(c)(i) of this Schedule 12 [Changes], to the extent BC Hydro is materially prejudiced by any delay in the Contractor complying with its obligations under Section 4.1(a)(i) of this Schedule 12 [Changes]; and
- (d) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price on account of any circumstance, condition or event that entitles the Contractor to make a claim under Section 4.1 of this Schedule 12 [Changes] for which the Contractor has not kept, nor made available to Hydro's Representative, the records as required under Section 4.1(a)(ii) of this Schedule 12 [Changes].

If Hydro's Representative refuses the Contractor's request for a Change Order or Change Directive, then such refusal will be subject to settlement in accordance with Schedule 14 [Dispute Resolution Procedure].

5 VALUATION OF CHANGES

5.1 Valuation of Changes

The value and method of valuation of a Change will be determined by one or more of the following methods:

- (a) as set out in a Change Report, if any, and accepted in writing by Hydro's Representative, in accordance with this Schedule;
- (b) by a lump sum as agreed by the parties covering some or all of the Change;
- (c) by unit prices as applicable to the Work covered by the Change; and
- (d) to the extent not settled under one or more of Sections 5.1(a), 5.1(b) or 5.1(c) of this Schedule 12 [Changes], by the direct cost (or saving) of implementing the Change, calculated as follows:
 - (i) with respect to labour, the total of:
 - (A) the reasonable and substantiated wages and salaries, including payroll burden and statutory assessments, paid directly by the Contractor for labour directly and actively engaged in the performance of such Change, including a proper proportion of the time of Site supervisors directly supervising the performance of such Change; plus
 - (B) the reasonable and substantiated food, lodging and additional transportation costs for labour and supervisory personnel directly and actively engaged in the performance of such Change, to the extent the Contractor actually pays such costs; plus
 - (ii) with respect to materials, the total of the reasonable and substantiated direct costs of all materials reasonably and necessarily used by the Contractor for or incorporated into the Work on account of such Change, including extraordinary freight and shipping costs, if any; plus
 - (iii) with respect to equipment (other than Small Tools) the total of the reasonable and substantiated rental charges for such equipment used directly in the performance of such Change, including equipment owned by the Contractor, at the rates established in the most recently published edition of the book entitled "Equipment Rental Rate Guide" and "The Blue Book" as published by the B.C. Road Builders & Heavy Construction Association on the date when such Change is performed, without mark-up. Such rates will be without an operator and the cost of the operator of such equipment may be included in the amount permitted for labour under Section 5.1(d)(i) of this Schedule 12 [Changes]; plus
 - (iv) with respect to first tier Subcontractors performing some or all of such Change, BC Hydro will pay the amounts as determined under Sections 5.1(d)(i), 5.1(d)(ii) and 5.1(d)(iii) of this Schedule 12 [Changes] as incurred by such first tier Subcontractors;
 - (v) the rates and charges applied will be no greater than the market rates and charges prevailing at the time of the implementation of the Change, paid between arms-length contracting parties;

- (vi) unless otherwise agreed by BC Hydro in writing, the Contractor will obtain competitive quotations or tenders for all work, equipment and materials required to implement a Change; and
- (vii) the rates and charges, of the Contractor or any Subcontractor, will be determined all without addition of any mark-ups for indirect costs, and the aggregate of mark-ups payable with respect to a Change will be limited to the mark-ups set out in Section 5.2 of this Schedule 12 [Changes].

The final evaluation of a Change will take account of any savings resulting from the Change and accordingly valuation of a Change will be the aggregate of the direct incremental costs minus the aggregate direct cost savings reasonably incurred or resulting from the implementation of the Change. For certainty a Change may have a net cost, or a net saving, or may result in no net cost or saving.

5.2 Mark-Up on Changes

Mark-up on direct costs relating to a Change valued under Section 5.1(d) of this Schedule 12 [Changes] will be payable only as follows:

- (a) for the purposes of Section 5.2 of this Schedule 12 [Changes] a mark-up will be deemed to cover all indirect, head office, supervision and management, including without duplication, any costs related to the Contractor's, and any Subcontractors', management and oversight of the Work, Site management, supervision of trade foremen, Site overheads, and other costs and profit associated with the Change;
- (b) if the aggregate of the direct incremental costs minus the aggregate direct cost savings of a Change is positive such that there is a net cost for the Change then, in addition to such aggregate net cost, BC Hydro will pay the Contractor a mark-up on such aggregate net cost of 15%; and
- (c) if the aggregate of the direct incremental costs minus the aggregate direct cost savings of a Change is negative such that there is a net saving for the Change then the Contractor will pay BC Hydro such net saving without adjustment of such net saving on account of any mark-up.

5.3 Quantity Variation

If, for any reason, including an addition or deletion to the scope of the Work under Section 2 of this Schedule 12 [Changes], the actual quantity of a unit price item varies by more than plus or minus 20% from the estimated quantity for that unit price item as listed in the Contract Documents, or as otherwise agreed to pursuant to the Contract Documents, then either BC Hydro or the Contractor may, by written notice to the other party, request the other party to agree to a revised unit price, to take account of the variation in quantity and prevent either party from obtaining a windfall or suffering a loss as a result of the quantity variation. A party will make a request for a revised unit price as soon as reasonably practicable after it becomes aware of the quantity variation. Upon a request under this Section 5.3 the Contractor's Representative will deliver to Hydro's Representative all documentation reasonably required by Hydro's Representative to evaluate and substantiate the calculation of the applicable unit price(s).

5.4 Adjustments to Time for the Performance of the Work

Subject always to the Contractor's duties under Section 29.2 of Schedule 2 [Design and Construction Protocols], the time for the performance of the Work will be adjusted on account of a Change by the net amount of time reasonably required by the Contractor to accommodate and perform the Change, taking account of any impacts that require more time, and any impacts, that result in time savings, as follows:

- (a) as set out in a Change Report, if any, and accepted by Hydro's Representative pursuant to Section 3.8 of this Schedule 12 [Changes];

- (b) as otherwise agreed in writing by the parties; or
- (c) in the absence of an agreement, in accordance with Schedule 14 [Dispute Resolution Procedure].

6 EMERGENCY

6.1 Emergency

Notwithstanding any other provision in the Contract, Hydro's Representative may, in the event of an emergency, issue oral orders to the Contractor for any Change required by reason of an emergency. The Contractor will proceed with such Change without delay, without prejudice to the Contractor's right to claim an adjustment to the Contract Price or the time for the performance of the Work or both. Hydro's Representative will confirm such orders in the form of a Change Order or Change Directive as soon as practicable.