

**February 23, 2024****Addendum No. 01****File Reference Number: RFP 2024 006****Title: Joint Elimination Program and Electric Flash-Butt Welding****RE: Clarifications/Questions**

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Please refer to the following information / clarifications:

**Item 1: Part 5 - Request for Proposals Draft Agreement**

Part 5 of the RFP Package has now been updated to include ONTC's Draft Agreement. Please replace Part 5 of the RFP Package with Part 5 attached to this Addendum at Appendix A.

**Item 2: Contract Security**

As per the Draft Agreement ONTC will require that a Performance Bond and Labour and Material Bond be provided following award of this contract. As a result, ONTC will now require an Agreement to Bond to form part of the mandatory requirements of the RFP Documents.

**Part 1 – Request for Proposals**

ONTC has now added Section 4.5 Agreement to Bond to Part 1 Request for Proposals – Section 4 – Proposal Content and Format which reads as follows:

**4.5 Agreement to Bond**

- (1) *The Respondent shall provide with its Proposal an agreement to bond issued by a surety company undertaking to provide a Performance Bond and a Labour and Material Bond with a coverage limit of at least 50% of the Contract Price (the "**Contract Securities**") in the form prescribed by the Construction Act, both to be provided to ONTC by the Successful Respondent following award of the contract.*
- (2) *Proposals not accompanied by the required agreement to bond will be declared noncompliant.*

- (3) *The Respondent shall include the actual cost of all bonds, with no mark-up, in the Proposal price.*

Section 8 – Draft Agreement Finalization and Debriefing and Successful Respondent – subsection 8.1(7) has been updated as well. Please delete this section and replace with the following:

- (7) *Prior to supplying any Goods and/or Services pursuant to the Contract, the Successful Respondent shall deliver to ONTC:*
- (a) *the performance bond and the labour and material bond described in the RFP Documents. The form of such bonds shall comply with the requirements prescribed in the Construction Act. Refer to the link below for the appropriate forms (Form 31 and 32).*  
<http://ontariocourtforms.on.ca/en/construction-lien-act-forms/>
  - (b) *certificates of insurance as specified in section 78 of the Draft Agreement;*
  - (c) *executed Contractors Health and Safety Responsibility Agreement;*
  - (d) *Respondent’s Health and Safety and Environmental Policy; and,*
  - (e) *a current Clearance Certificate issued by the Workplace Safety and Insurance Board, if applicable.*

#### Part 2 – Request for Proposals Summary of Requirements

ONTC has updated Part 2 Request for Proposals Summary of Requirements – Schedule 2-A RFP Data Sheet to reflect the mandatory requirement to include the Agreement to Bond as prescribed in the new Section 4.5 of Part 1. Please replace the Schedule 2-A RFP Data Sheet in the RFP package with the Schedule 2-A Data Sheet attached to this Addendum at Appendix B.

#### **Item 3: Part 4 – Request for Proposals Form of Proposal**

ONTC has now updated Part 4 – Form of Proposal – Proposal Form 1 to include ONTC’s communications prohibition clause. Please replace Part 4 – Proposal Form 1 of the RFP Package with Part 4 – Proposal Form 1 attached to this Addendum at Appendix C.

Regards,

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# APPENDIX A



**PART 5**

**REQUEST FOR PROPOSALS**

**DRAFT AGREEMENT**



**"Environmental Contaminants"** means any substance, material or waste defined, regulated, listed or prohibited by Environmental Laws;

**"Equipment"** means all machinery and equipment of the Contractor, either operated or not operated, that is required for preparing and performing the Work but is not incorporated into the Work;

**"Force Majeure"** means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, adverse weather conditions which are materially more adverse than could reasonably be expected, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, pandemic, quarantine restriction, strike, lockout or other labour disturbance, governmental embargo, or emergency changes in the Laws to any acts, orders, legislation, regulations, directives, or government priorities of any government or other public authority; provided such event is not caused by the affected party's negligence or failure to exercise reasonable diligence. A Force Majeure event or cause does not include an inability to pay or a lack of financial resources unless it is due to a failure of the province to approve the appropriation from the Consolidated Revenue Fund for the Project.

**"Loss" or "Losses"** means loss, liability, damage, cost, legal cost and disbursement whatsoever arising out of or related to the Work or this Agreement, whether in contract, tort or otherwise;

**"Notice"** includes written notification or communication required or permitted to be given by one party to the other party under this Agreement;

**"ONTC Parties" or "Contractor Parties"** means the officers, directors, employees, consultants, contractors, subcontractors and agents of the party and those for whom it is responsible in law;

**"Surplus Materials"** means the surplus spikes, anchors, plates, joint bars and rail ends created by the Work;

**"Waste Materials"** means the waste materials that are generated by the Work but does not include the Surplus Materials; and

**"Work"** means everything that the Contractor is required to supply or perform to fulfill the Contractor's obligations under this Agreement, including any work or services not expressly set out in the Scope of Work in Schedule A, but which is, nevertheless, necessary for the proper completion of the Work; and

**"Working Day"** means any day except a Saturday, Sunday or statutory vacation day or such other days designated as working days in the Contract Documents.

- 2. Construing this Agreement.** This Agreement is to be construed and interpreted with all changes in number and gender as may be required by the context. The obligations of the parties contained in this Agreement have, where applicable, the status of representations, warranties and covenants by the respective obligated party. Time is of the essence of this Agreement, including if any extension of time is permitted.

3. **Precedence.** Subject to any contrary intention elsewhere in this Agreement, in case of any inconsistency or conflict among the Schedules and the body of this Agreement, the documents shall prevail in the following order, but only to the extent necessary to resolve the conflict or inconsistency:
  - (a) The body of this Agreement;
  - (b) Schedule A (Scope of Work);
  - (c) Schedule B (Price); and,
  - (d) Any other documents incorporated by reference in any of the foregoing,(the “**Contract Documents**”).

### **COMMUNICATIONS**

4. **Communications Prohibition.** The Contractor acknowledges that ONTC will lead and make any announcements relating to this Agreement and the Work. The Contractor shall not make any announcement of any kind, including press releases, social media posts, public declarations, or any form of publication or announcement about the Contractor being retained by ONTC to complete the Work, about the Work or about this Agreement unless prior written consent is given by ONTC. If the Contractor is contacted by any media outlet or other person or entity wishing to make any form of publication or announcement or seeking any information about this Agreement or the Work, the Contractor shall immediately notify ONTC and shall not communicate with the person or entity. If the Contractor becomes aware of any publication or announcement relating to this Agreement or the Work, the Contractor shall immediately notify ONTC.

### **PARTICULARS OF THIS AGREEMENT**

5. **Retainer.** ONTC hereby retains the Contractor to perform the Work described in Schedule A. The Contractor shall complete the Work under the general direction and control of ONTC and subject to the provisions of the Contract Documents.
6. **No Exclusive Arrangement.** This is a non-exclusive arrangement. ONTC may from time to time have other suppliers of the Work.
7. **Contract Price.** The price for the performance of the Work is set out in Schedule B (the “**Contract Price**”), subject to adjustment in accordance with the Change Order process in the Contract Documents.
8. **Disbursements and Expenses.** The Contractor shall, at its sole cost, and at no cost to ONTC, except as specifically provided in this Agreement or agreed to by ONTC in writing, obtain and supply all work, labour, Contractor Parties, travel, plant, accommodations, equipment, materials, supplies and administrative, technical or other support necessary to provide the Work, including insurance, local or long distance telephone, facsimile, postage, or

other communication costs, and photocopying, printing or other reproduction costs. The Contractor shall be responsible for all living, traveling, relocation and accommodation expenses for the Contractor Parties. For greater certainty, the Contractor shall not, unless specifically agreed to by ONTC in writing, charge any such expenses to ONTC and such expenses are deemed to be included in the Contract Price.

## **CONTRACT TIME AND SCHEDULE**

9. **Contract Time.** This Agreement shall commence on the Effective Date and shall continue for for a period of three years (the “**Initial Term**”) unless terminated early or extended in accordance with the Contract Documents (the “**Contract Time**”). ONTC shall have the option to extend the Contract Time for two additional one year periods (each an “**Extended Term**”) by providing Notice to the Contractor not less than 60 days prior to the end of the Initial Term or the first Extended Term, as the case may be. The parties shall execute a Change Order for each Extended Term that provides the details of the scope of Work and the change in the Contract Price for the Work to be completed during the Extended Term. The Work shall be completed in accordance with Schedule A and the schedule for the performance of the Work agreed to by the parties as set out in Sections 10 and 11.
10. **Schedule.** The Contractor shall prepare, and update as required or requested, a schedule, including identification of the critical path of the Work and the schedule of operations, indicating the proposed methods of construction and sequence of work and the times the Contractor proposes to complete the various items of work (*i.e.* milestones) within the Contract Time (the “**Schedule**”). The Schedule shall be submitted to the ONTC Representative within 10 Working Days from the date of the contract award.
11. **Updated Schedule.** The Contractor shall, during performance of the Work and in accordance with the controls and reporting requirements in the Contract Documents, provide for the ONTC Representative’s review and approval progress reports updating the Schedule, reporting on the progress achieved, percentage of completion, schedule status and financial status with areas of immediate concern highlighted. These updated Schedules shall be provided at least every 30 days. If the Schedule is affected by approved Changes, the Contractor shall submit an updated Schedule, if requested by the ONTC Representative, within 7 Working Days of the request. This updated Schedule shall show how the Contractor proposes to perform the balance of the Work and complete the Work within the Contract Time. ONTC may, at its sole discretion, not issue an order to commence work until the Construction Schedule has been received and approved.
12. **Schedule Slippage.** If at any time it should reasonably appear to ONTC that the actual progress of the Work is behind Schedule or is likely to become behind Schedule and notice of such opinion is given to the Contractor or the Contractor has noticed slippage in the Schedule, then the Contractor shall take appropriate steps to cause the actual progress of the Work to conform to the Schedule and shall provide ONTC with an updated Schedule showing how the Contractor proposes to perform the balance of the Work and complete the Work within the Contract Time.

## **PERFORMANCE OF THE WORK**

13. **Permits and Certifications.** The Contractor shall obtain all permits required to perform the



Work and provide the requisite permits to ONTC, upon request. The Contractor warrants that it and the Contractor Parties have obtained all required certifications under any governmental authority for the performance of the Work, including Canadian Rail Operating Rules 2022 (“CROR”) and such certifications are in good standing. The Contractor shall provide evidence of the requisite certification to ONTC.

14. **Contractor Parties.** The Contractor shall be responsible for every act or omission of Contractor Parties in completing the Work. The Contractor shall be solely liable to pay all salaries, wages, overtime, bonuses, allowances, profit sharing, pensions, and other remuneration of Contractor Parties, including payment of costs related to employee benefits, and for the deduction and remittance of all applicable employment-related taxes, premiums, dues and other burdens to the appropriate governmental authorities. The Contractor agrees that it shall not be entitled to claim, nor shall ONTC be obliged to pay or reimburse the Contractor, for any monies whatsoever in respect of or in connection with any such payments.
15. **Subcontractors.** The Contractor shall not enter into a subcontract for any part of the Work except as disclosed in any quote or response of the Contractor to an ONTC procurement document or, in any other case, without the prior written approval of ONTC. The Contractor shall provide to ONTC as part of the Contractor’s request for approval, a description of that part of the Work to be subcontracted and the name and address of the proposed Subcontractor, and such other information as ONTC may request. The Contractor shall not change Subcontractors without the prior written approval of ONTC, which approval will not be unreasonably withheld.
16. **Policies and Procedures.** The Contractor shall ensure that it and the Contractor Parties are aware of and, while being on the Owner’s property, comply with the Owner’s policies, including its Drug and Alcohol Policy. The Work shall be performed in accordance with ONTC’s policies and procedures and the Ontario Northland Operating Manual, including the Current Summary Bulletin, current Ontario Northland Time Table, CROR, Infrastructure Special Instructions, Ontario Northland Manual of Track Requirements, Dangerous Goods and Ontario Northland General Operating Instructions, as applicable. The Contractor shall ensure that appropriate standards of conduct and service are communicated to and understood by all Contractor Parties.
17. **Replacing of Contractor Parties.** The Contractor shall replace within a reasonable time, any Contractor Party whose removal is requested by ONTC for reasonable cause. ONTC’s right to request removal of a Contractor Party does not entitle or obligate the Contractor to terminate or breach any employment or other contractual relationship with such Contractor Party. The Contractor, in its sole and absolute discretion, may take such action as it deems appropriate under the circumstances. The Contractor shall not be entitled to any extension of the Contract Time due to the replacement of a Contractor Party.
18. **Contractor Equipment.** The Contractor will use Equipment that is in good repair and meets all safety standards and regulations. The Contractor shall be responsible for all costs and expenses for the Equipment including, but not limited to, repair, maintenance, replacement, insurance and fuel. In the event the Equipment fails to operate correctly during the Work, the Contractor shall be responsible for all costs relating to any delay in the Work. ONTC shall not

be charged for any costs relating to the Contractor Parties or the Equipment if the Contractor Parties or ONTC employees are unable to work due to Equipment failure or breakdown.

19. **ONTC Equipment.** If the Contractor uses any ONTC equipment, including railcars, during the performance of the Work, the Contractor shall be responsible for the repair, maintenance and replacement of the ONTC equipment if the ONTC equipment is damaged during the performance of the Work.

20. **Obligations of the Contractor.** The Contractor shall:

- (a) perform the Work in accordance with all applicable laws, applicable ONTC policies and rules and the Contract Documents;
- (b) in particular, comply with all applicable Occupational Health and Safety laws and with ONTC policies regarding Contractors working on ONTC property;
- (c) in performing the Work and its obligations under the Agreement, exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor performing Work of a similar nature to the Work;
- (d) not interfere with the operations of the railway while performing the Work;
- (e) avoid any Conflict of Interest during the performance of the Work;
- (f) disclose to ONTC any Conflict of Interest the Contractor has or potentially has that arises during the performance of the Work;
- (g) not subcontract the provision of any of the Work without the written consent of ONTC; and
- (h) ensure any Equipment used by the Contractor in completing the Work will be in safe working condition, will comply with all laws applicable to such Equipment and will be operated by suitably qualified and competent personnel;

(the “**Standard of Care**”).

21. **Vendor Performance Policy.** ONTC has a Vendor Performance Policy which requires ONTC to complete an evaluation of the Contractor’s performance of its obligations under this Agreement. The performance evaluation of the Contractor for the supply of these Work will be used in the assessment of the Contractor’s proposals in response to future procurements. The performance evaluation may also result in the Contractor being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>.

22. **Conflict of Interest.** If a potential or actual Conflict of Interest of the Contractor arises during the Contractor’s performance of the Work,

- (a) ONTC has the sole right to determine whether any situation or circumstance constitutes a Conflict of Interest;
- (b) ONTC has the right to prescribe the manner in which the Contractor should resolve the Conflict of Interest; and

(c) ONTC may terminate the Agreement immediately upon Notice to the Contractor if the Contractor fails to disclose any actual or potential Conflict of Interest, if the Contractor fails to resolve its Conflict of Interest as directed by ONTC or if ONTC determines that the Conflict of Interest cannot be resolved.

23. **Defective Work.** ONTC shall be the sole judge of the adequacy of the Work completed by the Contractor. The Contractor shall promptly correct Defective Work that has been rejected by ONTC as failing to conform to the Contract Documents whether or not the Defective Work has been incorporated in the Work and whether or not the Defect is the result of poor design, poor workmanship, use of Defective Materials or damage through carelessness or other act or omission of the Contractor.
24. **Same.** If in the opinion of ONTC it is not expedient to correct Defective Work or Work not performed as provided in the Contract Documents, ONTC may deduct from the amount otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents. If ONTC and the Contractor do not agree on the difference in value, the matter shall be handled as a dispute in accordance with the Dispute Resolution provisions of this Agreement.
25. **ONTC's Representative.** ONTC's representative shall provide direction regarding the tasks required of the Contractor and the schedule for the completion of the Work. ONTC's representative shall inspect the Work for quality and completeness. ONTC's representative shall not be considered the supervisor of the Contractor Parties.
26. **Health and Safety.** The Contractor shall be solely responsible for compliance with the rules, regulations and practices required by the applicable health and safety laws and shall be responsible for initiating, maintaining and supervising all health and safety precautions and programs in connection with the performance of the Work. While working on ONTC property, the Contractor shall comply with all ONTC's policies and directions to ensure the health and safety of ONTC Parties and Contractor Parties.

## **CHANGES**

27. **Changes.** Changes of any kind to the scope of the Work shall only be made by the Contractor upon receipt of a written Change Order signed by an authorized member of each Party or a Change Directive. ONTC may at any time by issuing a Change Order or Change Directive make any change in the Work to be completed by the Contractor. The Change Order shall specify the details of the change in scope of the Work, any agreed adjustment to the Price in respect of the change in scope of the Work and any agreed adjustment to the Contract Time for performance of the Work, whether an increase or reduction. A Change Order shall represent full payment for all costs and any adjustment to the workplan associated with the change or changes for which it was issued.
28. **Change Directive.** Prior to finalization of a Change Order, ONTC may instruct the Contractor to proceed with additional or changed Work by issuing a Change Directive signed by an authorized representative of ONTC. Upon receipt of a Change Directive, the Contractor shall immediately proceed with the changes to the Work as identified therein. The Parties shall then

seek to finalize a Change Order as soon as commercially reasonable. Prior to the finalization of the relevant Change Order, the Contractor shall be entitled to payment for pre-approved, reasonable documented costs incurred in respect of a Change Directive.

29. **Unauthorized Changes.** ONTC shall have no liability whatsoever for any claim for payment for additional Work provided or costs incurred by the Contractor which have not been authorized in advance by ONTC by way of a Change Order or a Change Directive.

## **WARRANTY**

30. **Warranty Period.** The Contractor warrants that each weld shall be free from Defects for a warranty period of one year from the date of completion of the weld (the "**Warranty Period**"). Acceptance of the Work by ONTC shall not relieve the Contractor from any responsibility for Defects.
31. **Defects.** ONTC shall promptly give the Contractor notice of observed Defects which arise during the Warranty Period. Following the receipt of the notice, the Contractor shall remedy, at the Contractor's expense, the Defects in the Work within 10 Working Days of receipt of the notice, or such other period directed by ONTC, acting reasonably (the "**Remediation Period**"). The Contractor shall correct or pay for damage resulting from the Defect or such remediation.
32. **Failure to Remediate.** If the Contractor fails to remedy a Defect within the Remediation Period, ONTC may upon written notice to the Contractor, in its sole discretion, either proceed to remedy the Defect itself or contract a third party to remedy the Defect (including reconstruction costs and costs related to damages arising from such Defect). ONTC shall be entitled to recover from the Contractor the costs thereof or may deduct the money from any monies due or that become due to the Contractor.
33. **Remedial Work Warranty.** The Contractor further warrants any and all remedial work it performs for a further period of one year from completion of the remedial work (the "**Extended Warranty Period**").
34. **Warranty Holdback.** ONTC may hold back on each invoice submitted by the Contractor two percent (2%) of the total amount payable under that invoice as security for the Contractor's performance of its warranty obligations (the "**Warranty Holdback**"). In the event the Contractor fails to correct a Defect during the Warranty Period within the required time and/or fails to pay for the redesign, reconstruction and other costs related to damages arising from a Defect, ONTC may use the Warranty Holdback, or such part of it still being held by ONTC, to pay for the costs of remedying the Defect and any redesign, reconstruction or other costs relating to the Defect. If the costs are greater than the amount of the Warranty Holdback, the Contractor shall pay the additional costs upon receipt of an invoice from ONTC. The Contractor shall invoice ONTC for the balance of the Warranty Holdback at the end of the last Warranty Period or Extended Warranty Period.
35. **OEM Warranty.** The Contractor shall assign to ONTC all warranties, guarantees or other obligations for Work, services or Materials performed or supplied by any Subcontractor,

supplier or other person in connection with the Work and such assignment shall be with the consent of the assigning party where required by law or by the terms of that party's agreement. Such assignment shall be in addition to, and shall in no way limit, the warranty rights of ONTC under the Contract Documents.

## **DELAY**

36. **Delay – ONTC.** If the Contractor is delayed in the performance of the Work by an act or omission of ONTC contrary to the provisions of the Contract Documents, then the Contract Time shall be extended for such reasonable time as ONTC determines. The Contractor shall be reimbursed by ONTC for the reasonable direct costs directly flowing from the delay but excluding any indirect, consequential or special damages.
37. **Stop Work Order.** If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority on account of a breach, violation, contravention, or a failure to abide by any laws, ordinances, rules, regulations, or codes or the advice, recommendations and instructions of public health officials directly by ONTC or ONTC's other contractor(s) and relating to the Work or the work site and providing that such order was not issued as the result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the Contract Time shall be extended for such reasonable time as the ONTC determines in consultation with the Contractor. The Contractor shall be reimbursed by ONTC for the reasonable direct costs directly flowing from the delay but excluding any indirect, consequential, or special damages.
38. **Force Majeure.** If the performance of the Work or the performance of any other obligation(s) of a party to this contract is delayed by Force Majeure, then the Contract Time shall be extended for such reasonable time as ONTC and the Contractor shall agree. The extension of time shall not be less than the time lost as a result of the event causing the delay, unless the Contractor and ONTC agree to a shorter extension. Neither party shall be entitled to payment for its costs incurred by such delays. Upon reaching agreement on the extension of the Contract Time attributable to the Force Majeure event, ONTC and the Contractor shall execute a Change Order indicating the length of the extension to the Contract Time and confirming that there are no costs payable by either party to the other for the extension of Contract Time.
39. **Change Directive.** Notwithstanding the foregoing, ONTC may issue a Change Directive requiring the Contractor to undertake those specific actions identified in the Change Directive as the Contractor can reasonably and safely initiate to remove or relieve either the Force Majeure or its direct or indirect effects on the Project, in which case the Contract Price will be adjusted in accordance with Change Directive provisions of this Agreement. If the Contractor fails within the time period specified in the Change Directive to take such action, then ONTC may, at its sole and absolute discretion and after it has given written notice to the Contractor, take some or all of such actions to partially or wholly remove or relieve such Force Majeure or its direct or indirect effects, and thereafter require the Contractor to resume the performance of the Work.
40. **Length of Force Majeure.** If the Contractor gives notice of a Force Majeure and the non-

performance of any obligation affected by such Force Majeure continues for a period longer than 30 days, ONTC may terminate the Agreement by notice in writing to the Contractor. ONTC shall pay the Contractor for the Work performed to the date of termination.

41. **Notice of Delay.** No extension of the Contract Time will be approved unless the Contractor notifies ONTC in writing within 3 Working Days of becoming aware of (or when it ought reasonably to have been aware of) or being notified of any potential delay contemplated in sections 35, 37 or 38. For the written notice to be valid under this section it must include specific details about:

- (a) The cause of the delay;
- (b) The likely impact the delay will have on the Contract Time and details of the extension of time being requested;
- (c) The likely effect the delay will have on payment; and
- (d) Mitigation efforts, if any, undertaken by the Contractor or, where no mitigation efforts have been undertaken by the Contractor, the reasons why mitigation is either not possible or has not been undertaken by the Contractor.

42. **Contractor Delay.** If the Contractor is delayed in the performance of the Work and such delay is for a cause within the Contractor's control, or due to the replacement of a Contractor Party, the Contractor shall pay to ONTC the per diem rate for liquidated damages specified in the Contract Documents for each day of delay. If the per diem rate for liquidated damages is not specified in the Contract Documents, the Contractor shall pay to ONTC the direct and indirect costs incurred by ONTC as a result of the delay.

## **ENVIRONMENTAL OBLIGATIONS**

43. **Environmental.** The Contractor shall comply with all Environmental Laws in the provision of the Work. If the Contractor fails to comply with Environmental Laws relating to the provision of the Work, the Contractor shall be solely responsible for all costs, claims, fines, fees or other expenses arising from the failure by the Contractor to comply with the Environmental Laws in the provision of the Work.

44. **Impact Assessment.** The Contractor shall be responsible for identifying any impacts relating to fish, navigable waters, species at risk, vegetation, wildlife, socio-economic and heritage that arise prior to commencing the Work and during the Work.

45. **Unknown Impacts.** If the Contractor or ONTC observes or reasonably suspects the presence of any impacts described in section 44,

- (a) the observing party shall immediately report the circumstances to the other party; and
- (b) the Contractor shall immediately take reasonable steps, including stopping the performance of the Work if necessary, to ensure that any potential impacts are mitigated.

46. **Failure to Comply.** If the Contractor fails to comply with the requirements in section 45, the Contractor shall:
- (a) be responsible for all costs incurred by ONTC and the Contractor to mitigate the damage caused due to the failure; and
  - (b) not be entitled to request a Change Order relating to the failure to comply.
47. **Environmental Contaminants.** The Contractor shall not cause or permit any Environmental Contaminants to be located, stored, disposed of, produced, processed, deposited, released, discharged or incorporated in, on or under any part of ONTC's land except as required to provide the Work. The Contractor shall remove from ONTC's land, immediately upon demand, at its cost, any Environmental Contaminants introduced thereto by the Contractor that are not required to provide the Work. If there is remediation Work required on ONTC's land or adjacent land or watercourse due to environmental contamination that occurred as a result of the Contractor's entry onto ONTC's land to provide the Work, the Contractor shall be responsible for all costs incurred to complete remediation Work on ONTC's land and adjacent land or watercourse and shall reimburse ONTC or any public authority or any third party for any reasonable costs incurred as a result of the requirement to complete the remediation Work.
48. **Ownership of Environmental Contaminants.** Notwithstanding any provision of law to the contrary, any Environmental Contaminants placed or permitted on or under ONTC's land by the Contractor in contravention of section 47 shall remain the property of the Contractor.
49. **Spills and Releases.** All spills and releases of Environmental Contaminants in the course of the Work must be immediately reported by the Contractor to ONTC and the Ministry of the Environment, Conservation & Parks ("MOECP") Spills Action Centre ("SAC"). If the ONTC Representative is not available, the Contractor shall report the incident to the MOECP SAC and the ONTC RTC at 800-558-4129 X 141.
50. **Mitigation of Spills.** The Contractor shall take immediate steps to mitigate the damage to the environment and contain the spill or release. If the Contractor does not take timely action or, if the Contractor is not available, ONTC may direct others to remedy the situation.
51. **Expenses for Spills.** If the spill or release was the fault of the Contractor, the remedial Work shall be completed at the cost of the Contractor and with no additional cost to ONTC and ONTC shall be entitled to seek reimbursements for all costs associated with the remedial Work including the cost of work done by third parties. If the spill or release was not the fault of the Contractor, ONTC shall pay for the remedial Work.
52. **DFO Notification.** Pursuant to section 38(4) of the *Fisheries Act*, the Contractor has an obligation to notify the Department of Fisheries & Oceans ("DFO") when the Work results in the unauthorized death of fish or a harmful alteration, disruption or destruction ("HADD") of fish habitat or where there is imminent danger that the death of fish or HADD of fish habitat could occur. The Contractor shall also notify ONTC of any such incidents. In accordance with the *Fisheries Act*, notification must be made without delay to DFO after the Contractor ensures the immediate health and safety risks are managed at the Work site. Updates to DFO may be provided at a later time, if required.

## **WASTE DISPOSAL**

53. **Waste Disposal Plan.** The Contractor shall provide to ONTC for approval a waste disposal plan, and a waste reduction plan if required by Environmental Laws, for the Waste Materials, which plan shall comply with all Environmental Laws and the Specifications. The costs of disposing of the Waste Materials is included in the Contract Price.
54. **Waste Disposal.** The Contractor shall comply with all Environmental Laws in disposing of the Waste Materials. The Contractor shall assume all liability and responsibility for the Waste Materials which are removed from ONTC property by the Contractor and during the transportation of the Waste Materials to the appropriate waste disposal site.
55. **Surplus Materials.** The Contractor shall remove the Surplus Materials from the ONTC right-of-way and provide a credit to ONTC on the Contractor's invoices based on the credit amount per ton of Surplus Materials set out in Schedule B.

## **LIENS**

56. **Construction Liens.** The Contractor shall not permit a subcontractor or supplier to assert any right to a construction, builder's, mechanic's or unpaid vendor's lien for unpaid work or supply of materials (a "lien") or to issue a written notice of lien pursuant to the *Construction Act*.
57. **Vacating Lien.** The Contractor shall, at its cost, promptly discharge, release or vacate or obtain a withdrawal of any lien that is the subject of a claim for lien or a written notice of lien relating to the any of ONTC's property or buildings by a subcontractor or supplier. If such lien is not discharged or withdrawn within 7 calendar days of the service of the written notice of lien or of the registration of the claim for lien, then, without prejudice to any other rights or remedies it may have, ONTC may take whatever steps it deems necessary and appropriate to discharge or obtain a withdrawal of the lien, including payment of any amount owing or claimed thereunder, and seek immediate recovery from the Contractor for the amount of any such payment and any associated costs, including legal costs, all of which shall be payable on demand.
58. **Contractor's Obligations.** Without limiting any of the foregoing, the Contractor shall satisfy all judgments and pay all costs resulting from any construction liens or any actions brought in connection with any liens, or in connection with any other claim or lawsuit brought against ONTC by any person that provided services or materials to the project which constituted part of the Work, and the Contractor shall indemnify ONTC for any and all costs (including, without limitation, legal fees on a solicitor and client basis) ONTC may incur in connection with such claims or actions.
59. **Payment Into Court.** If a subcontractor or supplier registers a claim for lien with respect to all or part of the Work Site or delivers a claim for lien or a written notice of lien to ONTC, ONTC shall have the right to withhold, in addition to the statutory holdback, the full amount of the claim for lien plus either: (a) \$250,000 if the claim for lien is in excess of \$1,000,000 or (b) 25% of the value of the claim for lien if it is less than \$1,000,000 and to bring a motion to vacate the claim for lien and any associated certificate of action in respect of that claim for lien, in accordance with Section 44 of the *Construction Act*, by paying into court as security the amount withheld.
60. **Construction Act.** Section 20(1) of the Construction Act does not apply to this Agreement



and no general lien arises under or in respect of the Work and liens shall arise and expire on a per property basis.

### **PAYMENT FOR THE WORK**

61. **Invoices.** The Contractor shall submit invoices to ONTC at the end of each work cycle. The invoice and required back up material described in section 62 shall be submitted to the ONTC contact person and [pay.invoice@ontarionorthland.ca](mailto:pay.invoice@ontarionorthland.ca) within 7 days after the end of each work cycle. ONTC may, prior to the time it is required to issue payment in respect of an invoice, request any additional information or back up from the Contractor. ONTC shall pay the Contractor the undisputed, properly charged amounts within 28 days after receipt of the invoice.

62. **Proper Invoice.** Each invoice submitted by the Contractor shall include and comply with, as applicable, the following:

- (a) Be in writing;
- (b) Contain the Contractor's name, telephone number and mailing address and contact information of the Contractor's project manager;
- (c) Contain the title of the Project and ONTC's contract number or purchase order number under which the work was performed and the related request for proposal number, as applicable;
- (d) Contain the date the invoice is being issued by the Contractor;
- (e) Identify the period of time the Work which is the subject of the invoice was performed;
- (f) The location of each weld being invoiced and the date each weld was completed;
- (g) The welding report for each weld being invoiced;
- (h) The credit, if any, for the Surplus Materials and the weigh tickets and price for the Surplus Materials;
- (i) The amount the Contractor is requesting to be paid by ONTC, set out in a statement separating out any statutory or other holdbacks, set-offs and HST;
- (j) The name, title, telephone number and mailing address of the person at the place of business of the Contractor to whom payment is to be directed;
- (k) The amount invoiced to date;
- (l) The percentage of the Contract Price invoiced;
- (m) The individual value of Change Orders approved during the invoice period and the cumulative value of Change Orders for the Work; and
- (n) Excluding the first invoice, a declaration stating that all accounts for labour, subcontracts, materials, equipment and other indebtedness which may have been incurred by the Contractor and for which ONTC might in any be held responsible have been paid full up to the previous invoice, except for amounts properly retained as a holdback or as an identified amount in dispute.

**63. Withholding from Payment.** All or part of any payment for an invoice may be withheld by ONTC or set-off against the payments owing to the Contractor for:

- (a) All amounts due from the Contractor to ONTC (including under any indemnity in this Agreement);
- (b) Any amount that ONTC is required to withhold or deduct by the *Construction Act* or applicable laws;
- (c) The amount of any liens for which ONTC has received a written notice of lien or a copy of a claim for lien relating to the Work; or,
- (d) Defective Work including non-compliance with health and safety rules and policies (until it has been re-performed or otherwise remedied to ONTC's satisfaction at the Contractor's sole expense).

**64. Final Completion.** ONTC will consider the Work is complete when, except for any obligations of the Contractor relating to the warranty, the Work has been fully completed in accordance with the Contract Documents, including all Defects remedied to meet the Standard of Care and the requirements of the Contract Documents, and all obligations of the Contractor to subcontractors and anyone else related to the Work are fully satisfied.

**65. Payment on Final Completion.** When the Work has, in the opinion of the Contractor reached final completion, the Contractor shall submit an invoice for final payment, including a complete statement of accounts; a complete statement of all money that the Contractor considers to be due from ONTC arising out of or in connection with the Work, the Contract Documents or any alleged breach of the Contract; details of how the amount claimed in the invoice for final payment is calculated; and, confirmation that all deliverables and approvals of all governmental authorities as required by the Contract Documents have been delivered to ONTC.

### **HOLDBACK**

**66. Phased Release of Holdback.** Each one year period of the Contract, commencing on April 1 in each year and ending on March 31 of each year starting in the second calendar year shall be a phase of the Work for the purpose of section 26.2 of the *Construction Act* ("**Phase**"). ONTC may release the holdback withheld during each Phase 61 days after the end of a Phase provided that:

- (a) there are no preserved or perfected liens relating to the Work; or
- (b) all liens in respect of the Work have been satisfied, discharged or vacated.

### **CONFIDENTIAL INFORMATION**

**67. General Confidentiality Requirements.** The Contractor shall:

- (a) ensure that all Contractor Parties comply with all the provisions of this Agreement relating to Confidential Information and the Contractor shall be responsible for any failure by any Contractor Party to do so;
- (b) use Confidential Information only for the purposes of the Work;

- (c) not copy or transcribe into another form, any Confidential Information received from ONTC except as reasonably necessary; and,
- (d) upon the termination of this Agreement, or earlier upon the request of ONTC, promptly destroy or return (as directed by ONTC) all copies of the Confidential Information disclosed to the Contractor.

68. **Keeping Confidential Information Confidential.** Except as provided in this Agreement, the Contractor shall keep confidential all Confidential Information disclosed to it by ONTC and shall protect the Confidential Information disclosed to it by ONTC, in the same manner and to the same extent that it protects its own Confidential Information. This obligation shall survive the termination of this Agreement.

69. **Disclosing Confidential Information.** The Contractor may disclose Confidential Information if:

- (a) ONTC approves;
- (b) the Contractor is required by law to disclose it, in which case it shall promptly notify ONTC so that ONTC may intervene to prevent the disclosure; or
- (c) the Confidential Information is generally and publicly available.

70. **FIPPA.** The Contractor specifically acknowledges that ONTC is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, and that ONTC may be compelled by law to disclose certain information provided by the Contractor.

71. **Breach of Confidentiality.** The Contractor acknowledges and expressly agrees that any breach by it of this Agreement which does or may result in loss of confidentiality of the Confidential Information would cause ONTC irreparable harm for which damages would not be an adequate remedy. If the Contractor breaches the confidentiality provisions of this Agreement, ONTC shall have the right to seek injunctive relief against the continuing or further breach by the Contractor, without the necessity of proof of actual damages. The right to seek injunctive relief without the necessity of proof of damages shall be in addition to any other right which ONTC may have under this Agreement or otherwise in law or in equity. This section shall continue to bind the Contractor after the expiry or termination of this Agreement.

#### **INDEMNITY AND LIMITATION OF LIABILITY.**

72. **General Indemnity.** The Contractor shall indemnify ONTC and ONTC Parties and save them harmless from and against any and all Losses which may arise by reason of the exercise of the responsibilities and obligations contained in this Agreement by the Contractor or as a result of any breach of the terms of this Agreement by the Contractor or by any act or omission of the Contractor or Contractor Parties, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such claim, unless such claim or damage is caused by the negligent act or omission of ONTC or ONTC Parties. The Contractor shall, at ONTC's election, either assume the defence of every proceeding brought in respect of such Loss, or cooperate with ONTC in the defence, including providing ONTC with prompt Notice of any possible Loss and providing ONTC with all information and

material relevant to the possible Loss. For the purpose of enforcement of this indemnity, ONTC is acting as agent and trustee for the ONTC Parties.

73. **Specific Indemnities.** The Contractor shall indemnify ONTC and ONTC Parties and save them harmless from and against all Losses incurred by ONTC arising from:
- (a) any decision or interpretation by any court or governmental authority that: (i) any of the Contractor Parties is an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Contractor Parties under any laws, including employment insurance, provincial health insurance, income tax or other employment matters;
  - (b) any health, medical disability or similar claims which the Contractor or Contractor Parties may have during or after the term of this Agreement;
  - (c) the Contractor taking any action regarding a Contractor Party following a request by ONTC for replacement of the Contractor Party;
  - (d) the failure of the Contractor to protect the confidentiality of Confidential Information;
  - (e) safety infractions committed by the Contractor under the *Occupational Health and Safety Act* or any other laws, guidelines or public health orders regulating health and safety at the place of the Work;
  - (f) exposure to, or the presence of, Environmental Contaminants which were either brought onto ONTC property by the Contractor or the Contractor mishandled or handled negligently or improperly the substances or materials;
  - (g) a claim from adjacent landowners or other third parties regarding damage to their property due to the execution of the Work; and
  - (h) the release into the environment of Waste Materials that contain Environmental Contaminants during the transportation of such materials from the work site to the certified waste disposal site.
74. **Exception.** The Contractor shall not be liable for any Loss arising from errors or omissions in any of the information which is supplied to the Contractor by ONTC.
75. **Bodily Injury and Property Damage.** The Contractor shall make full and complete compensation for any bodily injury or death to any person and for any damage caused to ONTC's physical property by the Contractor's act or omission or that of the Contractor Parties.
76. **Waiver.** The Contractor waives against ONTC and ONTC Parties any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement or for any injury to or death of any person or for any loss of or damage to any property belonging to the Contractor or Contractor Parties and for any loss or damage of the Contractor unless caused by the negligent act or omission of ONTC or ONTC Parties.
77. **Limitation of Liability.** Notwithstanding any other provision of this Agreement,

- (a) Notwithstanding any other provision of this Agreement, ONTC shall not be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit or damages resulting from interruption of service or transmission. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether ONTC has been advised of the possibility of such damages;
  - (b) ONTC shall not be liable for any amounts in excess of the amount of the Contract Price; and,
  - (c) Any express or implied reference to ONTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of ONTC, whether at the time of execution of this Agreement or at any time during the Term or Renewal Term, shall be void and of no legal effect in accordance with s.28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12.
78. **Survival.** The provisions in this part “Indemnity and Limitation of Liability” shall survive the expiry or termination of this Agreement.

## **INSURANCE**

79. **Insurance.** The Contractor shall obtain, and for as long as this Agreement is in effect, maintain, pay for and, upon request by ONTC from time to time, provide evidence, satisfactory to ONTC, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario, satisfactory to ONTC:
- (a) Commercial General Liability Insurance to a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence, including “Ontario Northland Transportation Commission” as an additional insured, covering bodily injury, personal injury, death and damage to property, including loss of use of such property, containing cross liability coverage and preclude subrogation claims by the insurer against ONTC and endorsed to provide ONTC with not less than thirty (30) days’ Notice, in advance, of any cancellation, change or amendment restricting coverage. The policy shall not exclude coverage related to working on railway property.
  - (b) Automobile Liability Insurance in respect of licensed vehicles, to a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence, including bodily injury, death and damage to property, endorsed to provide ONTC with not less than thirty (30) days’ Notice, in advance, of any cancellation, change or amendment restricting coverage, and in the following forms: standard owner’s form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Contractor, and standard non-owned automobile form policy including standard contractual liability endorsement;
  - (c) Environmental/Pollution Insurance to a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence to cover damages relating to a release of an Environmental Contaminant or a contravention of Environmental Laws; and,
  - (d) Property (Contractor’s Equipment) insurance for the Equipment.

80. **Same.** The Contractor shall ensure that all the insurance is primary and does not call into contribution any other insurance coverage available to ONTC. The Contractor shall not do or omit to do anything which would impair or invalidate the insurance policies.

81. **Workers' Compensation.** The Contractor shall ensure the Contractor Parties are registered for workers' compensation coverage.

### **CONTRACT SECURITY**

82. **Bonds.** Prior to commencement of the Work or within the specified time, the Contractor shall provide a performance bond and a labour and materials payment bond, each issued by a bonding company acceptable to ONTC and licensed to issue such instruments in the jurisdiction of the Work Site, in the amounts and forms as follows:

(a) The amount of the performance bond shall be equal to not less than 50% of the Contract Price and be in the form prescribed by the Construction Act.

(b) The amount of the labour and material payment bond shall be equal to not less than 50% of the Contract Price in the form prescribed by the Construction Act.

83. **Bond Requirements.** The bonds shall guarantee the faithful performance of the Contract in accordance with the Contract Documents, including the requirements for warranties provided for in the Contract Documents and the payment of all obligations incurred in the event of the Contractor's default, including but not limited to the following:

(a) The payment of legal, accounting, architectural, engineering and other consultant expenses incurred by ONTC in determining the extent of Work executed and any additional Work required as a result of the interruption of the Work, and its completion; and

(b) The payment of additional expenses to ONTC in the form of security guard services, light, heat, power, loss of use of premises, and other related costs, payable over the period between the default of the Contract and completion of the Work.

84. **Indemnity.** Without limiting the foregoing in any way, the bonds shall indemnify and hold harmless ONTC for and against costs and expenses (including legal and consultant services and court costs) arising out of or as a consequence of any default of the Contractor under this Contract.

85. **Premiums.** The premiums for bonds required by the Contract Documents shall be included in the Contract Price.

86. **Updated Bonds.** The Contractor shall be responsible for notifying the surety company of any changes made to the Contract Documents or the Contract Price during the course of the Work or any delay in the completion of the Work and shall obtain updated bonds reflecting the changes, if applicable.

87. **Additional Bonds.** Should ONTC require additional bonds by the Contractor or any of its

subcontractors, after the receipt of bids for the Work, the Contract Price shall be increased by the actual costs attributable to providing such bonds. The Contractor shall promptly provide ONTC with any such bonds that may be required.

**88. Contract Documents.** The Contractor represents and warrants that it has provided its surety with a copy of the Contract Documents prior to the issuance of such bonds.

## **DISPUTE RESOLUTION**

**89. Informal Dispute Resolution.** Save and except where the Contractor has given an undertaking, in accordance with the *Construction Act*, to refer a dispute to adjudication, prior to delivering a notice of adjudication in a form prescribed by the *Construction Act*, the parties shall first address all unresolved claims, disputes or controversies of any kind arising out of or in connection with this Agreement or the execution of the Work (hereafter referred to as the “**Dispute**”) in a tiered approach as follows:

- (a) A Dispute shall be referred to ONTC’s representative for the Work and a representative of the Contractor of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days.
- (b) If unresolved, after following the process described in (a), the Dispute shall be referred to the ONTC Director or Vice President who is responsible for the Work and an employee of the Contractor of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days.
- (c) If unresolved after following the process described in (b), the Dispute shall be referred to the CEO of ONTC and the most senior executive employee of the Contractor for resolution within a period not to exceed thirty (30) days.

**90. Adjudication.** If the Dispute remains unresolved despite the Parties’ attempting to resolve it following the process in section 89 (a) to (c), a party may elect to proceed with the Dispute by way of an adjudication. If a party elects to proceed by way of an adjudication, the other party shall not be bound to proceed by way of an adjudication, save and except where the parties are obliged under the *Construction Act*. Where either party has delivered a notice of adjudication in a form prescribed by the *Construction Act*, the procedures and rules set out under the *Construction Act* and the regulations thereto shall govern the adjudication.

**91. Mediation.** If the Dispute remains unresolved despite the Parties’ attempting to resolve it following the process in section 89(a) to (c), a party may elect to proceed with the Dispute under a mediation model to be agreed upon by the parties. A party shall elect to proceed to mediation no later than ten (10) days following the expiry of the timeline set out in section 89 (b) or (c). Where a party elects to proceed with mediation within the timelines prescribed in this section, the other party shall be bound to proceed to mediation. No later than ten (10) days after a party makes an election to proceed to mediation, or such longer period as may be mutually agreed between the parties, the parties shall enter into a mediation agreement which shall set out the mediation process and designate the mediator.

**92. Arbitration.** If neither party elects to proceed to mediation within the timelines outlined in

section 91, or the Parties are unable to enter into a mediation agreement within the time limits, the matter shall proceed and be finally resolved by binding arbitration by a single arbitrator in accordance with the *Arbitration Act*, 1991, S.O. 1991, c. 17 (hereafter referred to as the “**Arbitration Act**”) as amended by an arbitration agreement to be executed by the parties and the arbitrator. The Parties shall mutually agree on the selection of the arbitrator, failing which the arbitrator shall be appointed in accordance with the *Arbitration Act*. The arbitration proceedings shall take place in Toronto, Ontario, Canada. The language of the arbitration shall be English. The Parties agree that any arbitration award, including with respect to costs, shall be binding on the Parties, may be enforced in any court of competent jurisdiction and shall be final and no appeals or judicial reviews shall be permitted as of right or by application to any court of competent jurisdiction, except on errors of law. The Parties shall each bear their own costs and their proportionate share of any joint costs of arbitration, subject to any award of an arbitrator.

93. **Amendment of Time.** The timelines in this part – Dispute Resolution may be amended by mutual agreement of the Parties.

## **TERMINATION**

94. **Termination for Convenience.** ONTC may terminate this Contract at any time for any or no reason. Such termination shall be effective upon the date specified in ONTC’s Notice in writing advising of the termination of the Contract pursuant to this section. In such event, ONTC shall pay for the actual and verifiable Work performed up to the effective date of termination, including demobilization costs, and for such additional costs, if any, directly flowing from and which are a reasonable consequence of the termination, but excluding any consequential, indirect or special damages, termination fees, penalties or levies, and any claims for loss of profit, lost deposits, or lost opportunity. ONTC shall not be liable to the Contractor for any other claims, costs or damages whatsoever arising from such termination of the Contract. Within 3 Working Days of receiving the Notice of termination by ONTC, the Contractor shall deliver a Notice in writing to each of its subcontractors confirming the effective date of the termination.

95. **Early Termination.** This Agreement may be terminated early as follows:

- (a) by the mutual written agreement of the parties;
- (b) by ONTC immediately if the Contractor is in default or breach in respect of any condition or provision of this Agreement;
- (c) by the Contractor upon Notice to ONTC, where ONTC has failed to observe or perform any of its obligations under this Agreement, and such failure has not been remedied to the reasonable satisfaction of the Contractor within thirty (30) days after the Contractor has provided Notice to ONTC detailing the nature of such failure and requiring that such failure be remedied.

96. **Immediate Termination.** This Agreement will terminate immediately upon:

- (a) the winding up or dissolution of the Contractor; or
- (b) subject to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, the



Contractor making an assignment for the benefit of its creditors, becoming bankrupt or insolvent, undergoing reorganization, making a proposal to its creditors, or otherwise becoming financially unable to perform its obligations under this Agreement.

97. **Early Termination:** If this Agreement is terminated early under section 95 (b), then:

- (a) ONTC is excused from further performance under this Agreement;
- (b) any money payable by the Contractor to ONTC is immediately due and payable;
- (c) ONTC shall not be responsible for paying any amount over and above the chargeable amounts, including payment on a pro-rated basis if applicable, incurred up to the effective date of such termination, or a later date if Work, already commenced by the Contractor, cannot reasonably be discontinued until such later date;
- (d) ONTC shall retain any rights, powers and remedies it has or may have against the Contractor; and
- (e) ONTC may enter an agreement with another person to provide the Work. The Contractor shall be liable for all costs incurred by ONTC in having the Work completed by another Contractor.

## **GENERAL**

98. **Assignment.** Neither party may assign their respective rights and obligations under this Agreement without first obtaining the written consent of other party, provided, however, that either party may assign this Agreement to an affiliate or the successor of its business upon written Notice to the other party. This Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors (including any successor by reason of amalgamation, merger or statutory arrangement of any party) and permitted assigns.

99. **Notice.** Any Notice under this Agreement shall be given in writing and delivered personally or by fax, email or prepaid courier addressed as follows:

To ONTC at:

Ontario Northland Transportation Commission 555 Oak Street

North Bay, ON P1B 8L3

Attention: Merick Letourneau

T: 705-544-2292 X 128

F: 705-472-4267

E: Merick.letourneau@ontarionorthland.ca

With a copy to Legal Services

E: legal@ontarionorthland.ca

To the Contractor at:

or at such other address or addresses as ONTC and the Contractor may designate from time to time. The date of receipt of any such Notice shall be the date of delivery.

100. **No Waiver.** No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations in this Agreement shall be a waiver of any subsequent breach or the breach of any other covenants, agreements or obligations, nor shall any forbearance by a party to seek a remedy for any breach by the other party be a waiver by the party of its rights and remedies with respect to such breach or any subsequent breach.
101. **Relationship.** The Contractor is an independent contractor of ONTC and none of the Contractor Parties are employees of ONTC. The Contractor and the Contractor Parties have no power or authority to bind ONTC or to assume or create an obligation, express or implied, on ONTC's behalf, nor shall the Contractor or a Contractor Party represent that they have such power and authority. Nothing contained in this Agreement shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties.
102. **Governing Law.** This Agreement shall be governed by and constituted in accordance with the laws in force in the Province of Ontario, excluding any conflict of laws principles. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.
103. **Severability.** Should any section or part or parts of any section in this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon ONTC and the Contractor as though such section or part or parts thereof had never been included in this Agreement.
104. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties and supersedes any and all prior understandings, discussions, negotiations, commitments, representations, warranties, and agreements, written or oral, express or implied between them with respect to the subject of this Agreement. No amendment, variation or change to this Agreement shall be binding unless the same shall be in writing and signed by the parties.
105. **Survival.** In addition to those provisions which are expressly stated to survive the termination or expiration of this Agreement, the provisions of this Agreement that are by their nature intended to survive termination or expiration of this Agreement shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.
106. **Counterparts and Electronic Delivery.** This Agreement may be executed and delivered by facsimile or electronic transmission and the parties may rely upon all such facsimile or electronic signatures as though such facsimile or electronic signatures were original signatures. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.

**[Signature Page follows]**

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT.

**ONTARIO NORTHLAND TRANSPORTATION COMMISSION**

Per \_\_\_\_\_  
Jonathan Corley, VP Rail Operations

Date \_\_\_\_\_

I have authority to bind the corporation

Per \_\_\_\_\_

Date \_\_\_\_\_

I have authority to bind the corporation.

**SCHEDULE A**  
**SCOPE OF WORK**

**SCHEDULE B**  
**CONTRACT PRICE**

# APPENDIX B

**PART 2 – REQUEST FOR PROPOSALS  
 SUMMARY OF REQUIREMENTS  
 SCHEDULE 2-A  
 RFP DATA SHEET**

<b>RFP 2024 006                  Joint Elimination Program and Electric Flash-Butt Welding</b>	
<b>Contact Details</b>	
Contact Person	Ashley Commanda, Manager, Public Procurement
Contact Information	555 Oak Street East North Bay, Ontario, P1B 8L3 <a href="mailto:Ashley.commanda@ontarionorthland.ca">Ashley.commanda@ontarionorthland.ca</a> (705) 472-4500 ext. 398
<b>Proposal Detail</b>	
Respondents' Meeting	There will not be a Respondents' Meeting. Respondents shall seek any clarifications up to four (4) Business Days prior to the Submission Deadline Date and Time.
Validity of Proposals	90 days following the Submission Deadline
Format of Submission	Respondents shall submit their Proposal through MERX Electronic Bid Submissions (EBS). Refer to Part 1, Request for Proposals, Section 5.1 (1) (a). <b>MERX EBS does not allow Proposals to be uploaded after the Submission Deadline; therefore, Respondents shall ensure they allow sufficient time to upload the documents.</b>  Proposals which are submitted by facsimile transmission, email or by electronic means other than MERX <u>will NOT</u> be considered.
Two-Envelope Process	This procurement will not be a two-envelope process.
Distribution Method	The RFP Documents will be posted on the ONTC website and MERX. Any addenda to the RFP will be posted in these locations.

**PART 2 – REQUEST FOR PROPOSALS  
 SUMMARY OF REQUIREMENTS  
 SCHEDULE 2-A  
 RFP DATA SHEET *continued***

RFP 2024 006 Joint Elimination Program and Electric Flash-Butt Welding			
Proposal Detail <i>continued</i> – <u>Note the requirements below are new to ONTC</u>			
Submission Requirements	Respondents are required to submit <b>all</b> of the documents listed below as part of their Proposal. Respondents shall confirm they have included the documents listed below with their Proposal by placing a checkmark in the column “Included in Proposal”. If the Respondent fails to include a document listed below as being “Material”, the respondent may be disqualified in accordance with section 6.2 (3) of the RFP.		
	<b>Item</b>	<b>Included in Proposal (indicate with ✓)</b>	<b>Item is classified as Material</b>
	This checklist		
	Proposal Form 1 - Proposal Submission Form		Material
	Proposal Form 1-A - Proposal Submission Form		Material
	Proposal Form 2 - Respondent’s General Information		Material
	Proposal Form 3 - Acknowledgment to Comply with Part 3 – Request for Proposals Specifications		Material
	Proposal Form 4 - References		Material
	Proposal Form 5 - Compliance with Contract Documents		
	Proposal Form 6 - Health, Safety and Environment		Material
	Proposal Form 7 - Schedule of Materials		
	Proposal Form 8 - List of Equipment		
	Proposal Form 9 - Schedule and Proposed Approach <u><b>Include Construction Schedule in Gantt chart format and Written Narrative Proposed Approach</b></u>		Material
	Proposal Form 10 - Schedule of Progress Payments		
	Proposal Form 11 - List of Personnel <b>and Resumes</b>		Material
	Proposal Form 12 - Current Labour Agreements		
	Proposal Form 13 - Contractor’s Qualification Statement <u><b>Include Company Profile and 3 Project Descriptions</b></u>		Material
	Proposal Form 14 - Claims		
Agreement to Bond as prescribed in Part 1, Request for Proposals, Section 4.5.		Material	



**PART 2 – REQUEST FOR PROPOSALS**  
**SUMMARY OF REQUIREMENTS**  
**SCHEDULE 2-A *continued***  
**RFP DATA SHEET**

<b>RFP 2024 006</b>				
<b>Joint Elimination Program and Electric Flash-Butt Welding</b>				
<b>Important Dates</b>				
Publication Date	Wednesday, February 14, 2024			
Participation Registration Form	Complete and submit to the Contact Person as soon as possible			
Deadline for Additional Information Request	Four (4) full Business Days prior to the Submission Deadline			
Submission Deadline Date and Time	Friday, March 15, 2024 at 2:00:00 p.m. (EST)			
Target Completion Date	Spring 2024			
<b>Notes Pertaining to Final Agreement</b>				
Term	ONTC will enter into a three (3) year contract with the Successful Respondent. ONTC may, in its sole discretion, extend this contract for an optional fourth (4 <sup>th</sup> ) year and optional fifth (5 <sup>th</sup> ) year.			
<b>Procedure of Selection</b>				
Mandatory Requirements	Respondents must first satisfy that all of the Mandatory Requirements listed below have been met. Respondents will receive a pass/fail for each Mandatory Requirement. Respondents who fail any of the Mandatory Requirements will be disqualified from the RFP Process.			
		<b>Mandatory Requirement</b>	<b>Pass</b>	<b>Fail</b>
		Respondent has submitted all of the documents as specified in the Submission Requirements listed in Part 2, Request for Proposals, Summary of Requirements, RFP Data Sheet Respondent has provided sufficient evidence to pass the Contractor Safety Pre-Qualification (Part 4 – Form of Proposal, Proposal Form 6, Health, Safety and Environment)		
		Respondent has achieved a minimum score of 6 under Experience and Qualifications		
		Respondent has achieved a minimum score of 21 under Schedule and Proposed Approach		
		Agreement to Bond included in Proposal Submission (scanned copy acceptable)		

**PART 2 – REQUEST FOR PROPOSALS  
 SUMMARY OF REQUIREMENTS  
 SCHEDULE 2-A *continued*  
 RFP DATA SHEET**

RFP 2024 006 Joint Elimination Program and Electric Flash-Butt Welding		
Procedure of Selection <i>continued</i>		
Evaluation General Procedure	ONTC will proceed with an evaluation of the Proposals. The evaluation will be based on the following criteria:	
Evaluation Criteria	<b>Description</b>	<b>Weight</b>
	<p><b>Price</b>                      ONTC will use the following to calculate the initial score for price:                      Lowest price of all Proposals / price of Respondent x 30 = Score                      ONTC reserves the right in its sole discretion to consider the best overall value when evaluating price and adjust the score accordingly. If ONTC, in its sole discretion, is of the opinion that the Respondent has submitted a price that is too low to adequately complete the scope of work, then ONTC reserves the right not to use that price as the “Lowers price of all Proposals”.</p>	30
	<p><b>Experience and Qualifications</b>                      ONTC will assess Respondents’ experience and qualifications using the information supplied as part of Part 4 of this RFP. The following sub-weights will apply:                      Company Profile and Resumes of Key Personnel – <b>5 points</b>                      Project Profile 1,2,3 – <b>5 points</b>                      (ONTC may or may not contact references as part of the evaluation and may use this information as part of this score)</p>	10
	<p><b>Schedule and Proposed Approach</b>                      ONTC will be looking for the Contractor to fully demonstrate the following:                      Is the Schedule provided in the proper format and is it logical? – <b>5 points</b>                      Detail your ability and experience in joint elimination, electric flash-butt welding, and destressing the rail behind the flash-butt welding operation. Provide an example of your daily work report, and daily rail destressing report – <b>15 points</b>                      Detail your ability and plan to remove all surplus OTM and scrap rail ends from ONTC property – <b>5 points</b>                      Does the proposed approach prove to ONTC that you are capable of completing 10,000 rail joints per year in priority order and has a contingency been built in to the proposed approach?                      Does it provide enough detail to demonstrate how you plan to deliver the required services per the critical delivery schedule and locations specified in the RFP – <b>10 points</b></p>	35

**PART 2 – REQUEST FOR PROPOSALS  
 SUMMARY OF REQUIREMENTS  
 SCHEDULE 2-A *continued*  
 RFP DATA SHEET**

RFP 2024 006 Joint Elimination Program and Electric Flash-Butt Welding		
Procedure of Selection <i>continued</i>		
Evaluation Criteria	<b>Local Knowledge</b> Describe your experience with the climatic and environmental requirements in Northern Ontario – <b>10 points</b>	10
	<b>Local Benefit</b> Describe how and when you will use local workforce, local vendors, local manufacturers, local contractors, and local apprentices/trainees to achieve the project goals and provide the requested services – <b>5 points</b> Describe your organization’s diversity programs – <b>5 points</b>	10
	<b>Environmental and Sustainability</b> Provide evidence of compliance to Ontario’s environmental requirements (e.g. recycling, waste management, etc.) – <b>5 points</b>	5
	<b>Total</b>	<b>100</b>

## APPENDIX C

**PART 4 – FORM OF PROPOSAL  
PROPOSAL FORM 1  
PROPOSAL SUBMISSION FORM**

RFP Number: RFP 2024 006

Description: Joint Elimination Program and Electric Flash-Butt Welding

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Submitted To: ONTARIO NORTHLAND TRANSPORTATION COMMISSION

We, \_\_\_\_\_  
(Name of Respondent)

having carefully examined, understood, and completed the Request For Proposals Documents as described in Section 2 – The RFP Documents, and Addenda No. \_\_\_ to No. \_\_\_ having familiarized ourselves thoroughly with local conditions, hereby propose to supply the services associated with the joint elimination program and electric flash-butt welding as outlined on the following Proposal Form 1-A.

ONTC reserves the right in its sole discretion to sub-divide and/or bundle the Goods and/or Services which are the subject of this RFP and award one or any numbers of separate contracts for the Goods and/or Services.

Purchase is subject to budgetary approval of expenditures.

Proposal Forms:

The information contained in the Proposal Forms, as listed in the Request for Proposals and attached hereto, forms an integral part of this Proposal.

Declarations:

We hereby declare that:

- (a) We will execute the Agreement within ten (10) Working Days of receipt of the Final Agreement;
- (b) We agree to perform and fully complete the Work on or before the agreed upon schedule;
- (c) The Work is to start no later than the agreed upon start date in the schedule;
- (d) The statutory holdback pursuant to the Construction Act will be 10% and a warranty holdback of 2%;
- (e) We will provide the required evidence of insurance, as specified in the Ontario Northland – draft agreement included in Part 5 of the RFP Documents, with our execution of the Agreement;
- (f) For the General Liability Insurance, Ontario Northland Transportation Commission is to be included as an additional insured;
- (g) Coverages and limits of insurances will be provided and maintained by all Subcontractors in accordance with subsection (e) above;

**PART 4 – FORM OF PROPOSAL  
PROPOSAL FORM 1 *cont'd*  
PROPOSAL SUBMISSION FORM**

- (h) No person, corporation or other legal entity other than the undersigned has any interest in this Proposal or in the proposed Contract for which this Proposal is made;
- (i) This Proposal is irrevocable for a period of ninety (90) days from the Submission Deadline;
- (j) It is understood and agreed that if this Proposal is accepted, we will not commence the Work until we have executed the Final Agreement and delivered it to ONTC and/or we are advised in writing by ONTC to proceed with the Work;
- (k) All copies of plans and specifications and other said RFP Documents furnished to us for the purpose of this Proposal are the property of ONTC and shall be kept confidential and not divulged in any manner by us. They will not be used on other work by us and will be returned to the issuing office when requested or promptly when not bidding; and
- (l) We have no right to reimbursement by ONTC for expenses, both direct and indirect, which may have been incurred by us in preparing this Proposal or otherwise participating in the RFP Process.

Communications Prohibition:

The Respondent acknowledges that ONTC will lead and make any announcements relating to the Project, this RFP or the award of the Contract. The Respondent shall not make any announcement of any kind, including press releases, social media posts, public declarations, or any form of publication or announcement, in relation to the Project, this RFP and the award of the Contract unless prior written consent is given by ONTC. Should the Respondent be contacted by any media outlet or others person or entity wishing to make any form of publication or announcement, or seeking any information, in relation to this Project, the Contractor shall immediately notify ONTC.

Signed and submitted for and on behalf of:

Contractor:

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Street Address or Postal Box Number)

\_\_\_\_\_  
(City, Province and Postal Code)

Signature:

\_\_\_\_\_  
I have authority to bind the corporation.

Name and Title:

\_\_\_\_\_  
Email:

Date at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024