



The St. Lawrence
Seaway Management
Corporation

Corporation de Gestion
de la Voie Maritime
du Saint-Laurent

GENERAL CONDITIONS

Consulting and Professional Services

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Consulting and Professional Services

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GC1 Interpretation

1.1 The following definitions of terms used in the contract shall apply:

- 1.1.1 "Owner Representative" means the officer or employee of the Owner designated pursuant to the A-1 Specifications and a person specially authorised by the Owner Representative to perform, on his behalf, any of his functions under the contract;
- 1.1.2 "contract" covers any document mentioned in the document entitled Articles of Agreement;
- 1.1.3 "invention" means any undertaking, any process, any machine, fabrication or composition of materials or any improvement thereof;
- 1.1.4 "President" means the person holding the position of President of The St. Lawrence Seaway Management Corporation, and includes a person acting for, or if the office is vacant, in the place of such President, and his successors in the office, and his or their lawful deputy and any of his or their representatives appointed for the purpose of the contract;
- 1.1.5 "prototype" means a model, a scale model, a sample or a first specimen;
- 1.1.6 "technical documentation" includes drawings, reports, photographs, specifications, software elements, surveys, calculations and other data, information and documents collected, compiled, drafted or produced, including computer outputs;
- 1.1.7 "Consultant Services" include, unless otherwise noted in the contract, everything that the Consultant must do, supply or deliver to comply with his obligations under the contract.
- 1.1.8 "construction work" includes, unless specifically noted otherwise in the contract, everything that must be done, supplied or delivered by a contractor who will be hired to execute the construction work for which the Consultant must supply Consultant Services such as design, specifications and drawings as well as construction supervision and inspection services under this contract as prescribed in the Terms of reference.

GC2 Successors and Assigns

2.1 The contract shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns who are bound by its dispositions.

GC3 Assignment of Contract

3.1 The contract may not be assigned by the Contractor, either in whole or in part, without the written consent of the President. Any assignment done without this consent is void.

3.2 The assignment in whole or in part of the contract does not free the Consultant of any of the obligations imposed on him by the contract; it does not impose any obligation to the Owner or the President.

GC4 Time of Essence

4.1 Time is of the essence of the contract.

4.2 Any delay in the execution of the obligations imposed on the Consultant by the contract which is attributable to an event which is out of his control and which he cannot prevent without supporting exorbitant expenditures by using, for example, other work plans including other resources, or other means, constitutes an excusable delay. The following is a non limitative list of such events; act of God, acts of Her Majesty, of the local or provincial governments, fires, flooding, epidemics, quarantines, strikes or labour unrest, embargos and exceptionally inclement temperature.

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GC4 Time of Essence (continued)

- 4.3 The Consultant should warn the President as soon as an event occurs that causes an excusable delay. He shall describe, in his notice, the cause and the circumstances of the delay and mention the part of the Consultant Services which is affected. Upon request from the Owner representative, the Consultant shall supply a description, in a form judged acceptable by the President, other work plans in which he mentions other resources and other means which he could use to avoid the delay in question and prevent the occurrence or others. Upon receiving the written approval of the work plan from the President, the Consultant shall implement his plans and take all reasonable measures to eliminate the excusable delay.
- 4.4 If the Consultant fails to respect the requirements specified in the contract regarding this notice, any delay which could be excusable will not be considered as such.
- 4.5 Whether the Consultant conforms or not to the requirements of Article GC4.3, the Owner may exercise the right to terminate the work as allowed under Article GC11.

GC5 Indemnification

- 5.1 The text of Article GIC 1 of the document titled *Insurance Conditions* applies to this part.

GC6 Notices

- 6.1 When the contract requires that one of the parties give a notice, directive or any other indication, or present a request, the communication shall be done in writing and is valid if it is given in person or transmitted by registered mail or facsimile sent to the recipient, at the address mentioned in the contract; moreover, the communication is deemed completed if the recipient acknowledges receipt of the registered mail and by facsimile when transmitted. The address of one of the contracting parties may be modified by means of a notice given in the manner specified in this Article.
- 6.2 If the Consultant neglects to inform the Owner in writing and obtain directives, as specified in Article 6.1, and executes the Consultant Services knowing he is in contravention to a law, an order, a rule, a regulation or any code, the Consultant will be responsible for the infractions there from and shall correct them. The Consultant shall also bear all the costs, expenditures and damages attributable to non-compliance with the requirements of these laws, orders, rules, regulations or codes.

When the Consultant represents the Owner in a contract with a sub-consultant, the sub-consultant is then responsible for informing the Consultant, in the manner described in the above Article, and the Consultant is responsible for informing the sub-consultant.

GC7 Indemnification of Workers – WSIB and CNESST

- 7.1 Before starting the Consultant Services, the Consultant shall supply proof of conformance to the Workplace Safety and Insurance Board (WSIB) in the province of Ontario or to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) in the province of Quebec, including proof of payments established under their regime.

- 7.1.1 An individual Consultant (self-employed person who does not have any employee, as defined in Part 1 of the Act) shall, jointly with the Owner, fill WSIB form n° 1158 upon determination of the self-employed person status, as well as any other form which replaces it or other applicable document required by the same Act. If the Consultant has the self-employed person status, as defined by the WSIB, then the Consultant has the choice to insure himself or not through the WSIB. The Consultant shall supply to the Owner proof of his choice and, if he has elected to insure himself, the Consultant shall provide proof thereof (attestation of payment) at the beginning of the Consultant Services and every 60 days thereafter.

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GC8 Canadian Labour and Materials

- 8.1 The Consultant shall use Canadian labour and materials in the performance of the Consultant Services to the full extent to which they are available, consistent with proper economy and the expeditious carrying out of the Consultant Services.

GC9 Changes in the Consultant Services

9.1 Work Orders

- 9.1.1 The Owner may, at any time, through a written Order given to the Consultant, make changes by modification, addition or reduction of the Consultant Services within the general scope of the contract without invalidating the Agreement.
- 9.1.2 After receiving a Work Order, the Consultant shall quickly advise the Owner:
- 9.1.2.1 Of the feasibility of the modifications to the Consultant Services as prescribed in the Work Order;
- 9.1.2.2 Of the cost of these modifications.
- 9.1.2.3 Whether the Consultant considers that the modifications will have an impact on the amount or the schedule of the contract, and
- 9.1.2.4 Of the effect, if any, that these modifications will have on the Agreement.
- 9.1.3 The Consultant will be entitled to appropriate and equitable adjustments to the amount of the contract and to the time allocated to execute the Consultant Services for such modifications.
- 9.1.3.1 The parties will negotiate and agree in writing on these adjustments before the beginning or implementation of the appropriate modifications.
- 9.1.3.2 Except as prescribed in Article 9.1.4 hereunder, if the Consultant makes any modification before agreement between the parties on the cost of such modifications, the Consultant will have no right to claim any fees, costs, expenditures or disbursements from the Owner for such modification and related to any period prior to the date when such an agreement has been concluded.
- 9.1.4 If the parties cannot rapidly agree whether an element constitutes a modification to the schedule or on the amount, if any, by which the contract must be decreased or increased, this question will be solved according to the disagreement resolution procedures established in Article GC10, *Arbitration*, of these General Conditions provided that:
- 9.1.4.1 If, in the opinion of the Owner, the modification must be made, then the Owner, as a first step, will determine the cost or the delay attributable to the modification, subject to final resolution according to Article GC10, *Arbitration*.
- 9.1.4.2 The Consultant shall, until such resolution, nonetheless undertake to execute the services required due to such modifications.

9.2 Request for Modification

- 9.2.1 The Consultant shall submit all Requests for Modification to the Owner for approval complete with all the appropriate justification documents.
- 9.2.2 No Request for Modification shall be implemented or incorporated in the Consultant Services unless and until such Request for Modification has been accepted by the Owner.

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- 9.2.3 The Owner will bring the adjustments to the schedule and to the amount of the contract following a Request for Modification, upon occurrence of circumstances which are out of the reasonable control of the Consultant and which have an impact on the Consultant costs or on the execution time of the Consultant Services.
- 9.2.4 If the parties cannot rapidly agree whether an element constitutes a modification to the schedule or on the amount, if any, by which the contract must be decreased or increased, this question will be solved according to the disagreement resolution procedures established in Article GC10, *Arbitration*, of these General Conditions.

GC10 Arbitration

- 10.1 Any dispute or disagreement between the Owner and the Consultant regarding anything under the contract will be solved according to the process established by the contract. This Article GC10 does not modify any other article of this contract.
- 10.2 If the process established by the contract does not solve the dispute or disagreement or if the contract does not include a process to solve a dispute or disagreement, the Owner and the Consultant may submit the dispute or disagreement to an arbitration tribunal for examination and decision.
- 10.3 The decision of the arbitration tribunal shall be final and without appeal and will be binding for the Owner and the Consultant.
- 10.4 The arbitration tribunal shall conform to the *Commercial Arbitration Code* which is mentioned in the *Commercial Arbitration Act* (R.S.C. 1985, Chap. 17, 2nd Supp. and amendments).
- 10.5 The arbitration will be held in the province in which the majority of the work is performed.
- 10.6 The language of the arbitration procedures will be the language in which the contract is written.
- 10.7 All the written communications shall be provided to the Owner at his head office and to the Consultant at his address specified in the contract unless a party provides a change of address to the other party.
- 10.8 The Owner and the Consultant will name a sole arbitrator who will constitute the arbitration tribunal. If the Owner and the Consultant cannot agree on the nomination of a sole arbitrator and if a party requests the nomination an arbitration tribunal composed of three arbitrators, such a tripartite tribunal will be named according to the *Commercial Arbitration Code* which is mentioned in the *Commercial Arbitration Act* (R.S.C. 1985, Chap. 17, 2nd Supp. and amendments).
- 10.9 The arbitration tribunal will solve the dispute according to the law applicable in the province in which the majority of the work is performed. The arbitration tribunal will not be authorised to solve ex aequo and bono or as amiable composer.
- 10.10 During the arbitration, the Consultant shall continue the work under the contract. The arbitrator will not dispense the Consultant from conforming to the decision or directive in question. The fact that the Consultant conforms to the decision or to the directive which he contests will not be construed as an admission by the Consultant of the correctness of this decision or directive.

GC11 Termination or Suspension of the Work

- 11.1 The President may, by written notice to the Consultant, terminate or suspend the execution of the totality or of any part or parts of the Consultant Services.
- 11.2 All Consultant Services completed by the Consultant and judged satisfactory by the Owner before the notice is sent will be paid by the Owner according to the contract articles; for all Consultant Services non completed at the time when this notice is given, the Owner will pay to the Consultant the pertinent costs, accurately determined in the contract; and pay, in addition, a sum representing a reasonable indemnity with respect to the Consultant Services performed.

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- 11.3 To the sum which is paid to the Consultant pursuant to Article GC11.2, is added the reimbursement of fees due to the termination, following this notice, of commitments he has made and related fees, as well as commitments he has made or obligations pursuant to the Consultant Services.
- 11.4 The payment or the reimbursement required pursuant to Article GC11 will only be made provided that it has been proven to the satisfaction of the President, that the costs and expenses have actually been incurred by the Consultant and that they are fair and reasonable and really attributable to the termination or the suspension of part or of the totality of the Consultant Services.
- 11.5 The Consultant is not entitled to any adjustment which would add up, with the sums which have been paid or which are due to him, to a total superior to the price included in the contract for the complete or a part of the Consultant Services.
- 11.6 The Consultant cannot claim any sum as compensation or indemnity or with respect to damages or profit losses or for any reason directly or indirectly linked to a measure taken by the President or to a notice given by him pursuant to Article GC11, except in the manner and in the amount which are explicitly indicated.

GC12 Termination of the Work Due to the Consultant Failing to his Obligations

- 12.1 The Owner may, by written notice to the Consultant, terminate part or the totality of the Consultant Services:
- 12.1.1 If the consultant is bankrupt or becomes insolvent, is subject to a receiving order in favour of his creditors, if an order has been issued or a resolution adopted for the liquidation of his business, or if the Consultant relies on any legislation with respect to bankrupt or insolvent debtors, or
 - 12.1.2 If the Consultant does not fulfill one of the obligations imposed on him by the contract or if the President feels that the slowness of the progress compromises the execution of the contract within the time planned therefore.
- 12.2 If the Owner terminates part or the totality of the Consultant Services pursuant to Article GC12.1, the Owner may take the measures judged appropriate by him for the Consultant Services which have been stopped to be completed. The Consultant shall then pay to the Owner any additional cost required for completion of the Consultant Services.
- 12.3 At the time of terminating the Consultant Services pursuant to Article GC12.1, the President may order the Consultant to provide the Owner in the manner and to the extent that he specifies, the property title of all Consultant Services executed which have not been delivered and accepted before this stoppage as well as the materials and the work underway which the Consultant has acquired or produced specifically for the execution of the contract. The Owner will pay the Consultant for all Consultant Services delivered following this Order and that he has accepted, the amount that these Consultant Services have cost to the Consultant plus a sum proportional to the part of the fees determined in the contract; he will also pay the fair and reasonable costs which he has incurred with respect to materials or Consultant Services underway which have been handed over following the Order in question. The Owner may retain, on the sum due to the Consultant, the sum that the President estimates necessary to protect the Owner against additional costs that may be required to complete the Consultant Services.
- 12.4 The Consultant is not entitled to any adjustment which would form, together with the sums which have been paid to him or which are due to him, a total superior to the price included in the contract for the complete or part of the work.
- 12.5 If, after having given the notice of work termination pursuant to Article GC12.1, the President discovers that causes independent from the Consultant have prevented him from fulfilling his obligations, the notice will be considered as having been issued pursuant to Article GC11.1, and the rights and the obligations of the parties to the contract will be governed by Article GC11.

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GC13 Records to be Kept by the Consultant

- 13.1 The Consultant shall keep records and appropriate accounts of what the work cost him and of all expenses and of all commitments he makes with respect to this work, including bills, receipts and justification documents, which may, at any reasonable time, be verified and inspected by the authorised representatives of the President, who may make copies or take excerpts thereof.
- 13.2 The Consultant shall also make available the office space required by the verifiers and inspectors and provide them with all the information which the President or they may need regarding these documents.
- 13.3 The Consultant shall not dispose of the documents mentioned here above without the written consent of the President; to the contrary, he shall keep them and make them available to the verifiers and inspectors as long as may be specified elsewhere in the contract or, in the absence of such specification, for two years following the completion of the work.

GC14 Intellectual and Other Ownership, Including Copyright:

- 14.1 The technical documents and the prototypes produced by the Consultant for the execution of the work included in the contract are and remain the property of the Owner; the Consultant shall fully account for these documents and prototypes to the President, in the manner prescribed by him.
- 14.2 The technical documents shall bear the following note relative to copyright.
- ©ST. LAWRENCE SEAWAY MANAGEMENT CORPORATION (CGVMSL)
- 14.3 The technical information or invention designed, tune-up or in application for the first time during the execution of the work under the contract is the property of the Owner. The Consultant has no right on them or with respect to them. He shall neither disclose, nor use them other than in the execution of the work included in the contract, nor sell to others than the Owner any part in which this information or this invention has been used.

GC15 Personal Information and Privacy

- 15.1 With respect to personal information, the Consultant shall conform to the *Personal Information Protection and Electronic Documents Act, 2001* (PIPEDA) and to all other applicable acts or regulations relative to the protection of private life. The Owner will treat the personal information supplied by the Consultant in the exercise of providing services to the Owner according to the Policy on the Protection of Personal Information of the Owner and to the PIPEDA.

GC16 Conflicts of Interest

- 16.1 The Consultant declares that he has, in the business of a third party, no financial interest which could produce or seem to produce a conflict of interest relative to the execution of the work. Should he acquire such interests before the expiration of the contract, he will declare it immediately to the representative of the President.

GC17 Consultant Status

- 17.1 The contract is for the supply of a service and commits the Consultant, as an independent contractor, only to provide a service. Neither he nor any member of his personnel is committed by the contract as an employee, a public servant, or an agent of the Owner. Moreover, the Consultant agrees that he is solely responsible for all the payments or deductions which must be made, including for the Canada Pension Plan, the Régime des rentes du Québec, the unemployment insurance, the occupational accident indemnification regime or income tax.

GC18 Guarantee Given by the Consultant

- 18.1 The Consultant guarantees he has the knowledge and the aptitudes required to execute the work included in the contract.
- 18.2 The Consultant guarantees that he will supply services of a quality at least equal to what clients normally expect, in a similar situation, from a qualified consultant.

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GC19 Members of House of Commons and Senate

19.1 No member of the House of Commons or Senate shall be admitted to any share or part of the contract or to any benefit arising there from.

GC20 Amendments

20.1 No amendment, addition and suppression to the contract, and no dispensation relative to the modalities therein shall be valid unless it has been added to the contract and signed by both contracting parties.

GC21 Totality of contract

21.1 The contract represents everything that has been agreed upon between the parties on a given subject and cancels any negotiation, communication or prior agreement on the same topic, whether verbal or in writing, unless it is incorporated in the contract itself.