

TENDER DOCUMENTS

SECTION 9

CONTRACT SECURITY AND INSURANCE CONDITIONS

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9.1 CONTRACT SECURITY CONDITIONS

9.1.1 OBLIGATION TO PROVIDE CONTRACT SECURITY

- 9.1.1.1 The Contractor shall, at its own expense, provide either or both of the contract securities specified in Article 9.1.2 *Acceptable Types and Amounts of Contract Security*.
- 9.1.1.2 The contract security or securities provided by the Contractor pursuant to paragraph 9.1.1.1 shall be forwarded to the Owner within ten (10) days of receipt of the Notice of Contract Award.

9.1.2 ACCEPTABLE TYPES AND AMOUNTS OF CONTRACT SECURITY

- 9.1.2.1 The Contractor shall provide to the Owner, in accordance with Article 9.1.1 *Obligation to Provide Contract Security*:
- 9.1.2.1.1 a performance bond and a labour and material payment bond, each representing at least 50% of the amount specified in the Notice of Contract Award; or
- 9.1.2.1.2 a security deposit in an amount to be determined and accepted by the Owner.
- 9.1.2.2 The performance bond and the labour and material payment bond specified in paragraph 9.1.2.1.1 shall be in a form approved by the Owner and be from a company whose bonds are recognized thereby. The Owner requires federal bonds; standard bonds will not be accepted.
- 9.1.2.3 The security deposit referred to in paragraph 9.1.2.1.2 shall be made in the form of a bank transfer.

9.2 INSURANCE CONDITIONS

The Contractor shall, at its own expense, purchase and maintain the insurance policies as described below from companies approved by the Owner.

9.2.1 GENERAL INSURANCE CONDITIONS

9.2.1.1 In this Section:

9.2.1.1.1 the term “Worksite” means the property within the perimeter of the project site, plus an area of 100 metres (300 feet) outside the perimeter of the site;

9.2.1.1.2 the term “Occurrence” means any loss, catastrophe or accident, or series of losses, catastrophes or accidents arising out of a single event. If such event lasts for a certain period of time, it shall be deemed to be a single occurrence. If the commencement of the event causing the loss occurs before the expiry date of the policy, the insurer(s) shall be liable for any loss incurred after the expiry of said policy, if the loss results from such event.

9.2.1.2 Indemnification

9.2.1.2.1 The Contractor shall indemnify and save harmless the Owner and His Majesty in right of Canada from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by whomsoever made, brought or prosecuted and based upon, arising out of, connected with, occasioned by or attributable to the activities of the Contractor, its employees, agents and subcontractors, as well as those of their subcontractors, in the performance of the work covered by the Contract, including any infringement or alleged infringement of a patent or any other form of intellectual property.

9.2.1.2.2 For the purposes of paragraph 9.2.1.2.1, the term “activities” includes any act or omission, as well as any delay in performing an act.

9.2.1.3 Contractor’s Obligations

9.2.1.3.1 The Contractor shall, at its own expense, purchase and maintain insurance policies that comply with the provisions of this Section 9 “*Contract Security and Insurance Conditions*” (hereinafter referred to as “this Section”) in terms of format, nature, amounts of coverage, periods and insurance conditions.

9.2.1.3.2 The Contractor shall provide the Engineer with the form entitled “Notice of Compliance with Insurance Conditions” prior to entering the property of the Owner. This form shall be signed by both the insurance broker and the Contractor.

9.2.1.3.3 The Contractor shall provide the Engineer or the Owner with the insurance certificates within ten (10) days of the date of Notice of Contract Award, as well as any annual renewals, in accordance with the requirements of this Section.

9.2.1.3.4 The purchase, by the Contractor, of the insurance policies required under the provisions of this Section shall in no way limit the Contractor’s contractual obligations. Any additional insurance coverage deemed necessary by the Contractor to meet its contractual obligations shall be purchased by the Contractor at its expense.

9.2.1.4 Insurance Proceeds

- 9.2.1.4.1 In the case of an indemnity payable under a Comprehensive General Liability insurance maintained by the Contractor pursuant to Article 9.2.2 *Comprehensive General Liability Insurance*, the insurer shall pay the indemnity directly to the claimant.
- 9.2.1.4.2 In the case of a claim payable under the Builders Risk/Installation Floater (All Risks) insurance maintained by the Contractor pursuant to Article 9.2.3 *Builders Risk/Installation Floater (All Risks) Insurance*, the indemnity shall be paid directly to the Owner, and
- 9.2.1.4.2.1 any indemnity paid to the Owner will be retained for the purposes of the Contract, or
- 9.2.1.4.2.2 if the Owner elects to retain the indemnity, said indemnity will vest in the Owner absolutely.
- 9.2.1.4.3 If the Owner elects, pursuant to paragraph 9.2.1.4.2.2, to retain the insurance indemnity, the Owner may cause an audit to be made of the accounts of the Contractor and of that of the Owner in respect of the portion of the work that was lost, damaged or destroyed for the purpose of establishing the difference, if any, between:
- 9.2.1.4.3.1 the aggregate amount of the loss or damage suffered or sustained by the Owner, including any costs incurred in respect of the clearing and cleaning of both the work and the Worksite and any other amount that is payable by the Contractor to the Owner under the Contract, less any monies retained pursuant to paragraph 9.2.1.4.2.2, and
- 9.2.1.4.3.2 the aggregate amount payable by the Owner to the Contractor pursuant to the Contract up to the date of the loss or damage.
- 9.2.1.4.4 Any difference determined under paragraph 9.2.1.4.3 shall be paid forthwith by the party that, as a result of the audit, has been determined to be the “debtor party” to the party that, as a result of the audit, has been determined to be the “creditor party”.
- 9.2.1.4.5 Once the difference referred to in paragraph 9.2.1.4.4 has been remedied, the Owner and the Contractor shall be deemed to be released from all rights and obligations under the Contract with respect to the portion of the work that was the subject of the audit referred to in paragraph 9.2.1.4.3.
- 9.2.1.4.6 If no election is made pursuant to paragraph 9.2.1.4.2.2, the Contractor shall, subject to paragraph 9.2.1.4.7, clean and clear both the work and the Worksite and, at its own expense, restore and replace the part of the work that was lost, damaged or destroyed as if that part of the work had not yet been performed.
- 9.2.1.4.7 Once the Contractor has completed the clean-up and removal of both the work and the Worksite and the restoration and replacement of the work referred to in paragraph 9.2.1.4.6, the Owner shall reimburse the Contractor up to the amounts stipulated in paragraph 9.2.1.4.2.

- 9.2.1.4.8 Subject to paragraph 9.2.1.4.7, all payments will be made by the Owner in accordance with paragraph 9.2.1.4.7, but each such amount shall represent the entire indemnity.
- 9.2.1.5 Named Insured/Additional Insured
- 9.2.1.5.1 Each insurance policy shall establish the Contractor as the “Named Insured”.
- 9.2.1.5.2 The Comprehensive General Liability Insurance policy and the Marine Risks/Protection and Indemnity policy, if any, shall also establish The Jacques Cartier and Champlain Bridges Incorporated, The St. Lawrence Seaway Management Corporation and His Majesty in Right of Canada as “Additional Insureds”.
- 9.2.1.6 Contractor’s Responsibility for its Subcontractors as well as for their Subcontractors and Suppliers
- 9.2.1.6.1 It is the Contractor’s responsibility to ensure that its subcontractors as well as their subcontractors and suppliers, purchase and maintain, at their own expense, insurance policies that comply with the provisions of this Section in order to enable the Contractor to meet the requirements of this Section. Failure to do so shall not relieve the Contractor of its legal responsibilities under the Contract.
- 9.2.1.7 Period of Insurance
- 9.2.1.7.1 Except as provided below, the insurance policies required by this Section shall take effect on the date of commencement of the Contract and shall remain in force until the date of issuance of the Final Certificate of Completion by the Engineer.
- 9.2.1.8 Proof of Insurance
- 9.2.1.8.1 Immediately following the award of the Contract and prior to the commencement of any work at the Worksite, the Contractor shall provide the Engineer with written evidence from the insurer that all insurance coverages required by this Section will be in force for the commencement of the work.
- 9.2.1.9 Notification
- 9.2.1.9.1 Each insurance policy shall contain a provision that, prior to making any material change or cancelling the insurance coverage, the insurer will attempt to give the Owner thirty (30) days written notice. Any such notice received by the Contractor shall be promptly forwarded to the Owner.
- 9.2.1.10 Payment of Deductible
- 9.2.1.10.1 The Contractor shall be responsible for the payment of all amounts in settlement of any claim up to the amount of the deductible.
- 9.2.1.11 Other Insurance
- 9.2.1.11.1 If, in the event of loss of or damage to the property insured under a policy purchased by the Contractor, other insurance coverages covering the same interests exist, such policy will be the primary insurance. This clause shall be subject to the Property/Boiler & Machinery Insurance Joint Loss Agreement.

9.2.1.12 Agent/Trustee Clause

9.2.1.12.1 It is understood and agreed that the Named Insured who purchased the policy and paid the premium for it did so on his own behalf and as agent or trustee for the others insured hereunder, including the insureds named by general description. It is further understood and agreed by the insurer(s), as evidenced by their acceptance of the premium paid, that any person, firm or corporation falling within the definition of a person not named and insured under the policy, may assume such responsibility as agent or trustee, at any time after the issuance of the policy, in order to be entitled to the insurance coverage provided in the policy for valuable consideration.

9.2.1.13 Currency

9.2.1.13.1 It is agreed that all amounts and limits in insurance policies issued for the performance of the Contract shall be in Canadian currency.

9.2.2 COMPREHENSIVE GENERAL LIABILITY INSURANCE

9.2.2.1 Scope of Insurance

9.2.2.1.1 The policy shall provide for an amount of coverage on an Occurrence basis of at least \$5,000,000, which coverage shall include bodily injury, property damage and death arising out of the same Occurrence or a series of Occurrences having the same origin. Legal or professional fees arising from one or more claims shall not be deducted from the amount of coverage.

9.2.2.2 Coverages/Provisions

9.2.2.2.1 The policy shall include, without necessarily being limited to, the following coverages and provisions:

9.2.2.2.1.1 liability arising out or resulting from the ownership, existence, maintenance or use of premises by the Contractor and operations necessary or incidental to the performance of this Contract;

9.2.2.2.1.2 “Broad Form” Property Damage including the loss of use of property;

9.2.2.2.1.3 removal or weakening of support of any property, building or land whether such support be natural or otherwise;

9.2.2.2.1.4 liability to third parties for any bodily injury, damage to property or death attributable to the use, maintenance and operation, including loading and unloading of vehicles and equipment that are not registered for use on public roads and not covered by any automobile liability insurance;

9.2.2.2.1.5 non-owned automobile liability;

9.2.2.2.1.6 liability for lifting equipment (including hoists and similar devices);

9.2.2.2.1.7 Contractor’s Protective Liability;

9.2.2.2.1.8 contractual liability as well as the responsibilities assumed under this Contract;

- 9.2.2.2.1.9 liability arising from post-construction risks;
- 9.2.2.2.1.9.1 The insurance, including all coverages specified in this Section, shall continue for a period of at least one (1) year beyond the date of issuance of the Final Certificate of Completion by the Engineer;
- 9.2.2.2.1.10 mutual responsibility;
- 9.2.2.2.1.10.1 This clause shall be written as follows:

“The coverage afforded by this contract shall apply to any claim made by any insured against any other insured or to any action brought by one against the other. Without increasing the coverage amounts, the coverage of this contract shall apply to each insured in the same manner and to the same extent as though a separate policy had been issued to each of them, provided that any breach of a condition of this contract by any insured shall not affect the protection given by this contract to any insureds”.
- 9.2.2.3 Additional Risks
 - 9.2.2.3.1 The policy shall either cover or be amended to cover the following risks if the Contractor’s work is exposed thereto:
 - 9.2.2.3.1.1 blasting;
 - 9.2.2.3.1.2 pile driving or caisson work;
 - 9.2.2.3.1.3 underpinning;
 - 9.2.2.3.1.4 radioactive contamination resulting from the use of commercial isotopes;
 - 9.2.2.3.1.5 sudden and accidental pollution following the specified risks;
 - 9.2.2.3.1.6 damage to an existing building or structure, outside the direct scope of a renovation, addition, repair or installation contract (it should be noted that the exclusion relating to the care, custody and control of the insured must be repealed);
 - 9.2.2.3.1.7 marine risks associated with the construction of piers, wharves, walls and docks.

9.2.3 BUILDERS RISK/INSTALLATION FLOATER – ALL RISKS INSURANCE

- 9.2.3.1 Scope of Insurance
 - 9.2.3.1.1 The policy shall be written on an “All Risks” basis granting coverages identical to those of the forms known and referred to in the insurance industry as “Builders Risk-Broad Form”, including the risks of flood and earthquake, or “Installation Floater - All Risks”.

9.2.3.2 Property Insured

9.2.3.2.1 The property insured shall include:

9.2.3.2.1.1 the work and all property, equipment and materials intended to become part of the finished work at the project site or any other location and/or while in transit prior to, during and after installation, erection or construction, including testing;

9.2.3.2.1.2 expenses incurred in the removal from the Worksite of debris of the property insured, including the cost of demolition of damaged property, de-icing and dewatering, occasioned by the loss, destruction or damage to such property and in respect of which insurance is provided by this policy.

9.2.3.3 Insurance Proceeds

9.2.3.3.1 All proceeds under this policy shall be payable in accordance with paragraph 9.2.1.4.2 and within thirty (30) days after submission of the proof of loss.

9.2.3.3.2 The policy shall provide that the proceeds thereof are payable to the Owner.

9.2.3.3.3 The Contractor shall do such things and execute such documents as are necessary to effect payment of the proceeds.

9.2.3.4 Insurance Amount

10.2.3.4.1 The insurance amount shall be at least equal to the sum of the Contract value, plus the value declared (if any) in the Contract documents, of all materials and equipment supplied by the Owner to be incorporated into and form an integral part of the finished work.

9.2.3.5 Subrogation

9.2.3.5.1 The following clause shall be included in the insurance policy:

9.2.3.5.1.1 "The insurer hereby waives all rights of subrogation or assignment of rights against the Named Insureds and their associated companies, subsidiaries and divisions."

9.2.3.6 Mandatory Provisions

9.2.3.6.1 If any of the conditions below are inconsistent with any provision of the policy, the conditions listed below shall prevail.

9.2.3.6.1.1 Permissions

9.2.3.6.1.1.1 The insurer(s) hereby grant permission to the insured to immediately carry out the necessary and reasonable repairs for damage to the insured property where the amount of said damage does not exceed \$100,000 and said damage is insured under the policy. Subject to the deductible and any limit of liability stipulated in the declarations, the insurer(s) will reimburse the insured for the actual cost of said repairs in proportion for which it is responsible. Nothing in this clause shall be construed as a waiver of the requirement that notice of damage be served as soon as practicable on the insurers in accordance with the other provisions of this policy.

- 9.2.3.6.1.1.2 The insurer(s) hereby grant permission for partial or full occupancy of the insured project.
- 9.2.3.6.1.2 Liberalization
- 9.2.3.6.1.2.1 If during the period that insurance is in force under this policy, or within forty-five (45) days prior to the inception date thereof, any changes are proposed on behalf of the companies and approved or accepted by the insurance supervisory authorities, in conformity with law, in the forms or endorsements attached to this policy, or the rules or regulations applying thereto, by which this insurance could be extended or broadened, without increased premium charge, by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the insured as though such endorsement or substitution of form has been made.
- 9.2.3.6.1.3 Sue and Labour
- 9.2.3.6.1.3.1 In the event of loss or imminent damage insured under this policy, it shall be lawful and necessary for the insured, its employee(s) and assign(s) to sue, labour and travel for, in and about the defence, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice to this insurance. The acts of the insured or the insurer(s), in recovering, saving and preserving the property insured in case of loss or damage shall not be considered a waiver or an acceptance of abandonment. The expense so incurred shall be borne by the insured and the insurer(s) in proportion to the extent of their respective interests.
- 9.2.3.6.1.3.2 The coverage provided in this clause does not increase the amount of insurance purchased under this policy and the limit of coverage stated in the declarations, or amended by an endorsement, represents the maximum amount payable under this policy.
- 9.2.3.6.1.4 Breach of Conditions Clause
- 9.2.3.6.1.4.1 In the event of a loss, and if there has been a breach of contract with respect to a matter preceding the Occurrence of the loss and which would otherwise disqualify the insured from recovery under the policy, the breach will not disqualify the insured from recovery:
- 9.2.3.6.1.4.1.1 unless the insurer or insurers establish that the loss was caused by or contributed to by the breach of contract; or
- 9.2.3.6.1.4.1.2 if the breach of contract occurred in a part of the premises over which the insured has no control.
- 9.2.3.6.1.4.1.3 Notwithstanding anything contained elsewhere in this policy, any action or breach of contract by any party insured hereunder shall not prevent recovery by any other party insured hereunder who is not responsible for said action or breach.

9.2.3.6.1.5 Clearing

9.2.3.6.1.5.1 If the perimeter of the facility is protected under this policy, coverage is provided for the cost of clearing the damaged insured property due to an insured peril relating to the additional facilities and, with respect to property in transit, relating to the location of the accident.

9.2.4 AUTOMOBILE LIABILITY INSURANCE

9.2.4.1 Scope of Insurance

9.2.4.1.1 The policy shall be written to cover all licensed automobiles, regardless of whether or not they belong to the Contractor, which are used directly, indirectly or incidentally by the Contractor, in connection with or in the performance by the Contractor of the work or operations mentioned in the Contract.

9.2.4.2 Coverages/Provisions

9.2.4.2.1 The policy shall include, without not necessarily being limited to, the following coverages and provisions:

9.2.4.2.1.1 provide a minimum coverage of \$2,000,000 per Occurrence for bodily injury, property damage and death;

9.2.4.2.1.2 be subject to the provisions of the Quebec *Automobile Insurance Act* (CQLR c. A-25) or any other legislation that replaces it.

9.2.5 MARINE RISKS/PROTECTION AND INDEMNITY INSURANCE

9.2.5.1 Scope of Insurance

9.2.5.1.1 The policy shall be written to cover the insured's legal liability for loss, damage or expense incidental or consequential to the insured's capacity as owner, operator, charterer, maintainer or user of any vessel or boat used for inland navigation, including the insured's liability for bodily injury, illness or death of others.

9.2.5.2 Coverages/Provisions

9.2.5.2.1 The policy shall include, without not necessarily being limited to, the following coverages and provisions:

9.2.5.2.1.1 Hull and Machinery insurance, if purchased by the Contractor, shall be subject to use of the usual and customary form generally applicable to such vessels, including Collision and Tower's Liability;

9.2.5.2.1.2 Protection and Indemnity insurance, including Collision and Tower's Liability and the Collision and Tower's Liability deductible, including a mutual responsibility clause, to a limit of:

9.2.5.2.1.2.1 \$10,000,000 per accident or Occurrence if the Contractor plans to carry out work of any kind in the Seaway Canal or in the St. Lawrence River;

9.2.5.2.1.2.2 \$5,000,000 per Occurrence if the Contractor only travels in the canal or within the limits of the Port of Montreal.

- 9.2.5.2.1.3 The Jacques Cartier and Champlain Bridges Incorporated, The St. Lawrence Seaway Management Corporation and His Majesty in Right of Canada shall be listed as Additional Insureds on the Protection and Indemnity policy with respect to third party liability;
- 9.2.5.2.1.4 the Protection and Indemnity policy, if purchased by the Contractor, shall include a clause indicating that the insurers and the Contractor waive their rights of subrogation against The Jacques Cartier and Champlain Bridges Incorporated, The St. Lawrence Seaway Management Corporation and His Majesty in Right of Canada.

9.2.6 PROFESSIONAL LIABILITY INSURANCE

9.2.6.1 Scope of Insurance

- 9.2.6.1.1 The policy shall cover against pecuniary loss caused by the Contractor or its consultant for alleged negligence, error or omission arising out of its professional services.

9.2.6.2 Coverages/Provisions

- 9.2.6.2.1 The consultant shall purchase and maintain professional liability insurance for a minimum amount of \$2,000,000 per loss per year.
- 9.2.6.2.2 If prior loss(es) or knowledge of a potential loss reduces the professional liability insurance coverage prior to the commencement of the Contract, then the consultant shall, prior to the commencement of the work and at its own expense, purchase professional liability insurance specific to the Contract.

9.2.6.3 Period of Insurance

- 9.2.6.3.1 In addition to the proof of insurance provided in Article 9.2.1.8 *Proof of Insurance*, the consultant shall carry insurance with the same insurer(s) on a continuous and uninterrupted basis for the duration of the Contract for a period of twenty-four (24) months following date of completion of the work.
- 9.2.6.3.2 If the original insurer(s) are no longer available or willing to underwrite the policy, then the new policy must contain a clause providing retroactive coverage.

9.2.7 WORKPLACE INJURIES

- 9.2.7.1 The Contractor undertakes to comply with all the requirements of the *Act respecting Industrial Accidents and Occupational Diseases* (CQLR, c. A-3.001) as well as any order and directive that may be issued by the *Commission des normes de l'équité de la santé et de la sécurité du travail* (CNESST), including the proceeds prescribed therein.

9.2.8 UNMANNED AIRCRAFT VEHICLE LIABILITY (UAV) INSURANCE

9.2.8.1 Coverage

9.2.8.1.1 If the Contractor plans to use an unmanned aircraft (drone), the Contractor shall purchase and maintain unmanned aircraft liability insurance for a minimum Occurrence-based coverage of \$1,000,000, which shall include bodily injury and property damage per Occurrence.

9.2.8.2 Scope of Insurance

9.2.8.2.1 The policy shall cover the Contractor's legal liability for property damage or personal injury (including death) to others arising out of the ownership, use or maintenance of unmanned aircraft vehicles.

9.2.8.3 Coverages/Provisions

9.2.8.3.1 This policy shall include, without necessarily being limited to, the following coverages and provisions:

9.2.8.3.1.1 liability arising out of the use of an unmanned aircraft;

9.2.8.3.1.2 civil liability of co-contractors or subcontractors;

9.2.8.3.1.3 contractual liability as well as the responsibilities assumed under the Contract;

9.2.8.3.1.4 liability arising from post-construction risks;

9.2.8.3.1.5 mutual responsibility;

9.2.8.3.1.6 liability arising from the place from which the aircraft is operated.

END OF SECTION