

2025-T-9 - New NRPS D3 NG911 Stand Alone Back Up Facility

Date Issued: Monday, March 3, 2025

Addendum No. 2

No. of Addenda pages: 4

Additions

Addition 1: Part 1, Section 1.1. Invitation to Bidders

Add:

1.1.4 Trade Tariffs & Pricing

Niagara Region recognizes that this solicitation is being released during uncertain times with respect to trade between Canada and the United States. Without limiting any of the other requirements of this RFT, bidders are expected to submit pricing in the Schedule of Prices that is inclusive of all custom duties or import tariffs, as may be applicable, relevant to any part of the work or provisions of Deliverables under the Contract. Bidders are directed to Supplementary Condition 57 (GC 10.1 – Taxes and Duties) to the CCDC 2 General Conditions which sets out the process for adjustments to Contract payments where a change to custom duties or import tariffs occurs after Contract execution.

Revisions

Supplementary Conditions to CCDC 2-2020

Revision 1: Delete SC47.1 in its entirety and replace with the following:

SC47.1	6.6.1	<p><u>Add</u> the following to the end of paragraph 6.6.1:</p> <p>“Any such <i>Notice in Writing</i> to be provided by the <i>Contractor</i> must be provided to the <i>Owner</i> and to the <i>Consultant</i> no later than 5 <i>Working Days</i> after the <i>Contractor</i> became aware, or should reasonably have become aware, of the commencement of the event or series of events giving rise to a claim. If the <i>Contractor</i> fails to comply with the notice requirements of this GC 6.6.1, the <i>Owner</i> will not be liable in connection with any such claim by the <i>Contractor</i>; and the <i>Contractor</i> will be absolutely barred from making any claim against the <i>Owner</i>, arising out of or in connection with such event or series of events.”</p>
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Revision 2: Delete SC57 in its entirety and replace with the following:

SC57 GC 10.1 – TAXES AND DUTIES

SC57.1	10.1.1	<p>In GC 10.1.1 <u>add</u> the word “tariffs” after the word “taxes” and before the words “and customs duties” in the first line.</p>
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SC57.2	10.1.2	<p><u>Delete</u> paragraph 10.1.2 and <u>replace</u> it with the following:</p> <p>“10.1.2 If, subsequent to the time of bid closing, changes are made to such taxes, tariffs, or custom duties referred to in GC 10.1.1, which may affect the cost of <i>Products</i> forming part of the <i>Work</i>, then, subject to GC 10.1.2A and 10.1.2B, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE. Provided that the <i>Contractor</i> has complied with the notice requirements of GC 10.1.2A or the <i>Owner</i> has complied with the notice and other requirements of GC 6.6, as the case may be, adjustments to the <i>Contract Price</i> shall be equal to the positive/negative change to the <i>Contract Price</i> arising solely from the change to the applicable tax, tariff, or custom duty when applied to such <i>Products</i> incorporated as part of the <i>Work</i>. For certainty, for any adjustment to the <i>Contract Price</i> pursuant to this GC 10.1.2,</p> <ul style="list-style-type: none"> .1 it is the intent that the <i>Contractor</i> will be placed in a position that is neither better nor worse, in respect of the affected <i>Product(s)</i> incorporated into the <i>Work</i>, than the <i>Contractor</i> would have been had the change in taxes, tariffs, or custom duties not occurred; .2 notwithstanding the mark-ups described in GC 6.2.3 or anything else in this <i>Contract</i>, there shall be no adjustment (increase or decrease) to the <i>Contractor's</i> overhead and profit, such that the <i>Contractor</i> hereby waives any claim to a mark-up related to such adjustment; and .3 any payment by the <i>Owner</i> or any credit by the <i>Contractor</i>, shall be strictly on a reimbursable basis, supported by written details of the adjustment being claimed and the grounds for and computation of the adjustment being claimed, and such further information, calculations, computations and documentation as may reasonably be required. <p>10.1.2A As soon as practicable, and in any event within five (5) <i>Working Days</i> after the <i>Contractor</i> became aware of, or should reasonably have become aware of, the occurrence of a change to any tax, tariff, or custom duty the <i>Contractor</i> shall give to the <i>Owner</i> a <i>Notice in Writing</i> that:</p> <ul style="list-style-type: none"> .1 identifies the change with reference to the applicable governmental resource such that the <i>Owner</i> can verify the accuracy of the change; .2 identifies the affected <i>Product(s)</i>, including the type of material, equipment, machinery or fixtures, the anticipated quantities, and the anticipated timing for delivery of such <i>Product(s)</i> as it relates to the <i>Construction Schedule</i>; .3 identifies the anticipated adjustment to the <i>Contract Price</i>, having regard to the limitations set out in GC 10.1.2; and .4 identifies all subcontract(s) that have been executed in respect of such affected <i>Product(s)</i>, including the name of each <i>Supplier</i> and the date of the executed subcontract(s) or, if a subcontract has not been executed for all or a portion of the affected <i>Product(s)</i>, the anticipated timing for when the <i>Contractor</i> intends to retain a <i>Supplier</i>, <p>and the <i>Contractor</i> shall immediately take all reasonable steps, including not entering into any further subcontract(s) for the affected <i>Product(s)</i>, to mitigate the application of the changes to the taxes, tariffs, or customs duties to the <i>Project</i>. For certainty, if the <i>Contractor</i> has delivered a <i>Notice in Writing</i> pursuant to this GC 10.1.2A , then such <i>Notice in Writing</i> also satisfies the requirement for a <i>Notice in Writing</i> under GC 6.6.1; however, nothing else in GC 10.1.2, 10.1.2A or 10.1.2B shall relieve the <i>Contractor</i> of its</p>
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		<p>other obligations set out in GC 6.6, including to mitigate, keep records, and to submit a detailed account in furtherance of its claim.</p> <p>10.1.2B Upon receipt of a <i>Notice in Writing</i> pursuant to GC 10.1.2A, the <i>Owner</i> may, in its sole discretion:</p> <ol style="list-style-type: none"> .1 elect to accept the proposed adjustment to the <i>Contract Price</i>; .2 reject the proposed adjustment on the basis that the information set out in GC 10.1.2A is missing, incomplete, inaccurate, or reflects a proposed adjustment to the <i>Contract Price</i> that is not supported by the documentation provided, in which case the <i>Contractor</i> can re-submit its <i>Notice in Writing</i> with the additional information; .3 where a subcontract has already been executed for the supply of the affected <i>Product(s)</i>, elect to decline the proposed adjustment to the <i>Contract Price</i> and remove the affected <i>Product(s)</i> from the <i>Work</i> by issuing a <i>Change Directive</i>, provided that the <i>Owner</i> shall be required to make payment to the <i>Contractor</i> for all affected <i>Products</i> that have been delivered to the <i>Project</i> as of the date of the <i>Owner's</i> election, including payment of the applicable changes to the taxes, tariffs, or custom duties in accordance with the limits prescribed in GC 10.1.2; or .4 where a subcontract has not been executed for all or a portion of the affected <i>Product(s)</i>, require that the <i>Contractor</i> cooperate with the <i>Owner</i> and the <i>Consultant</i> for a period of not less than ten (10) Working Days (and such longer period of time as may reasonably be required by the <i>Owner</i>), to consider alternative <i>Suppliers</i>, alternative <i>Products</i>, and/or decreases to the <i>Project</i> scope, and to implement any agreed upon steps, to mitigate the impact of the changed taxes, tariffs, or custom duties on the <i>Contract Price</i>. <p>Any agreement between the <i>Owner</i> and the <i>Contractor</i> under this GC 10.1.2B shall be recorded in a <i>Change Order</i>, including any adjustment to the <i>Contract Price</i> pursuant to GC 10.1.2.”</p>
SC57.3	10.1.3	<p><u>Add</u> new GC 10.1.3 as follows:</p> <p>“10.1.3 Any tax, including, without limiting the generality of the foregoing, any government sales tax, tariff, customs duty or excise tax, whether or not paid, which is found to be inapplicable or for which an exemption or refund may be obtained, is the sole and exclusive property of the <i>Owner</i>. The <i>Contractor</i> agrees to co-operate with the <i>Owner</i> and to obtain from all <i>Subcontractors</i> and <i>Suppliers</i> co-operation with the <i>Owner</i> in the application for any refund of any taxes, which co-operation shall include, but not be limited to, making or concurring in the making of application for any such refund or exemption and providing the <i>Owner</i> copies or, where required, originals, of records, invoices, purchase orders and other documentation necessary to support such applications for exemptions or refunds. All such refunds shall either be paid to the <i>Owner</i> or shall be a credit to the <i>Owner</i> against the <i>Contract Price</i> in the <i>Owner's</i> discretion. The <i>Contractor</i> agrees to endorse over to the <i>Owner</i> any cheques received from the federal or provincial governments, or any other taxing authority, as may be required to give effect to this paragraph.”</p>

Revision 3: Delete SC58.3 in its entirety and replace with the following:

SC58.3	10.2.7	<p>Amend paragraph 10.2.7 after the words “authorities having jurisdiction” in the second line, <u>add</u> the words “which changes were not, or could not have reasonably been known to the <i>Owner</i> or to the <i>Contractor</i>, as applicable, at the time of bid closing and which changes did not arise as a result of a public emergency or other <i>Force Majeure</i> event” and after the words “in accordance with the requirements of” and before “GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE” <u>add</u> the words “GC 10.1 in the case of changes to taxes,</p>
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		tariffs, or custom duties as contemplated by GC 10.1.1 and otherwise in accordance with the requirements of".
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End of Addenda