

**INSTRUCTIONS TO BIDDERS**

## 1.0 Definitions

For all purposes of this Request for Proposal (RFP), except as is otherwise expressly provided herein or unless the context otherwise requires, the terms defined in Part 2, Articles of Agreement, shall have the same meanings as assigned to them in the Articles of Agreement.

Additional definitions not contained in the Articles of Agreement, which are applicable to this RFP, are:

**"Addenda"** means any amendments to the RFP issued by the Company to all Bidders during the proposal period, containing additional information or corrections, made by the Company, to the RFP already issued.

**"Bidder"** means a person, corporation, partnership, Joint Venture or other organization which has received the RFP or has submitted a Proposal to the Company for the provision of the Work.

**"Commercial Proposal"** means that part of a Proposal that responds to Commercial Instructions and including all supporting Appendices and Exhibits.

**"Joint Venture"** means an undertaking by two or more parties to submit a single Proposal on behalf of each such party (together constituting a single Bidder) with the intention that if the parties are the Successful Bidder, each such party to the Joint Venture shall sign the Agreement with the Company to perform the Work.

**"Post Proposal Bulletin"** means any release of significant technical and/or commercial information by the Company that is issued to all Bidders after receipt of the Bidder's Proposal. The extent of the Post Proposal Bulletin may require the Bidders to update and re submit specific parts of their original Proposal.

**"Proposal"** means the document submitted by a Bidder in response to the RFP.

**"Request for Proposal"** or **"RFP"** means the documents issued to a Bidder by the Company in connection with the preparation of the Proposal, including all Addenda.

**"Successful Bidder"** means the Bidder whose Proposal has been selected by the Company and to whom the Agreement will be awarded.

**"Technical Proposal"** means that part of a Proposal that responds to the Technical Specifications and including all supporting documentation.

2.0 Introduction

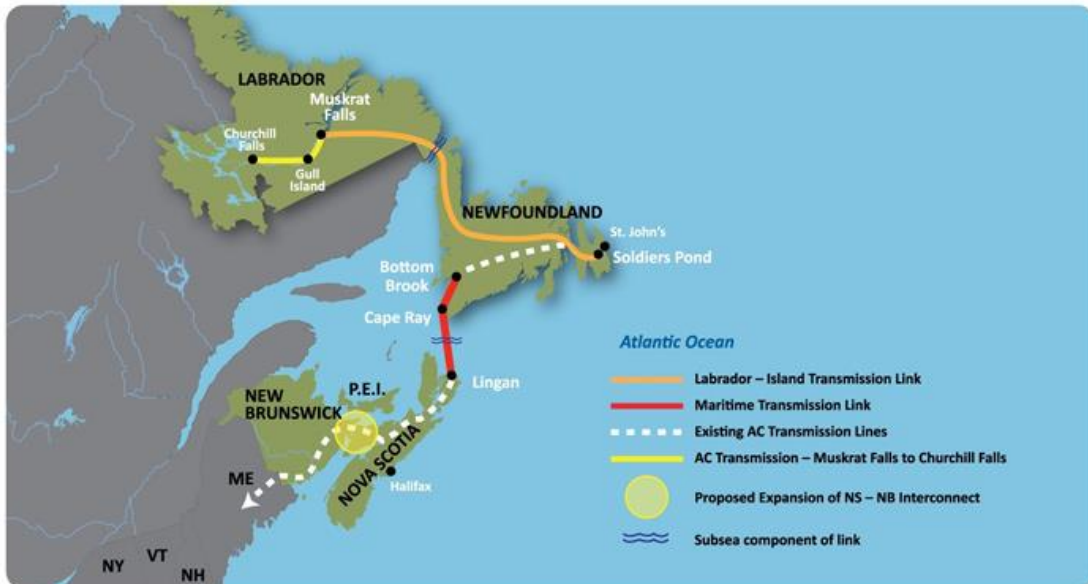
2.1 General

The Company is inviting Proposals from Bidders for the Work for the Lower Churchill Project (LCP), as defined in Part 2, Agreement.

Successful Bidder will be required to complete the Work in accordance with the requirements of the Agreement. The Agreement will comprise the documents set out in Part 2 of this RFP, which includes the Articles and Exhibits as may be updated during the RFP process. The Agreement will be awarded by the Company. The Company is located in St. John’s, Newfoundland, Canada.

2.2 Lower Churchill Project Description

The Churchill River in Labrador is a significant source of renewable, clean electrical energy. However, the potential of this river has yet to be fully developed. The existing five thousand four hundred twenty-eight (5,428) MW Churchill Falls generating station, which began producing power in 1971, harnesses about sixty-five percent (65%) of the potential generating capacity of the river. The remaining thirty-five percent (35%) is located at two (2) sites on the lower Churchill River, known as the Lower Churchill Project. The LCP is the most attractive undeveloped hydroelectric project in North America.



The Lower Churchill Generation Project's two (2) proposed installations, Gull Island and Muskrat Falls, will have a combined capacity of 3,074 MW and can provide sixteen point seven (16.7) terawatt hours of electricity per year. The proposed eleven hundred (1,100) kilometer high voltage direct current (HVdc) link will be the first of its kind in

Newfoundland and Labrador and will be constructed from the central region of Labrador down to Newfoundland's Avalon Peninsula.

### **2.3 Request for Proposal**

The RFP will be issued in electronic format (pdf or native file, as appropriate) and will include all documents outlined in the Table of Contents.

The Appendices contained in Part 1 are to be submitted as part of the Bidder's Proposal and do not have to be repeated in Part 2 at the proposal submission stage. Information from some or all of these Appendices may, in whole or part, become part of the final Agreement.

### **2.4 Modifications to the RFP**

Additional information or corrections made by the Company during the bidding period shall be issued in the form of an Addendum to the RFP Documents or a Bulletin referring thereto, and the instructions given therein shall be an integral part of the RFP Documents. Addenda to the documents shall be listed by the Bidder in the space provided in the Proposal Form Letter.

### **3.0 Discrepancies and Omissions**

Bidder is responsible for examining, with appropriate care, the entire RFP and all Addenda, and for informing itself about all conditions and matters that might in any way affect the cost or performance of the Work. Failure to do so will be at Bidder's sole risk.

If Bidder finds any errors or omissions in the RFP, or if Bidder has any doubt regarding the meaning of any requirements or data, Bidder shall promptly seek clarification from Company by submitting written clarification requests. All clarification requests should clearly identify the relevant RFP section, page number and must be addressed to the individual indicated in the Invitation Letter.

At its sole discretion, the Company will issue clarifications and /or Addenda to all Bidders as applicable throughout the process.

Each clarification and/or Addenda to the RFP released by Company will be issued by way of an Addenda.

No oral clarification shall be requested by or made to any Bidder with respect to this RFP.

### **4.0 Confidentiality**

Bidder shall comply fully with the terms of the Non-Disclosure and Conflict of Interest

Agreement. It must be signed as a requirement of this RFP. The RFP shall remain the property of Company and shall be returned to Company, if requested.

## 5.0 Collusion

In participating in this RFP, Bidder shall not, directly or indirectly, discuss or communicate the preparation or presentation of its Proposal with any other Bidder or any director, officer, employee, agent or representative thereof. Each Bidder's Proposal shall be submitted without any connection, knowledge, comparison of figures or arrangement with any other Bidder or any director, officer, employee, agent or representative thereof and each Bidder will be responsible to ensure that its participation in this process is conducted fairly and without collusion.

Bidders shall not have fixed or adjusted the amount of the Proposal by any agreement or arrangement with any other person or entity. Furthermore, Bidders shall ensure that the amount or approximate amount of its Proposal is not communicated to any other person or entity.

Bidders warrant that they have adhered to the highest standards of business ethics and, in particular, have established precautions to prevent any of its officers, employees or agents from making, receiving or offering substantial gifts, entertainment, payment, loans or other considerations which may influence individuals in respect of this RFP.

## 6.0 Communications

Bidders are not permitted to contact or communicate with any members of the Company and/or the Engineer's group other than the single point of contact on any matter relating to this RFP or the RFP process. Uninvited visits to the Company's and/or Engineer's office to discuss the RFP are not permitted.

All contact between Company and Bidder in respect to this RFP must be made in writing only. All communications from the Bidder during the bidding period shall be by letter, facsimile or e-mail and be addressed to the individual indicated in the Invitation Letter.

## 7.0 Submission of Proposal

The Bidder must deliver, via hand delivery or courier, **one (1) Priced Original, one (1) Priced Copy, four (4) Unpriced Copies, one (1) electronic Priced Copy and one (1) electronic Unpriced Copy (CD-ROM or USB memory stick) of its Proposal** not later than the closing time specified in the Invitation Letter. Bidder must ensure that the Proposal arrives before the closing time specified. Proposal should be addressed to the Company as follows:

**PROPOSAL - DO NOT OPEN UNTIL THE PROPOSAL CLOSING TIME**  
**(NAME OF BIDDER):** \_\_\_\_\_

**PROPOSAL FOR:**

**Request for Proposal No.: CH0009  
CONSTRUCTION OF NORTH AND SOUTH DAMS**

and delivered to:

Muskrat Falls Corporation  
c/o Nalcor Energy  
350 Torbay Road Plaza, Suite 2  
St. John’s, NL, Canada  
A1A 4E1  
Attention: Roy Lewis

The original and each copy shall each be submitted in a separate series of sealed packages, as follows:

a) Both packages are to be clearly marked, as follows:

Proposal RFP CH0009 PRICED	Proposal RFP CH0009 UNPRICED
One (1) Original	Copy (1)
One (1) Copy	Copy (2)
	Copy (3)
	Copy (4)
One (1) CD-ROM or USB Memory Stick	One (1) CD-ROM or USB Memory Stick

b) The electronic Priced Copy and the Unpriced shall be provided separately and shall be clearly identified (CD-ROM or USB Memory Stick format are acceptable) containing the native documents (Microsoft Word, Microsoft Excel) and a faithful reproduction (pdf) shall be included for each Priced and Unpriced versions of the Proposal.

**Under no circumstances shall the Technical Proposal contain any cost and / or pricing information.** Additional binders may be used as required while maintaining the above organization of the Proposal. Each form, and/or information provided in support thereof, shall be physically separated from the others in a logical fashion by dividers or similar, with labelled tabs.

The Bidder shall indicate its price by completing the relevant spaces in the enclosed Proposal Form.

The Proposal prices shall clearly indicate and include all tariffs, customs, duties and Taxes except for GST/HST, which shall be excluded from the prices and identified separately on the Proposal, where applicable. The Proposal is to be presented in Canadian dollars. There shall be no adjustment for indexation or escalation. All Prices are to be presented in both text and figures [e.g., five hundred (500)].

The Bidder shall return with the Proposal, the completed Proposal Form and all requirements outlined in the RFP which it may require to complete the Work.

## 8.0 Validity of Proposal

Bidder's Proposal shall be valid for a period of ninety (90) days after the closing time specified in the Invitation Letter. Bidder shall be notified in writing when selection of a Successful Bidder has been made. Once submitted, a Proposal may not be withdrawn prior to the expiration of the validity period.

In the event Company grants an extension to the closing date, such extension shall be granted to all Bidders through the issuance of an Addenda.

## 9.0 Fully Compliant Proposal

For full compliance with the RFP, the Proposal shall be prepared and submitted in accordance with the following:

### 9.1 Principal Proposal

- a) The Bidder's Proposal and all associated attachments and correspondence shall be in the English language;
- b) The Proposal shall be submitted in the form and format as prescribed in the RFP;
- c) The Proposal shall be dated;
- d) The Proposal shall show the full legal name and business address of the Bidder and shall be signed by a person authorized to legally bind the Bidder;
- e) Bidder's Proposal must be for the entire scope of Work as specified in Part 2, Exhibit 1 – Scope of Work. Company will not accept proposals for a portion of the Work;
- f) Bidder's rates and prices are to be denominated in Canadian currency; and
- g) Proposal shall include all information requested in the RFP.

### 9.2 Alternate Proposal

Where Bidder feels it would be advantageous to Company to depart in any way from any of the requirements, conditions and provisions set forth in the RFP, it shall present such departures as an alternative to, but together with, the principal Proposal, explaining in full detail the nature and extent of the proposed departure and the consequent impact on the prices, schedules or any other aspect of the Proposal. Such departures, if any, shall be clearly identified and listed in a section of the Proposal devoted explicitly to that purpose. Consideration of any alternative or departure on the Proposal shall be at the sole discretion of Company.

## 10.0 Evaluation of Proposals

- a) Company's opening and evaluation of Proposals will be conducted in private in

- accordance with Company's Project procedures.
- b) The hard copy original of the Proposal, will have precedence over all other copies of the Proposal.
  - c) In the case of any discrepancy between words and figures, the words shall prevail.
  - d) Company will consider not only the Proposal compensation basis, but Bidder's representations with respect to experience, key staff, delivery, capacity, Subcontract nomination, execution methodology, resource availability, management organization, engineering, response to technical questions detailed in RFP document, procurement, quality assurance/quality control, risk management, environmental approach, construction management capability, workload, Provincial Benefits content and other matters of commercial or technical importance to the Work. The representations listed herein are not an exhaustive list. Company reserves the right to consider any criteria it deems advisable in its sole discretion.
  - e) Company, at its sole discretion, may elect to appoint an independent specialist to undertake, on its behalf, an audit or assessment of the Bidder's facilities, equipment, personnel, resources, processes and procedures and to participate in and contribute to the overall evaluation and selection process.
  - f) Company, at its sole discretion, shall require a copy of all applicable insurance certificates and/or policies and shall require such parent company guarantees, performance bonds, letters of credit, bank references or other such commercial documentation as it may deem necessary prior to Agreement award or during the Agreement term.

#### 11.0 Additional General Information

- a) This is an invitation for Proposal and not a tender call.
- b) Company is not responsible for any costs or expenses Bidder may incur in preparing or discussing its Proposal or negotiating an Agreement for the Work. Company, at its sole discretion, may ask for certain meetings to be held at Bidder's or Company's and/or Engineer's office and the costs for such meetings shall solely be the responsibility of the Bidder.
- c) Company will not make any advance payment or payments in respect of the Agreement when awarded.
- d) Company shall not be bound to accept the lowest cost Proposal or any other Proposal, and is under no obligation to enter into an Agreement with the lowest cost Bidder or any other Bidder. Company reserves the right to accept the Proposal which it deems to have the best value for Company, and also reserves the right to reject any or all Proposals, in each case without notice.
- e) The inclusion or otherwise of items of optional services or alternate prices called for in compliance with this RFP in any Agreement that may be awarded as a result of this RFP, shall be at the sole discretion of Company.
- f) Company, at its sole discretion, reserves the right to negotiate with any Bidder it believes has the most preferable Proposal or with any other Bidder or Bidders concurrently. The Company reserves the right to enter into post-submission negotiations and discussions with any one or more Bidder(s) regarding price, scope,



- and/or any other term of a Bidder's Proposal and such other terms as the Company may require.
- g) No term or condition shall be implied, based upon any industry or trade practice or custom, any practice or policy of the Company or on any other basis, which is inconsistent or in conflict with the provisions of this RFP.
  - h) Company reserves the right, at its sole discretion to:
    - i. reject without notice any Proposal that is incomplete, conditional, obscure or does not comply with the requirements stipulated in the RFP, or that contains false information;
    - ii. waive any failure to comply with the requirements stipulated in the RFP;
    - iii. cancel the RFP process at any time for its own reasons, without incurring any liability to Bidders or having any obligation to Bidders, and without having to give details of the reasons for any such action on Company's part;
    - iv. include in the Agreement any part of the Bidder's Technical Proposal, as it may have been updated during the Proposal clarification process;
    - v. include in the Agreement Price any part of the Bidder's Commercial Proposal, as it may have been updated during the Proposal clarification process; and
    - vi. not award an Agreement related to this RFP.
  - i) The Bidder acknowledges that the terms of these Instructions to Bidders are reasonable and appropriate and that the Company is issuing this RFP in reliance upon the right to claim the privileges set out herein.
  - j) The Company does not intend to and does not assume or owe any contractual or other duties or obligations to the Bidder as a result of the issuance of this RFP, the preparation or submission of a Proposal by a Bidder, the receipt, opening and consideration of a Proposal, the evaluation of Proposals, provision of additional information or conduct of presentations, the Bidder's participation in any discussions or negotiations, or on any other basis whatsoever arising out of this RFP. Without limiting the generality of the foregoing and for certainty, no Agreement is formed by the submission of a Proposal in response to this RFP.
  - k) Without limiting the generality of the foregoing and for certainty, by submission of a Proposal in response to this RFP, each Bidder represents and shall be deemed to accept and agree to the following conditions:
    - i. Bidder shall be solely and fully responsible for all costs associated with the development, preparation, transmittal and submission of any Proposal or material in response to this RFP, including without limitation the costs of any in-person presentation of Proposals, regardless of the locations which the Company may require, and all costs incurred by a Bidder during the selection process and any negotiations.
    - ii. Bidder waives any claim against the Company for any compensation of any kind whatsoever as a result its participation in or providing a response to this RFP process, including without limitation any claim for costs of proposal preparation or participation in negotiations, or for loss of anticipated profits, whether based in contract including fundamental breach, tort, equity, breach of any duty, including but not limited to breach of the duty of fairness, breach of the obligation to only accept compliant proposals or any other cause of

action whatsoever.

- l) For the purposes of this RFP, Bidder acknowledges that Company is inviting Proposals from Bidders solely in its own right and not on behalf of or as agent of Nalcor Energy the Crown in right of the Province of Newfoundland and Labrador.

## 12.0 Signatures

The Proposal shall be duly signed in accordance with these Instructions to Bidders. The documents must be signed by person(s) authorized to sign on behalf of the Bidder and signatures must comply with the following requirements:

### a) Corporation

If the Proposal is made by a corporate body, the full and correct legal name of the corporation must be printed correctly in the space provided for the Bidder's signature. The person(s) authorized to sign must sign immediately under the corporation's name with the name(s) of the signatory printed under the signature(s).

The Bidder shall provide, with its Proposal, a certified copy of a resolution of the Board of Directors authorizing the directors or executives to sign the Proposal on behalf of the corporation.

### b) Partnership

If the Proposal is made by a partnership firm, the full and correct legal name of the partnership firm must be printed in the space provided for the Bidder's signature and all the partners must sign immediately thereunder. The partners' names must be printed under their signatures.

### c) Individual

If the Proposal is made by an individual doing business under a name other than his/her own, the name under which s/he does business must be printed in the space provided for the Bidder's signature, and the individual shall sign immediately thereunder. The individual's name must be printed under his/her signature.

### d) Joint Venture

If the Proposal is made by a Joint Venture, the full name of each participant (whether a corporation, partnership or individual) in the Joint Venture must be correctly printed and the person authorized to sign must sign the Proposal in the participant's name immediately below in the space provided for the Bidder's signature. The person authorized to sign for each participant shall print that person's name immediately under the signature.