

From: scottobrien@lowerchurchillproject.ca
To: [Scott O'Brien](mailto:ScottO'Brien@lowerchurchillproject.ca)
Subject: Fwd: LETTER FROM GILBERT 7 AUGUST
Date: Thursday, August 14, 2014 8:37:18 AM
Attachments: [.png](#)
[LETTER JUSTIFICATION AND REVISED BREAKDOWN PRICE .pdf](#)

Scott O'Brien

Project Manager - Muskrat Falls Generation

PROJECT DELIVERY TEAM

Lower Churchill Project

t. [709 570-5987](tel:7095705987) c. [709-764-6537](tel:7097646537)

e. ScottO'Brien@lowerchurchillproject.ca

w. muskratfalls.nalcorenergy.com

Begin forwarded message:

From: "Ron Adamcyk" <RonAdamcyk@lowerchurchillproject.ca>
To: "Scott O'Brien" <ScottOBrien@lowerchurchillproject.ca>, "Lance Clarke" <LanceClarke@lowerchurchillproject.ca>
Cc: "Ed Over" <EdOver@lowerchurchillproject.ca>
Subject: LETTER FROM GILBERT 7 AUGUST

Ron Adamcyk

Senior Contract Administrator

PROJECT DELIVERY TEAM

Lower Churchill Project

t. 709 752 3460 55148

e. RonAdamcyk@lowerchurchillproject.ca

w. muskratfalls.nalcorenergy.com



**GILBERT NEWFOUNDLAND
AND LABRADOR**
Contracting Ltd

August 6, 2014

[CONFIDENTIAL – FOR MFC AND ITS AGENTS ONLY]

BY EMAIL

Mr. Ron Adamcyk, Senior Contract Administrator
MUSKRAT FALLS CORPORATION (“MFC”)
(Re: Lower Churchill Project)
350 Torbay Road Plaza, Suite No. 2
St-John’s, NL
A1A 4E1

RE: Clarification and justification following our revised breakdown price and proposal of July 18, 2014 and follow-up on our meetings of July 30th and August 1st 2014 in St-John’s (NL)

Civil works / North Spur stabilization project – CH0008 (the “works” or the “project”)

Mr. Adamcyk,

By the present letter of clarification and justification we wish to follow-up on our meetings of July 30th (with your team and representatives from the operating engineers and teamsters unions) and of August 1st 2014 (with yourself and your project team representatives). The objective of the present is to provide you our arguments for our breakdown price increase proposal included in our July 18, 2014 proposal amendment letter.

As you’ll see, our argumentation is based either (i) on qualifications that we’ve made in our initial proposal of June 11 2014, and/or (ii) on new information that we were made aware of, either during the clarification meeting of July 7-8-9 and particularly following the interpretation or position of the unions regarding some clauses of the Collective Agreement in force, and we’ll explain the consequences of such qualifications, clarifications and/or union positions on the price.

We think that emphasis shall be put on the fact that our direct costs pricing never changed throughout this process, the consequences of the items in the above paragraphs being all occasioned in the indirect costs of the pricing of our amended proposal.



Our arguments are presented to you in the following order and classification:

- Introduction and context
- Qualification
- New information received following the clarification meetings and the unions' positions
- Room and Board
- Schedule
- Conclusion
- Table of price reduction and credit adjustments

INTRODUCTION AND CONTEXT

We think that it is important to remind you the factual context and history of our involvement in this request for proposals issued by Muskrat Falls Corporation ("MFC"). Such reminder shows that we have taken the process seriously and have always acted in good faith, with transparency and as a prudent contractor in determining the contents of our proposal, including the price offered.

Our involvement in this started on February 20, 2014 when the request for proposal was issued by MFC. On March 10th and 11th a first site visit and a first technical briefing occurred where our qualified representatives and project management officers were present.

On April 30th 2014, a first meeting occurred between ourselves and the union of operating engineers ("OE Union") in order to have a clear understanding of their position on various issues arising from the Collective Agreement, amongst other things of the possibility to have our own specialized workers and specialized forepersons executing the work, given the high sensibility and complexity of the works and the high productivity and production rates that MFC wishes to achieve on this project. From such first discussions with union representative, it was made clear to us that given the nature of the works there should be a certain labour shortage of local workers and so there should be no problem to bring substantial number of specialized workers and specialized forepersons that we already employ in the project. Our only obligation would be to make sure that such specialized workers and specialized forepersons are permitted by the applicable union and paid in accordance with the benefits package of the Collective Agreement.

On May 1st 2014, we held a conference call with yourself and Mr. David Clarke who participated in the elaboration of the Collective Agreement. During the phone call Mr. Clarke mentioned to us that we can choose the local workers that we wouldn't bring with us (specialized workers and foreperson) and that the ratio of foreperson that is in the Collective Agreement is something flexible or variable and depends of the nature of the works undertaken by a contractor.

On May the 12th through the 14th inclusively, we returned on the work site for our second visit so that we can see the work site without any snow coverage and we held a meeting with the representative of the Council of Unions, Mr. Hubert Loader. The later confirmed us and stated that there was non-working workers (shadow men) allowed on the work and that possible arrangements could be made concerning specialized resources given the nature of our work. At this meeting we understood that for some areas of the site it is too much dangerous to employ apprentices.



On June 11th we submitted our proposal to MFC with some qualifications, which are discussed and developed herein after.

On July 7, 8 and 9 2014, after the submission of our proposal, a clarification meeting is held at Nalcor's offices and at the offices of the OE Union and ourselves in that later case. During the clarification meeting with Nalcor some clarifications or different interpretations are given and expressed by various MFC participants that have an impact on the price regarding some geotechnical, quality and environmental issues or resources in comparison to the terms of the request for proposals of February 20, 2014 (the "RFP").

During the clarification meeting between ourselves and the OE Union held on July 9, their position changed in comparison with their position or interpretation of the Collective Agreement as presented to us on our first meeting of April 30th 2014. We are then surprised to learn that there is no need and that it will be practically impossible or "hazardous" to bring our own specialized workers and forepersons and that they can provide to us all the personnel we can require to execute the works including all specialized workers and specialized forepersons. We have also learned only at that time, (after the submittal of our proposal and in contrast of the Collective Agreement) that the OE Union would be choosing (and not simply referring) half of the workers, that there was no question to provide us with their curriculum vitae, and that all statutory holidays had to be worked if we don't want to start a "fire" in the work site. The OE representatives introduce the information that it is usual for Teamster to drive pickup trucks on the job.

On July 16, we've submitted an amended proposal that has precedence over our initial submission of June 11th for the works and which takes into account the impacts of the information, interpretation and positions of MFC and of the OE Union on the price of our initial proposal of June 11, 2014. On July 18, 2014, we've submitted you with an explicative letter providing the appropriate explanations of the impacts that such new information and positions had on our price.

On July 30th 2014, a second clarification meeting is held at Nalcor office in presence of your representatives. We met with the OE Union and the Teamsters Union who gave us or reaffirmed their position and interpretation on certain clauses of the Collective Agreement, since it is clear in our mind that the theoretical aspects of such agreement are one thing but their application during the works is another issue and we needed to validate the unions interpretation on certain clauses of the Collective Agreement (example: foreperson ratio, apprentices ratio, choice of specialized workers and specialized forepersons, jurisdictional issues between OE Union and Teamsters Union, statutory holidays, start of the payment period, referral vs choice of workers and employer's ability to evaluate and lay them off without having recourse at all times to the grievance procedure). As you remember, needless to say that the Teamsters Union had some more open and flexible views on such subjects than the OE Union but one shall keep in mind that personal with the more impact on the project success is from the OE Union.

Finally, in August 1st 2014, we had a meeting with you and some members of your project team in order to discuss, exchange, clarify and negotiate certain items that were part of our breakdown list provided to you with our amended breakdown price on July the 16th.



As you can see we gave a lot of seriousness, and allocated lots of time and resources to correctly understand and measure the position of various stakeholders in the project, being understood that in doing so we have always been transparent, in good faith, and always wanted to preserve a partner type relationship with the unions while maximizing the projects economic impacts in the local community and ensuring the highest quality of the works to be undertaken for MFC's benefit.

A) QUALIFICATION ARGUMENTS

1. Non-working workers (Shadow men).

On our letter of qualifications of 11 June 2014 and the text proposed in the summary of agreement modifications p.7-8 article 31.0 (Labour relation) we have made a qualification under which Non-working workers (Shadow men) are not included in the works of the project.

The unions changed their position regarding our ability and right to choose and/or bring with us specialized workers and specialized forepersons already under our employment and for which we can vouch in terms of production, productivity, experience, skills and knowledge of this kind of sensible and complex works. This is not the case of the workers chosen by the unions.

Consequently in order to ensure the project's high rate of production, productivity and experience needed, we had no other choice than to add more management staff in order to insure the required supervision and management of management staff and workers that we know nothing about and that we can not choose. This impact of adding supervisory resources and accordingly management staff, given the union's change of position, creates a situation of having management staff which we have no choice to pay and employ during the various shifts of the project. The supervisory personnel that we added with such management staff is required in order to preserve the high productivity required by the project and protect our risk given the sensible and complex nature of the works.

Such addition of supervisory and management staff has of course an important impact on the price if we also take into account the revised schedule that we draw up in order to execute the works within MFC's requested three year period (addition of calendar days and addition of night shifts) meaning that such supervisory resources have to be paid during the existing/already submitted schedule and the added shifts and calendar days of the revised schedule.

Therefore, since our initial proposal did not include shadow men, we think that the impact of this situation on the price shall be added and thereby constitutes an increase.

Another example of this is the role of apprentices which creates a non-working worker (shadow men) situation, given the OE Union's position in particular, since the apprentices are not required to work but to be on a "watch and learn" mode only. There is no place in the collective agreement stating explicitly that apprentices won't be working. MFC confirmed by that Non-working workers (shadow men) are not acceptable. Consequently, apprentices will work full time on appropriate operations.



2. Specialized workers and specialized forepersons and their appointment.

On our letter of qualifications of 11 June 2014 and the text proposed in the summary of agreement modifications p.7-8 article 31.0 (Labour relation) we have made a qualification under which we were supposed to bring and provide our own specialized workers and specialized forepersons.

This was our understanding when we submitted our June 11th proposal to MFC and given the unions position of April 30th.

Instead, given the change in position and clarifications provided by the unions, especially the OE Union, we learned afterwards that it would practically be almost impossible and not wise (if we wanted to preserve labour peace) to bring with us our own specialized workers and specialized forepersons for which we can vouch in terms of productivity, production, skills and experience. With the union's positions we would have now to proceed with the work with a blindfold regarding our specialized workers and specialized forepersons skills, experience, production rate and productivity in relation with the complex and sensitive nature of the works.

In order to diminish the inherent risks of this situation, we have added our own supervisory personnel within the management staff, as discussed in the above section, so that we can better deliver on the project and that we can better supervise the forepersons and general forepersons that the union will choose and that we know nothing about.

As stated earlier, notwithstanding the simple addition of the number of supervisory personnel, this also has an important impact on the price if we take into account the revised schedule that we draw up in order to execute the works within MFC's requested three year period (addition of calendar days and addition of night shifts) meaning that such supervisory resources have to be paid during the existing/already submitted scheduled shifts and the added shifts and calendar days of the revised schedule.

Consequently, since this item was qualified in our proposal, we think that the impact of this situation on the price shall be added and thereby constitutes an increase. See attachment table

Should MFC be able to help us in this matter we could provide a certain credit to MFC for such increase. (See the Price reductions included in the attachment table)

B) CLARIFICATION MEETINGS WITH MFC AND WITH THE UNIONS

This section B) contains, what we think are the compelling and clear arguments arising out of (i) information received and not known or included in the RFP documents between our June 11th proposal and our last August 1st meeting and (ii) information received that create an ambiguity between the documents of the RFP and the true and correct conditions under which the works would be undertaken.



1. HUMAN RESOURCES ISSUES / EMPLOYEES CHOSEN BY THE CONTRACTOR

- a) Following our meetings of April 30th and May 14th, we expected to have the workers' resumes before hiring them in order to correctly evaluate their skills without fear of the unions bringing obstacles into the choice of qualified workers by the Contractor.

It was made clear to us, especially by the OE union, that should they send us a worker that the union thinks constitutes a qualified one based on the requisition form that we would send, then there are very little chances for us to send such worker back to the union. Given that personal with the more impact on the project success is from the OE union, this presents an important choice limitation for us and lots of uncertainty or risk on a major part of the worker's skills for this sensitive and complex work that we will have to perform.

Given that new information and position of the OE union, such risk was not accounted for in our initial proposal of June 11th. Such risk also encompasses uncertainty on the workers skills and consequently on the production or productivity rates of the works, therefore requiring us to add supervisory personnel, working shifts, calendar days and also to limit the simultaneous area where the working teams would work so that we can have a better control over the works being executed.

- b) In our initial proposal of June 11th we took into account that half of the workers would be referrals of the unions, one worker (shop steward) would be appointed by them and the rest chosen by us out of a list, as per the Collective Agreement's hiring procedures and protocol (see section 7 of the Collective Agreement, 7.07 c) and 7.07 d)). Instead, during the meetings with the unions after June 11th their position changed from the initial one, and we understood that the alleged "referral" was more a choice than a referral. For us a referral, still leaves the employer's and contractor's right to manage intact, since we were to have the last decision on whether a worker is fit and skilled enough to participate in this sensitive and complex work of the project.

It was made clear to us, by the OE union representative Mr. Terry Sparks, that if he "refers" someone he thinks is skilled enough for a given job, then we better prepare ourselves for some type of litigation or extreme difficulties on the work site. In other terms, our management right to hire who we think is fitted and skilled for a given job vanishes almost completely.

As mentioned in the last paragraph (a) here above, such risk, created by the union position on appointments and choices instead of true referrals as per the Collective Agreement, was not accounted for in our initial proposal. Consequently to counter such risk on the difficulties and to preserve the labour peace as written in article 31.1 of the Agreement, we had to add working shifts and calendar days



in the schedule and also to add supervisory personnel to assist the forepersons in managing workers.

2. GRIEVANCE PROCEDURE

This item relates to subsection 1 (a) here above. The comments of the OE union's representative during our meeting of July the 30th lead us to strongly believe that if we wish to have a partner type relationship with the unions and also to maintain a labour peace in the workplace, we will have to deal with workers appointed by the unions and not simply referred by them. If we decide not to follow that principle, we'll be subjected each time to the grievance and arbitration procedure of the Collective Agreement which will cost us time, money and resources.

In our initial proposal of June 11th we didn't identify the grievance procedure of the Collective Agreement as such an important risk given the fact that we thought that we would be choosing the referred workers and would have a final decision within the first working rotation, without having to fear the grievance procedure.

Following the OE union's representative comments made before us on July 30th and July 9th, it is clearer to us that this constitutes an important risk that we'll have to manage and that may cost us trouble, money, loss of time and other similar inconveniences. To try and better manage this and successfully diminish the chances of grievance procedures each time there is a problem, our solution was to add our own supervisory personnel within the management staff so that it can manage adequately the human resources component of the work during all the working shifts of the project. Also reduce the number of workers on site at a given time to make sure possible hard cases can be solve by our staff in a productive and positive manner.

3. FOREPERSONS RATIO

In the Collective Agreement, section 7.08 (a) iv), it was clear to us that (i) we would decide of the number of forepersons and general forepersons and (ii) the word "average" on the 10:1 ratio meant that it was something flexible that it wouldn't be checked with some sort of a microscope.

The OE union's position on this as well as the Teamsters Union's position on July 9th and July 30th are clear that the ratio are more of a minimum even if the Collective Agreement, that is part of the RFP documents, does not say that explicitly.

Therefore this has an important impact on us since on our June 11th initial proposal; we didn't account this ratio to constitute a minimum as per the union's position. Consequently, this item alone resulted in additional forepersons and general forepersons and therefore multiplying that by the increased number of working shifts and calendar days of the revised schedule results in an important increase of the funds we need in the management staff item of our price breakdown list.

As the other items herein, this risk and situation was not taken into account by our June 11th proposal, and therefore we needed now (given the union's positions on such minimum ratio) to take it into account correctly and therefore increasing our price accordingly.



4. STATUTORY HOLIDAYS

In the Collective Agreement (see section 23, 23.02 and 23.03), it is not stated that work needs to continue during these statutory holidays. We took that into account on our June 11th proposal.

Following the meetings of July 9th and July 30th with the unions, it is now clear that union's position is that if we want to preserve a certain peace in the workplace, statutory holidays need to be worked and paid accordingly.

Since the union's position was not taken into account in our proposal of June 11th, we needed to amend our price accordingly in order to have the necessary funds to pay out such working statutory holidays. This item alone represents an increase on the price as presented in the attachment.

5. APPRENTICES

This subject is somewhat the same as the preceding. In our June 11th proposal we accounted that apprentices would be actually working full time on site in order to be paid and we understood it is also what MFC wish. Nothing in the Collective Agreement states otherwise and anything to the contrary.

6. START OF PAYMENT PERIOD

On our June 11th proposal, we took into account that workers would start getting paid once they are at their respective designated work area, as per the Collective Agreement terms.

7. JURISDICTION BETWEEN UNION WORKERS

In our proposal of June 11th we took into account that some union workers could willingly execute accessory tasks that are covered by another union's jurisdiction as described in [article 18.06; of the collective agreement], thus keeping the number of workers at a reasonable number.

Following our proposal of June 11th, the union's informed us that the operation of certain equipment could not be done by workers of another union because of jurisdiction issues.

Such inflexibility in this jurisdictional issue creates pressure on the Contractor resources and accordingly additional workers are sometimes in order to perform certain tasks that otherwise could have been done by another union member. Consequently, this costs more and a price increase on that matter is justified given the fact that the Contractor needs to abide in a very strict matter with the jurisdiction of each union.



8. CLARIFICATION MEETING WITH MFC VS RFP DOCUMENTS

The following items consist of explanations of part of our price increase as a consequence of clarifications and expectations expressed during the MFC clarification meeting of July 7 and 8 2014.

(a) Geotechnical: Following the clarification meeting with MFC, (after our June 11th proposal) we learned that a full time on site and during all duration of the works geotechnical resource would be required in order to adequately respond to MFC's expectations on that matter. Also, to take into account the addition of calendar days and working shifts, the entire geotechnical work team costs also more.

(b) Quality: Following the clarification meeting with MFC, (after our June 11th proposal) we learned that a full time dedicated resource was required in order to ensure and supervise the quality of the works, in opposition to exhibit 7 where it is contractor responsibility to appoint sufficient qualified personal. This has a cost impact and accordingly a price increase is justified, taking into account also the increase number of calendar days and working shifts.

(c) Environment: Following the clarification meeting with MFC, (after our June 11th proposal), we appointed an environment manager and added some management hours.

D) ROOM AND BOARD

There is a positive impact of the schedule rearrangement; the number of workforce was spread to reduce peaks that allow us to control the number of LOA people, relax the pressure on conventional town accommodations and maximize the local benefits.

Following a discussion with you, we have agreed that this item was to be discussed and established once all other items were cleared.



E) SCHEDULE REVISION

Following the reasons explained in the other sections of the letter, it had for impact the schedule revision. This revision had two (2) main aspects; 1) the increase of calendar days and 2) the global increase of working shifts.

- 1) This aspect of the schedule revision impacts a certain type of resources. For example, the resources working only on day shifts (project planner, project manager, etc...) and the installations are impacted by this increase of calendar days. The detail of calculation is available below.

Initial versus Revised situation	
Initial calendar days (control schedule rev0)	448
Initial working shifts (day+night shifts)	726
Revised calendar days (control schedule revB)	548
Revised working shifts (day+night shifts)	1010

To obtain the percentage used to adjust the items presented in the attached document, we have to do the following calculus.

$$548 - 448 = 100 \text{ added calendar days}$$

$$100 / 448 = 0.22 \text{ which represent the average adjustment to items price}$$

- 2) This aspect of the schedule revision influences another type of items. For example, the resources working day and/or night shifts (Forepersons, mechanics, etc...) and the indirect equipments (maintenance, pick-up trucks, etc...) are impacted by this increase of calendar days and increase in night shifts. The detail of calculation is available below.

Initial versus Revised situation	
Initial calendar days (control schedule rev0)	448
Initial Night shifts	278
Initial working shifts (day+night shifts)	726
Revised Night shifts	462
Revised calendar days (control schedule revB)	548
Revised working shifts (day+night shifts)	1010

To obtain the percentage used to adjust the items presented in the attached document, we have to do the following calculus.

$$1010 - 726 = 284 \text{ added shifts day or night}$$

$$284 / 726 = 0.39 \text{ which represent an average adjustment to items price}$$



F) CONCLUSION

As you can see the main reasons that have justified our price increase are mainly reasons that have to do with the union's positions on various subjects, which itself caused a revision of our schedule in order to add working days and additional working shifts, thus justifying the increased costs to execute the scope of work provided in the RFP documents.

The substantial part of the qualifications and all the information received after our initial proposal has impacts on the price, since it changes, the risk profile of the works.

Therefore we strongly believe that our price increase of July 16 is justified and reasonable under the circumstances given the price reduction that is included in the table enclosed herein.

We believe that we constitute the best contractor for delivering these works technically, on all commercial aspects and that our discussions/work so far shows our transparency, commitment and strong interest to undertake the project and deliver it on time. We think that we have the best plan to induce local economic benefits to the Goose Bay area with regards to the project and our reputation and past experience precedes us on that matter.

We are interested, if you think that it is appropriate, to defend before Nalcor's representatives all aspects of this letter and of the table herein enclosed.

As you'll see from the document enclosed herein, our price has been revised and we've made every best effort we thought possible in order to have a competitive and reasonable price, which we are convinced that we do. Therefore as discussed the first August, our price including the reductions that we're ready to grant you is: 154,128,000.00\$ (one hundred fifty four million hundred twenty eight thousand dollars).

We would also gladly discuss any questions or comments that you or your team may have on the contents of the present letter or of the table of prices herein enclosed.

As always, we thank you for your attention and collaboration.

Regards,

GILBERT NEWFOUNDLAND AND LABRADOR
CONTRACTING LTD.

By: Jean-Marc Gilbert 2014-08-07
Jean-Marc Gilbert, CEO

Encl.: Table of price reductions and credit adjustment
Control schedule revision B