

From: edover@lowerchurchillproject.ca
To: frankgillespie@lowerchurchillproject.ca; scotto'brien@lowerchurchillproject.ca
Subject: Fw: CH0032 - Approved LNTP - Signed by both parties
Date: Thursday, October 31, 2013 5:43:10 PM
Attachments: [.png](#)
[CH0032 LNTP Signed by LCP and AH 31-10-2013.pdf](#)

FYI

Ed Over

Sr. Commercial Advisor

PROJECT DELIVERY TEAM

Lower Churchill Project

t. 709-752-3461 x54809

e. EdOver@lowerchurchillproject.ca

w. muskratfalls.nalcorenergy.com

----- Forwarded by Ed Over/LCP/NLHydro on 10/31/2013 05:42 PM -----

From: Gauthier Francoys <Francoys.Gauthier@andritz.com>

To: "Anderson, Robert (Toronto)" <Robert.Anderson2@snclavalin.com> ,

Cc: Doyon Bernard <Bernard.Doyon@andritz.com> , Carrier Jean-Luc <Jean-Luc.Carrier@andritz.com> ,
"EdOver@lowerchurchillproject.ca" <EdOver@lowerchurchillproject.ca> , "BruceDrover@lowerchurchillproject.ca"
<BruceDrover@lowerchurchillproject.ca>

Date: 10/31/2013 05:19 PM

Subject: RE: CH0032 - Approved LNTP - Signed by both parties

Dear Robert,

See attached the LNTP countersigned by AH.

Thank you very much to you and your team for the effort and support.

Regards,

François D. Gauthier

Gestion de soumission / Proposal Management

ANDRITZ HYDRO Ltée / Ltd

Phone: 514-428-6785 / Mobile: 514-217-9029

From: Anderson, Robert (Toronto) [<mailto:Robert.Anderson2@snclavalin.com>]

Sent: October-31-13 3:08 PM
To: Gauthier Francoys
Cc: Doyon Bernard; Carrier Jean-Luc; EdOver@lowerchurchillproject.ca;
BruceDrover@lowerchurchillproject.ca
Subject: CH0032 - Approved LNTP

Francoys: Please see the attached approved LNTP. Please review and have a signed copy returned to me for our records.

We appreciated your assistance throughout this long process.

Regards,

Bob Anderson

Contracts Administrator

Power Construction Division

195 The West Mall

Toronto, Ontario, M9C 5K1

Direct: 416-252-5315 x 54630

Switchboard: 416-252-5311

Fax: 416-231-5356

Email: robert.anderson2@snclavalin.com

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Thank You.



CH0032_LNTP_Signed by LCP and AH_31-10-2013.pdf

LIMITED NOTICE TO PROCEED
LOWER CHURCHILL PROJECT: MUSKRAT FALLS
CH0032: SPILLWAY AND POWERHOUSE HYDRO-MECHANICAL EQUIPMENT

This Limited Notice to Proceed Agreement (“LNTP”) is made effective as of September 6, 2013 by and between:

NALCOR ENERGY a body corporate constituted pursuant to the *Energy Corporation Act*, S.N. 2007, c. E-11.01 solely in its own right and not as agent of the Crown in right of the Province of Newfoundland and Labrador, and having its head office at the City of St. John’s, Province of Newfoundland and Labrador (the “Company”)

- and -

Andritz Hydro Canada Inc.

(the “Contractor”)

WHEREAS the Company and the Contractor are in the process of finalizing a hydro-mechanical equipment design, supply and install agreement (the “Agreement”) for the Work in the form of the draft attached as part of Schedule 3 hereto;

AND WHEREAS the Parties have agreed that the Initial Work to be approved by the Company for performance for which the Contractor is to be paid in accordance with this LNTP and the Agreement, is comprised of the work (together with changes thereto as the Company may approve) as described in Schedule 1 hereto (the “Initial Work”).

AND WHEREAS the Parties wish to enter into this LNTP to record the basis upon which the Contractor is to proceed with, and be paid for, the Initial Work.

WITNESSETH that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree each with the other as follows:

1. The recitals together with the terms and conditions and schedules referenced herein constitute the limited notice to proceed agreement (“LNTP”). All capitalized terms not defined herein shall have the same meanings as defined in the Agreement form attached as Schedule 3.
2. **Agreement.**
 - (a) Subject to Sections 2(b) and 5(d) and subject to discretionary board approval of both Parties, the Company and the Contractor intend to execute the Agreement before November 15, 2013, substantially in the form attached as part of Schedule 3 hereto, subject only to negotiation of any terms and conditions identified in the Schedule 3 which are not yet agreed to between the Parties and any issues identified by the entities providing financing for the LCP and their independent engineer.

- (b) The Company undertakes that it is negotiating exclusively with the Contractor for the Work during the term of this LNTP and the Parties expect to conclude these negotiations within a month of the date of this LNTP. Provided the Parties have negotiated mutually acceptable wording for those terms and conditions identified in Schedule 3 which are not yet agreed to between the Parties and any issues identified by the entities providing financing for the LCP and their independent engineer as of the date of this LNTP, and received their respective board approvals then the Parties shall execute the Agreement substantially in the form set out in Schedule 3 with only those changes necessary to incorporate the mutually acceptable wording.

3. Initial Work.

Company hereby directs Contractor to commence the following Initial Work:

- (a) The Initial Work is described in Schedule 1 and shall be performed by the Contractor in accordance with Schedule 1. The Initial Work shall be carried out in accordance with and subject to the applicable terms and conditions of the Agreement form attached as Schedule 3. For greater certainty, the terms of this LNTP shall take precedence over the terms in the Agreement in the event of any inconsistency.
- (b) Initial Work which has been completed by Contractor and Approved by Company shall be included in and form a part of the Work. Such completed and Approved Initial Work shall satisfy the obligation to perform that part of the Work to which the Initial Work relates upon execution of the Agreement.
- (c) If the Agreement is executed, the remuneration paid to the Contractor with respect to the Initial Work pursuant to this LNTP shall be included in and form a part of the Contract Price pursuant to the Agreement and will not be an extra above and beyond the Contract Price. Such remuneration shall be credited against the Contract Price (against the initial milestone payments) following the execution of the Agreement. For greater certainty the sum of the Contractor's compensation for performing the Initial Work under this LNTP and for performing the Work under the Agreement shall not exceed the Contract Price.
- (d) For greater certainty, the Parties acknowledge and agree that this LNTP constitutes the basis upon which the Contractor shall perform the Initial Work and that Contractor is not authorized to proceed with the balance of the Work until execution of the Agreement or this LNTP is amended by the Parties to permit a further part of the Work to proceed.

4. Payment.

- (a) Company shall pay the Contractor for performance of the Initial Work the amounts set out in Schedule 2 (the sum of which shall be the "LNTP Price").
- (b) Company shall pay the LNTP Price by monthly payments in the amount set out for each month in Schedule 2 provided that:
 - (i) Contractor delivers to Company an invoice with such supporting documentation as Company may reasonably require; and
 - (ii) Contractor has completed and delivered to Company all the deliverables listed in Schedule 1 for the month invoiced.

- (iii) A notice issued pursuant to this LNTP shall be deemed to have been delivered as follows: Any communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the fifth (5th) Business Day following the deposit thereof in the mail and, if given by facsimile or email, on the day of transmittal thereof; provided that if any such notice or other communications so delivered or transmitted by facsimile or email after 3:00 p.m. EST on a Business Day (as hereinafter defined) or on a day other than a Business Day it shall be deemed received by the addressee on the next succeeding Business Day. In the event of the disruption of postal service, communication shall be given only by personal service or by transmittal by facsimile or email. For the purposes of this LNTP a Business Day means any day other than a Saturday, a Sunday, or a statutory or civic holiday in the Province of Newfoundland and Labrador.
- (c) The Parties shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this LNTP.
- (d) If any part of this LNTP or the application of such part to either Party, Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this LNTP, or the application of such remainder part to any other Party, Person or circumstances, shall not be affected thereby and each provision of this LNTP shall be valid and enforceable to the fullest extent permitted by law.
- (e) No amendment to this LNTP shall be valid or binding unless set forth in writing and duly executed by the Parties to this LNTP. No waiver of any breach of any provision of this LNTP shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.
- (f) This LNTP may be executed in counterparts and may be executed and delivered by facsimile and all the counterparts and facsimiles together constitute one and the same agreement.
- (g) This LNTP shall enure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns, provided that neither Party shall be entitled to assign this LNTP in whole or in part, to any other Party without the prior written consent of the other Party hereto.
- (h) Contractor shall not assign this LNTP without the prior written consent of the Company. Company may assign this LNTP in accordance with the provisions of Article 30 in the Agreement.
- (i) Notwithstanding any other provisions, the aggregate liability of Contractor (including its affiliates) or Company (including its affiliates) for any claims of any kind, losses, damages or expenses arising out of or in connection with the Initial Work or this LNTP or from the performance or breach thereof shall not exceed the LNTP Price.
- (j) Notwithstanding any other provision, neither the Company nor Contractor will be liable to the other Party for: (i) loss of profit, loss of revenue or business opportunity, loss of

5. Termination

- (a) Company may terminate this LNTP at its convenience upon written notice to Contractor to be effective not less than two (2) days from the date of the written notice.
- (b) Upon such termination in accordance with paragraph (a): (i) Contractor shall cease performance of the Initial Work subject to any direction by Company for completion of any part of the Initial Work; and (ii) Company shall compensate Contractor for all Initial Work performed up to the effective date of the termination of this LNTP and for any part of the Initial Work that Company directs the Contractor to complete.
- (c) In no event will the compensation payable to the Contractor upon termination exceed the value of that part of the LNTP Price for the Initial Work completed as of the effective date of the termination. For greater certainty, the compensation determined by this Section 5 shall be Contractor's sole and exclusive remedy for termination of this LNTP.
- (d) Subject to paragraphs (a) to (c) in this Section, if the Company and Contractor have not executed the Agreement by no later than November 15, 2013 or any other date agreed to between the Parties, this LNTP will be terminated as of such date and neither Party will be liable for any costs, damages or liabilities on account of such termination, except for the obligation of Contractor to complete the Initial Work and liabilities associated therewith and for the obligation of Company to pay the LNTP Price.

6. Intellectual Property

- (a) "Intellectual Property" means all intellectual property and intellectual property rights, including all trade secrets, patents, patent applications, trade-marks, copyrights, inventions, processes, discoveries, designs, techniques, drawings, specifications, data, software (hard copies and machine readable formats) and know-how.
- (b) The Contractor retains its rights in its Intellectual Property conceived, reduced to practice, designed, provided or developed by or for the Company or used by the Contractor in the course of the Initial Work (collectively, the "**Contractor Intellectual Property**")
- (c) The Contractor grants to the Company a perpetual, royalty-free, non-exclusive, fully paid up, non-transferable (except as provided below) licence to:
 - (i) use all such Contractor Intellectual Property in respect of the operation and maintenance, construction, commissioning, refurbishment, replacement, alteration, relocation, decommissioning, dismantling or demolition of the Initial Work;
 - (ii) assign all licence rights granted to the Company under this Section 6 to a Person which becomes the owner of the Initial Work; and
 - (iii) with prior written consent of the Contractor, which consent shall not be unreasonably be withheld, disclose on a confidential basis any Contractor Intellectual Property to any person which requires such Contractor Intellectual Property in respect of any of the actions referred to in Section 6(c)(i).

7. General Terms

(a) This LNTP shall in all respects be governed by and construed and interpreted in accordance with the laws of Province of Newfoundland and Labrador, and the laws of Canada applicable therein and the Parties agree to attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.

(b) Notices

(i) Any notice required or permitted to be given pursuant to this LNTP shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by registered letter, telefax or email (subject to confirmation of receipt) to the address or telefax number or email address set forth below.

(A) To Company:

Name: Scott O'Brien
Position: Area Manager – Muskrat Falls Facilities and Infrastructure
Address: 350 Torbay Road, Suite 2
St. John's, NL
A1A 4E1
Telephone: 709-737-4245
Facsimile: 709-737-1985
E-mail: Scott.O'Brien@nalcenergy.com

(B) To Contractor:

Andritz Hydro Canada Inc.
Name: Mathieu Bertrand
Position: Project Manager
Address: 6100 aut. Transcanadienne
Pointe-Claire, Quebec
H9R 1B9
Telephone: 514-428-6866
Facsimile: 514-428-6726
E-mail: mathieu.bertrand@andritz.com


(ii) Each Party to this LNTP shall have the right to change the place to which notice shall be sent or delivered by similar notice sent in like manner to the other Party.


production, costs of money, claims of customers, costs of replacement power, in each case whether foreseeable or not; or (ii) any incidental, indirect, special or consequential damages of any nature.


IN WITNESS WHEREOF the Parties hereto have executed this LNTP as of the date first written above.

Nalcor Energy

Andritz Hydro Canada Inc.

By: 
Name: PAUL HARRINGTON
Title: PROTECT DIESEL LCP

By: 
Name: DANIEL CARRIER
Title: VICE-PRESIDENT

By: 
Name: Lance Clarke
Title: Business Serv. - Supply Chain

SCHEDULE 1**DESCRIPTION OF INITIAL WORK**

The objective of this LNTP is the performance of activities described below by the Contractor related to the engineering of the Muskrat Falls spillway and powerhouse hydro-mechanical equipment. The list below sets out the deliverables to be provided by Contractor for delivery to Company under the LNTP by the dates shown below:

LNTP Deliverables 1**31st October 2013**

Design Criteria - Loads and Resistances (Only Spillway Primary Anchors and Embedded Parts)

Design Criteria - Materials and Material equivalents to the Specifications (Only Spillway Anchors and Embedded Parts)

Minutes of the Kick-Off Meeting with the Company

Spillway Temporary Stoplog Upstream - Foundation Drawing - Block Out / Anchors Arrangement

Spillway Permanent Stoplog Upstream - Foundation Drawing - Block Out / Anchors Arrangement

Spillway Temporary Stoplogs Upstream - Foundation Drawing – Primary Anchors

Spillway Permanent Stoplogs Upstream - Foundation Drawing – Primary Anchors

Spillway Stoplogs Upstream – Design calculation – Stoplog Footprint Sizing

Spillway Temporary Stoplogs Upstream - Design Calculation - Primary Anchors

Spillway Permanent Stoplogs Upstream - Design Calculation - Primary Anchors

LNTP Deliverables 2**29th November 2013**

Project Execution Plan

Project Quality Plan

Andritz Hydro Document Register

Spillway Roller Gate – Design Calculations – Wheels arrangement and rim sizing

Spillway Roller Gate – Foundation Drawing – Block Out / Anchors Arrangement

Spillway Roller Gate – Design Calculations – Primary Anchors

Spillway Roller Gate – Foundation Drawings – Primary Anchors

Spillway Temporary Stoplogs Upstream – Design Calculations – Embedded Parts

Spillway Permanent Stoplogs Upstream – Design Calculations – Embedded Parts

Spillway Temporary Stoplogs Upstream - Embedded Parts – General Assembly

Spillway Permanent Stoplogs Upstream - Embedded Parts - General Assembly

Spillway Temporary Stoplogs Upstream - Embedded Parts - Assembly - Details-I

Spillway Temporary Stoplogs Upstream - Embedded Parts - Assembly - Details-II

Spillway Permanent Stoplogs Upstream - Embedded Parts - Assembly - Details-I

Spillway Permanent Stoplogs Upstream - Embedded Parts - Assembly - Details-II

ITP - Spillway Permanent Stoplogs Upstream – Embedded Parts

ITP - Spillway Temporary Stoplogs Upstream – Embedded Parts

LNTP Deliverables 3

20th December 2013

Project Baseline Schedule

EHS Plan

Risk Plan

Unpriced Purchase Order(s) for spillway primary anchors

Inspection and test plan(s) for spillway primary anchors

Spillway Temporary Stoplogs Upstream - Embedded Parts - Sill Beam

Spillway Temporary Stoplogs Upstream - Embedded Parts - Tracks & Lining

Spillway Permanent Stoplogs Upstream - Embedded Parts - Sill Beam

Spillway Permanent Stoplogs Upstream - Embedded Parts - Tracks & Lining

Spillway Roller Gate - Foundation Drawing - Block Out - Details

Spillway Roller Gate - Embedded Parts - Assembly

Spillway Roller Gate - Embedded Parts - Assembly - Details I

Spillway Roller Gate - Embedded Parts - Assembly - Details II

Spillway Roller Gate - Embedded Parts - Sill Beam

Spillway Roller Gate - Embedded Parts - Tracks and Well Lining

Spillway Roller Gate - Embedded Parts - Tracks-Details

Spillway Roller Gate - Embedded Parts - Counter Guide

Spillway Roller Gate - Embedded Parts - Bottom and Lower Side Lining

Spillway Roller Gate - Embedded Parts - Side Guide

Spillway Roller Gate - Embedded Parts - Adit Doors

Spillway Roller Gate - Embedded Parts - Equipment Marking & Tagging

ITP - 2nd Stage EP Spillway Roller Gate

SCHEDULE 2**AMOUNTS TO BE PAID FOR INITIAL WORK**

| <u>Invoice date</u> | <u>Payment date</u> | <u>Amount</u> |
|-------------------------------|-------------------------------|---------------|
| November 1 st 2013 | November 4 th 2013 | 1,000,000 CAD |
| November 1 st 2013 | November 4 th 2013 | 1,000,000 EUR |
| November 3 rd 2013 | December 3 rd 2013 | 500,000 CAD |
| November 3 rd 2013 | December 3 rd 2013 | 500,000 EUR |
| December 3 rd 2013 | January 3 rd 2013 | 500,000 CAD |
| December 3 rd 2013 | January 3 rd 2013 | 500,000 EUR |

SCHEDULE 3**AGREEMENT FORM****Including:**

| | |
|-----------|---|
| Articles | Supply & Install Agreement Rev 3 (email to AH Oct. 19/13) |
| Exhibit 1 | <p>Scope of Work (Aconex email to AH Oct. 21/13) (AH emails Oct. 23 & 24/13 re updated technical documents)</p> <ul style="list-style-type: none"> - Section 1 – Scope of Work - Section 2 – Technical Document List - Section 3 - Technical Specification - Section 4 - Drawings |
| Exhibit 2 | <p>Compensation (email from AH Oct. 22/13)</p> <ul style="list-style-type: none"> - Appendix A –Schedule of Price Breakdown - Appendix B – Milestone Payment Schedule - Appendix C – Operating Spares Price Schedule - Appendix D – Personnel Rate Schedule - Appendix E – Equipment Rate Schedule - Appendix F – Estimated Trade Person – Hour Schedule |
| Exhibit 3 | <p>Coordination Procedures (email from AH Oct. 22/13)</p> <ul style="list-style-type: none"> - Appendix A – Change Request - Appendix B – Change Order - Appendix C – Request and Final Completion Certificate - Appendix D – Payment Certificate - Appendix E – Site Query (SQ) - Appendix F – Site Instruction (SI) - Appendix G – Engineering Change Notice (ECN) - Appendix H – Field Work Order (FWO) - Appendix J – Milestone Completion Certificate - Appendix K – Shipping Release Notice - Appendix L – Statutory Declaration - Appendix M – Form of Confirmation of Financing - Appendix N – Form of Confirmation of Financing from Nalcor Energy - Appendix O - Form of Notice of Assignment |
| Exhibit 4 | Supplier Document Requirement List (as per RFP) |
| Exhibit 5 | Health and Safety Requirements (as per RFP) |
| Exhibit 6 | Environment and Regulatory Compliance Requirements (as per RFP) |
| Exhibit 7 | Quality Requirements (as per RFP) |

| | |
|------------|---|
| Exhibit 8 | Subcontractors, Manufacturers and Material Sources (email from AH Oct. 18/13) |
| Exhibit 9 | Interface and Milestone Schedule (anchor delivery dates,(staggered by lots, to be confirmed by Company) |
| Exhibit 10 | Declaration of Residency (as per RFP) |
| Exhibit 11 | Company Supplied Documents (email from AH Oct. 15/13) |
| Exhibit 12 | Site Conditions (email from AH Oct. 22/13 – acceptance) |
| Exhibit 13 | Provincial Benefits (as per RFP) |
| Exhibit 14 | Performance Security (email from AH Oct. 18/13) |

Outstanding Items

- 1) Exhibit 3 procedure has been revised by Company with latest version provided by e-mail to Contractor on October 19th. (email comments from AH Oct. 22/13)
- 2) Exhibit 1 - AH re (i) clarifications from Eaton and (ii) price increase for Spillway Electrical Building new requirements introduced after Technical Document updates) (email from AH Oct 24/13)