

## Tender For

Tender Description: Provision of  
Electrical/Mechanical  
Maintenance for Rail  
Corridors

Tender Number: PT-2016-SIG-091



**LIST OF CONTENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR  
RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 2

Addendum No. 2

<b>Title</b>	<b>No. of Pages</b>
List of Contents.....	2
Addenda (If Applicable) .....	1
Bidder’s Submission Checklist.....	1
Introduction.....	1
Definitions.....	4
Instructions to Bidders .....	<b>22</b>
 <b><u>TENDER DOCUMENT FORMS</u></b>	
Form of Tender .....	4
Contract Prices .....	3
Bidder’s Qualifications .....	12
Conflict of Interest .....	2
Mandatory Technical/Personnel Requirements .....	2
Bidder’s Occupational Health and Safety Performance Record.....	1
Bidder’s Description of Facilities, Equipment and Workforce .....	1
Vendor’s Personnel.....	1
 <b><u>GENERAL CONDITIONS OF THE CONTRACT</u></b>	
General Conditions .....	45
Schedule A – Definitions .....	9
Schedule B – Financial Terms .....	7
Schedule C – Insurance.....	4
Schedule D – Dispute Resolution .....	4
Schedule E – Vendor Personnel.....	3
 <b><u>SCOPE OF WORK</u></b>	
General Instructions .....	<b>7</b>
Quality Control .....	2
Railway Safety Requirements.....	5
Environmental Protection .....	2
Safety Requirements .....	9
Material and Equipment.....	3
Detailed Scope of Work.....	<b>33</b>

**LIST OF CONTENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR  
RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 2  
Addendum No. 2

---

**ATTACHMENTS**

Bidder Q and A PT-2016-SIG-091 .....	1
Agreement To Bond.....	1
Sample Letter of Credit.....	1
Sample Parental Guarantee .....	1
Sample Reference Checks.....	1
Sample Articles of Agreement.....	1
Metrolinx MERX Portal – General Information.....	1
Attachment # 1 Contract Performance Appraisal .....	1
Attachment # 2 Safety Guidelines for Contractors	75
Attachment # 3 GO-Env-M001	36
Attachment # 4 GO-Env-M002 Policy	1
Attachment # 5 GO-Env-R201 Spill Response Plan	14
Attachment # 6 Spills Report Form	2
Attachment # 15 Primary & Secondary Substation Reference Drawing List	3
Attachment # 15 Primary & Secondary Substation Reference Drawings	101
Attachment # 16 Pumping Stations & HWDs Reference Drawings List	2
Attachment # 16 Pumping Stations & HWDs Reference Drawings	35

END OF SECTION

**ADDENDA (IF APPLICABLE)**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 1

---

Any Addenda/Addendum issued hereto shall form part of this Tender Document and any resultant Contract(s) for the Work.

## BIDDER'S SUBMISSION CHECKLIST

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 1 of 1

#### 1.0 Submission Checklist

The following checklist provides the Bidder with a consolidated listing of the requirements for the Submission. Bidders should review the checklist prior to submitting the Submission to ensure compliance.

<b>Requirement</b>	<b>Confirmation (left click with your mouse in the box to select)</b>
The Submission has been submitted by the E-Bid Authorized Signer.	<input type="checkbox"/>
The Bidder has read through all the Tender Documents including any Addenda that have been issued and these have all been considered in your Submission.	<input type="checkbox"/>
The Bidder has reviewed the mandatory requirements and acknowledges that it meets all mandatory requirements in order for their Submission to be considered further.	<input type="checkbox"/>
The Bidder has reviewed the Tender Timetable and understands all the dates and timelines associated with this Tender Process	<input type="checkbox"/>
Contact information for the individual responsible for the Submission has been included in "Tender Document Form: Form of Tender".	<input type="checkbox"/>
The Bidder understands the requirements for Electronic Bid Submission and shall comply with the Submission requirements.	<input type="checkbox"/>
The Bidder's Submission has been prepared in accordance with the Instructions to Bidders (i.e. mandatory formats, templates and requirements) as outlined in the Tender Documents and includes the Tender Document Forms.	<input type="checkbox"/>
The Bidder has not included a copy of the Bid Deposit with the Submission	<input type="checkbox"/>
The Bidder has not included a copy of the Agreement to Bond with the Submission	<input type="checkbox"/>
The Bidder's Price Submission has been completed in full and included with the Submission.	<input type="checkbox"/>
The Bidder has attended the Mandatory Site / Information Meeting, if applicable.	<input type="checkbox"/>
The Bidder has not included any qualifying statements in its Submission.	<input type="checkbox"/>
If a Joint Venture, a copy of the Joint Venture agreement electing the Participant-in-Charge is attached.	<input type="checkbox"/>

## INTRODUCTION

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 1 of 1

---

#### 1.0 General

- 1.1 Metrolinx is issuing this call for Tenders to retain the services of a Vendor to provide the goods and/or services described herein. Metrolinx intends to notify a Bidder of acceptance of its Submission and enter into a Contract through an open, fair and competitive process.

You are invited to submit your Submission for PT-2016-SIG-091, as more particularly described in this Tender Document as required by Metrolinx for the Provision of Electrical/ Mechanical Routine Inspection and Maintenance.

## DEFINITIONS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 1 of 4

---

#### 1.0 In this Tender Document,

- 1.1 “**Addenda**”/”**Addendum**” is the formal written release of additions, deletions, revisions, clarifications to this Tender Document, via the Metrolinx MERX Portal, that form a part of the Tender Document and subsequently the Contract as specified in Section 4.0 of Instructions to Bidders.
- 1.2 “**Bidder**” means the entity that submits a Submission in response to this Tender Document and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.3 “**Business Day**” means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx Head Office is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.4 “**Closing**” means the deadline for Metrolinx to receive Submissions as specified in “Closing” of Section 1.4, Tender Timetable, of Instructions to Bidders.
- 1.5 “**Conflict of Interest**” means:
  - (a) in relation to this Tender Process, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Metrolinx in the preparation of its Submission that is not available to other Bidders, (ii) communicating with any person with a view to influencing preferred treatment in this Tender Process (including but not limited to the lobbying of decision makers involved in this Tender Process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of this Tender Process; or
  - (b) in relation to the performance of its contractual obligations contemplated in the Contract that is the subject of this procurement, the Bidder’s other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.
- 1.6 “**Contract**” means the contract between the Vendor and Metrolinx pursuant to this Tender No. PT-2016-SIG-091 including the Articles of Agreement, Addenda, the General Conditions of the Contract, the Contract Documents, and any and all other documents referenced therein.
- 1.7 “**Contract Documents**” means the Contract and those documents listed in List of Contents and any written amendments thereto as agreed to by the Parties.

## DEFINITIONS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 2 of 4

---

- 1.8 "Drawings", if applicable to this Tender Document, describe the detailed technical requirements of the Work and form part of the Scope of Work contained herein.
- 1.9 "EBS" means Electronic Bid Submission.
- 1.10 "E-Bid Authorized Signer" is the designated individual in the Bidder's organization who has the authority to bind the Bidder to each and every term, condition, article and obligation of the Tender Document and any resultant Contract.
- 1.11 "E-Bid Confirmation Number" is the receipt received by a Bidder from the Metrolinx MERX Portal indicating that the Submission was uploaded successfully.
- 1.12 "FIPPA" means the Freedom of Information and Protection of Privacy Act, and any amendments or successor legislation. FIPPA is Provincial legislation regulating the collection, retention, access, use and disclosure of "Personal Information" by or on behalf of Metrolinx, and shall be applicable to the Contract including all Work provided pursuant to the Contract.
- 1.13 "Joint Venture" means a business arrangement of two or more parties proposed for this Tender Process further described in Section 21.0 of Instructions to Bidders.
- 1.14 "Key Personnel" means the individual identified by name in "Tender Document Form: Vendor Personnel".
- 1.15 "Metrolinx" is a provincial crown agency continued under Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns and shall have the same meaning ascribed to "Metrolinx" in Schedule A - Definitions of General Conditions of the Contract.
- 1.16 "Metrolinx MERX Portal" is the electronic bid solicitation and Vendor Submission website ([www.metrolinx.merx.com](http://www.metrolinx.merx.com)) that facilitates Metrolinx and Bidder interaction as it directly relates to the download by a Vendor of Metrolinx Tender Documents including Addenda, from and upload by a Vendor of a Submission to Metrolinx in response to this Tender Process.
- 1.17 "Option" means a component of the Work that is to be exercised at the sole discretion of Metrolinx.
- 1.18 "PDF" means Portable Document Format.



## DEFINITIONS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 3 of 4

- 1.19 "**Participant in Charge**" shall have the same meaning ascribed in Section 21.3 of Instructions to Bidders.
- 1.20 "**Parties**" means both of Metrolinx and the Vendor and a "Party" means either one of them.
- 1.21 "**Place of the Work**" is the designated site or location of the Work.
- 1.22 "**Procurement Office**" means Metrolinx Procurement Services office located at 277 Front Street West, 4th Floor, Mail Room, Toronto, Ontario, Canada, M5V 2X4.
- 1.23 "**Procurement Representative**" means the following individual in the Procurement Services Department:

Colleen Ramsay, Procurement Officer	
Telephone number	(416) 202-5664
Email	Colleen.Ramsay@metrolinx.com

- 1.24 "**Submission**" means all documentation which the Bidder shall be bound to and other materials and information submitted electronically by the Bidder's E-Bid Authorized Signer through the Metrolinx MERX Portal in response to this Tender Document or in respect of this Tender Process.
- 1.25 "**Subvendor**" means an individual, firm, partnership or corporation having a direct contract with the Vendor or another Subvendor to perform a part or parts of the Work.
- 1.26 "**Supplier**" means an individual, firm, partnership or corporation having a direct contract with the Vendor or another Subvendor to provide goods and services required to carry out the Work.
- 1.27 "**Scope of Work**" describes the general and detailed requirements of the Work and is to be read in conjunction with any Drawings contained herein, if applicable.
- 1.28 "**Tender Document**" means this Tender document comprised of sections listed in the List of Contents, issued by Metrolinx for the Work to be provided and any Addenda thereto.
- 1.29 "**Tender Document Form(s)**" means any sections of this Tender Document which require completion and must be included with the Submission.

## DEFINITIONS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 4 of 4

---

- 1.30 "**Tender Process**" means the procurement process for this Tender as set out in the Tender Document herein.
- 1.31 "**Total Contract Price**" means the total set out in "Tender Document Form: Contract Prices".
- 1.32 "**Vendor Performance Management (VPM)**" shall have the meaning ascribed in Section 31.0 of Instructions to Bidders.
- 1.33 "**Vendor Performance Rating (VPR)**" shall have the meaning ascribed in Section 31.2 of Instructions to Bidders.
- 1.34 "**Vendor**" means the Bidder identified on Page 1 of "Tender Document Form: Form of Tender" and who, if notified of acceptance of its Submission by Metrolinx, shall execute the Contract with Metrolinx for provision of the Work.
- 1.35 "**Work**" means all the tangible and intangible activities, services, goods, equipment, matters and things required to be done under the Contract, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work and Drawings.
- 1.36 "**Working Day**" means, for railway corridor related routine maintenance work under this Contract on the Kingston, GO, Oakville, Weston and Pearson Subdivisions, anytime during days, nights and weekends excluding statutory holidays. Work on all other subdivisions and layover yards may be Monday to Friday between 9 AM to 5 PM, excluding statutory holidays. Emergency restoration services will be performed 24/7 on an as-needed basis regardless of location.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 1 of 22  
Addendum No. 2

#### 1.0 General

- 1.1 The Bidder shall be solely responsible for the delivery of their Submission by Closing, in accordance with these Instructions to Bidders.
- 1.2 The Bidder's Submission is to be firm and irrevocable for one hundred and twenty (120) calendar days from the Closing.
- 1.3 The Bidder's Submission will be evaluated in accordance with Section 19.0 - Submission Evaluation of Instructions to Bidders.
- 1.4 Tender Timetable

<b>Milestone</b>	<b>Date</b>
Issuance of Tender Document	April 24, 2017
Mandatory Site Meeting	Not Applicable
Deadline To Propose Alternate Products and Materials	May 2, 2017
Deadline to Submit Questions	May 8, 2017
Last day for issuance of Addenda	May 11, 2017
Closing	May 16, 2017 @ 3:00 p.m. Toronto, Ontario time
Deadline to Submit Original Bid Deposit	May 19, 2017 @ 3:00 p.m. Toronto, Ontario time
Deadline to Submit Original Contract Security	May 19, 2017 @ 3:00 p.m. Toronto, Ontario time
Commencement Date of Work	July 5, 2017

Metrolinx may, without liability, cost or penalty and in its sole discretion amend the Tender Timetable.

#### 2.0 Tender Enquiries and Requests for Clarifications, Changes or Revisions

- 2.1 All written enquiries and other communications prior to full Contract execution are to be directed solely to the Procurement Representative.
- 2.2 Information communicated to anyone else shall be considered informal and Metrolinx shall not be bound by any information given in such a manner.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 2 of 22

Addendum No. 2

2.3 Any questions concerning this Tender Document, the contents herein, including General Conditions of the Contract, or the Work contemplated herein are to be directed, in writing, to the Procurement Representative prior to the deadline for submitting questions. No questions or requests for clarifications, changes or amendments of this Tender Document, including the General Conditions of the Contract, shall be entertained after this time regardless of the reason. To allow for dialogue on any questions or requests, Metrolinx encourages Bidders to submit their questions or requests early in the question and answer (referred to as “Q and A”) process. When seeking changes or amendments to any of the terms and conditions of this Tender Process, including the terms contained in General Conditions of the Contract, the Bidder should provide sufficient detail to provide Metrolinx with an understanding of the rationale for the change or amendment and, if applicable, the Bidder should propose the language that would address its concern(s).

2.4 All questions/requests for clarification, change or amendment related to this Tender Document are to be submitted via e-mail to the attention of the Procurement Representative using the question and answer form attached separately as:

“Bidder Q and A PT-2016-SIG-091”

In the table provided in the Q and A form, indicate the document section related to each question being submitted as well as page, document title, drawing no., section number and details of the specific question/request. For each set of questions submitted by the Bidder, a new copy of the above referenced Q and A form should be submitted.

2.5 When necessary, revisions to, or clarifications of the Tender Documents will be incorporated into a written Addendum issued by the Procurement Representative identified herein. Information regarding this Tender Document or the Work, whether provided by the Procurement Representative identified herein, or from any other source, whether verbally or in writing, shall be considered informal and Metrolinx shall not be bound by, or liable for, any such information unless incorporated into a written Addendum.

### **3.0 Mandatory Site/Information Meeting**

3.1 Not Applicable.

### **4.0 Addenda / Changes to the Tender Documents**

4.1 In the event that Metrolinx determines in its sole discretion that clarifications and/or revisions to this Tender Document are required, Metrolinx shall issue an Addendum. Information concerning Addenda can be found through the

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 3 of 22

Addendum No. 2

Metrolinx MERX Portal for this Tender Process. Bidders are urged to select automatic notification of Addenda issuance when registering on the Metrolinx MERX Portal.

- 4.2 It is the Bidder's responsibility to ensure that they have obtained copies of all Addenda, and to ensure that the Addenda have been considered in their Submission. Addenda/Addendum shall become part of this Tender Document and the contents thereof shall be allowed for in the prices bid for the Work.
- 4.3 The Bidder, when ascertaining if copies of all Addenda issued have been obtained, shall be responsible for allowing sufficient time prior to the Closing to obtain any missing Addenda and to review and allow for the contents thereof in its Submission.
- 4.4 The Bidder shall submit the Submission using the most current Tender Document Forms as issued via Addenda. Failure to use the most current pages of the Tender Document Forms may result in the Submission being found non-compliant and disqualified.

#### **5.0 Tender Submission**

- 5.1 Submissions shall only be accepted electronically via the Metrolinx MERX Portal. Submissions submitted in any other manner shall be found non-compliant and disqualified.
- 5.2 It is the Bidders sole responsibility when submitting a Submission to Metrolinx to exercise extreme care when completing and submitting all required documents and/or information. Failure of the Bidder to include all required documents and/or information may result in the Bidder's Submission being found non-compliant and disqualified.
- 5.3 Bidders shall examine carefully the whole of the Tender Document and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Work.
- 5.4 The Bidder shall not claim at any time after the Closing and/or after notification of acceptance of its Submission that there was any misunderstanding or uncertainty in regard to the Tender Document or any of the contents therein. No plea of ignorance of conditions which exist, or any conditions or difficulties that may be encountered, shall be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time.
- 5.5 Submissions should be completed fully in a clear and comprehensible manner.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 4 of 22

Addendum No. 2

- 5.6 The Submission shall be submitted on the most current Tender Document Forms issued by Metrolinx and except for designated sections where the Bidder is to enter information, the Tender Document and Tender Document Forms shall not be altered in any way including, but not limited to, write-ins, strike-outs of the pre-printed provisions or any other conditional or qualifying statements.
- 5.7 Any Submission which contains such conditional and/or qualifying statements may be found non-compliant and disqualified unless such conditional and/or qualifying statements are withdrawn in writing by the Bidder, upon request by Metrolinx.
- 5.8 If during the preparation of their Submission, the Bidder desires to make a change which requires correction, alteration or erasure to any information previously entered in a designated section of the Submission by the Bidder, documents that have been uploaded to the Metrolinx MERX Portal may be added, removed and/or re-submitted as often as required at any time, prior to Closing.
- 5.9 All prices shall be firm and quoted in Canadian funds. The prices quoted in the Submission shall represent full payment for all such Work as is necessary for the proper completion of the Contract.
- 5.10 For assistance with registration and login credentials, subscription information, fees, and general use of the Metrolinx MERX Portal, please watch the online Electronic Bid Submission tutorial at:  
<https://www.youtube.com/watch?v=To0fqScw3M>. Alternatively, you can contact MERX directly at 1-800-964-MERX (6379). For additional Metrolinx MERX Portal guidelines, refer to the document entitled "Metrolinx MERX Portal - General Information" under "Attachments" in this Tender Document.
- 5.11 Information contained in the most recent Submission submitted via the Metrolinx MERX Portal and received prior to the Closing will take precedence over the information contained in previously received Submissions from the Bidder.
- 5.12 The Bidder may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into [www.metrolinx.merx.com](http://www.metrolinx.merx.com).

#### **6.0 Submission Deadline**

- 6.1 Submissions must be electronically uploaded via the Metrolinx MERX Portal by the Closing. Any Submission or portions thereof received after the Closing (as confirmed by MERX Audit Report if submitted via the Metrolinx MERX Portal) shall be found non-compliant and the entire Submission shall be disqualified regardless of the reason for lateness. The Bidder shall submit the Submission within sufficient time to ensure its arrival before the Closing.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 5 of 22

Addendum No. 2

- (a) If the Bidder attempts to submit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
  - (b) In the event that the MERX system allows late Submissions, this will not supersede any stipulations herein regarding late submissions.
- 6.2 Upon successful completion of the electronic submission process, the Bidder shall be provided with an E-bid Confirmation Number indicating that the Submission was uploaded successfully.
- 6.3 Metrolinx reserves the right to postpone the Closing at which time all potential Bidders shall be advised of the new Closing by way of Addenda.
- 6.4 After the Closing has occurred, all Submission received will be opened by Metrolinx staff. There shall be no public access to this opening. Results of the opening of Submissions will be made public within approximately 24 hours on the Metrolinx MERX Portal (search the Tender Number and select "Bid Results").
- 6.5 Upon execution of the final Contract, all Bidders that have submitted a Submission shall be notified in writing of the results of the award to the successful Bidder. Results of the award to the successful Bidder shall also be posted on the Metrolinx MERX Portal. (Search the Tender Number and select "Awards").

#### 7.0 Clarification of Submissions

- 7.1 Metrolinx reserves the right, within one hundred and twenty (120) calendar days following the Closing, to request that any Bidder clarify its Submission or provide the required supporting documentation specified in "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements", and such Bidders shall submit responses to such request within five (5) Business Days following receipt of such request or within such shorter time as Metrolinx may require. Metrolinx may, in its sole discretion, choose to meet with some or all of the Bidders to discuss aspects of their Submission. Metrolinx may require Bidders to submit additional information clarifying any matters contained in their Submission, provide confirmation of any matters contained in their Submission or prepare a written interpretation of any aspect of a Submission for the respective Bidder's acknowledgement of that interpretation. Any unsolicited information shall not be considered.
- 7.2 Such information accepted by Metrolinx and written interpretations which have been acknowledged by the relevant Bidder shall be considered to form part of the Submission of those Bidders.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 6 of 22

Addendum No. 2

7.3 After the Closing, only information specifically requested by Metrolinx for purposes of clarification or to substantiate compliance with a mandatory requirement, shall be considered as additions to a Bidder's Submission.

7.4 Metrolinx is not obliged to seek clarification of any aspect of a Submission.

#### 8.0 Bidder Qualifications

8.1 Only the Submissions of qualified Bidders will be considered for acceptance by Metrolinx. In order to be considered qualified, the Bidder shall demonstrate to the satisfaction of Metrolinx it has:

- (a) Satisfactorily completed in the sole opinion of Metrolinx, a contract for work similar in scope, size, value and complexity as "the Work of this Contract" in an active Railway Right of Way including remedial work and emergent repairs;
- (b) Satisfactorily completed, or its designated Electrical Subvender has satisfactorily completed, in the sole opinion of Metrolinx, a minimum of 2 projects, performing work similar in scope, magnitude and complexity involving heavy industrial 600 volt electrical applications;
- (c) Satisfactorily completed, or its designated Mechanical Subvender has satisfactorily completed, in the sole opinion of Metrolinx, a minimum of 2 projects collectively, performing work similar in scope, magnitude and complexity involving heavy industrial pumping systems; and
- (d) The Mandatory Personnel with all the relevant certifications required to perform the work listed under the scope of work.

8.2 With respect to the experience requirements set out in Subsection 8.1 above, each Bidder is solely responsible to provide:

- (a) in "Tender Document Form: Bidder's Qualifications", a detailed description of reference projects starting with the most recent that the Bidder has performed and that the Bidder is representing to Metrolinx meets the requirements of Subsection 8.1 herein;
- (b) in "Tender Document Form: Bidder's Qualifications", a detailed description of reference projects for the Electrical Work starting with the most recent that the Bidder or its designated Subvender has performed and that the Bidder is representing to Metrolinx meets the requirements of Subsection 8.1 herein;



## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 7 of 22

Addendum No. 2

- (c) in "Tender Document Form: Bidder's Qualifications", a detailed description of reference projects for the Mechanical Work starting with the most recent that the Bidder or its designated Subvendor has performed and that the Bidder is representing to Metrolinx meets the requirements of Subsection 8.1 herein;
  - (d) in "Tender Document Form: Bidder's Qualifications", a client contact person for each reference project, that are prepared to speak to Metrolinx with respect to the Bidder's or its designated Subvendor's performance on each project described;
  - (e) in "Tender Document Form: Bidder's Occupational Health and Safety Record" include Occupational Health and Safety information for the past three (3) years as indicated therein;
  - (f) in "Tender Document Form: Description of Bidder's Workforce, Facilities and Equipment", list details of workforce and equipment that will be used in performing the Work.
- 8.3 Metrolinx may, in its sole discretion, waive the requirement to contact references provided by any Bidder and rely on the detailed descriptions provided by the Bidder in "Tender Document Form: Bidder's Qualifications".
- 8.4 When completing "Tender Document Form - Bidder's Qualifications", the Bidder should list relevant work that has been completed or that is ongoing under a Metrolinx contract. In its determination of whether a Bidder meets the requirements of Section 8.1 herein, Metrolinx may, in its sole discretion:
- (a) take into account the experience of Metrolinx itself in dealing with the Bidder or its Subvendor(s) in circumstances where the Bidder or its Subvendor(s) has carried out (or is carrying out) a project for Metrolinx (whether or not the Bidder has listed such a project as a reference); and
  - (b) make general inquiries of third parties with respect to the qualifications of a Bidder and take the results of these general inquiries into account (whether or not the Bidder has listed the third party or the applicable project as a reference).
- 8.5 Before any Submission is accepted, any Bidder may be required to demonstrate to the satisfaction of Metrolinx, that it is capable of performing the Work. Metrolinx reserves the right to inspect the equipment to be used, and/or the facilities where the proposed Work is to be carried out, of any and all Bidders and Subvendors, and make any and all further investigations it deems, in its sole opinion, necessary, prior to the acceptance of any Submission, to determine if a Bidder is qualified to perform the Work.

## **INSTRUCTIONS TO BIDDERS**

### **PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 8 of 22

Addendum No. 2

---

- 8.6 In the event the Bidder does not demonstrate to the satisfaction of Metrolinx that it possesses the necessary qualifications and experience required for acceptance of its Submission by Metrolinx, the Bidder's Submission shall be found non-compliant and disqualified.

#### **9.0 Insurance**

- 9.1 The Bidder shall, in accordance with Schedule "C" – Insurance of General Conditions of the Contract, provide a valid certificate of insurance in the types and amounts specified, within five (5) Business Days of notification of acceptance of its Submission by Metrolinx. Failure by the successful Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx.

#### **10.0 Workplace Safety and Insurance Clearance Certificate**

- 10.1 The Bidder shall, in accordance with Schedule C: Insurance, of General Conditions of the Contract, provide a valid Workplace Safety and Insurance Clearance Certificate for the premium rate class, subclass or group as appropriate for the Work of this Contract, as issued by the Workplace Safety and Insurance Board, within five (5) Business Days of notification of acceptance of its Submission by Metrolinx. Failure by the successful Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx.

#### **11.0 Parent Company Indemnity**

- 11.1 If requested by Metrolinx, a subsidiary company shall be required to submit a 'Guarantee' from its parent company, included as "Parental Guarantee" and provided under Attachments, or in a form satisfactory to Metrolinx and indicating that the Parent company agrees to provide all the necessary financial and technical support for the proper completion of the said Contract and shall guarantee the performance of the said Contract in accordance with the terms and conditions, including timely completion thereof, and agrees to guarantee the Work for the warranty period(s) stipulated therein.
- 11.2 Failure by the successful Bidder to comply with this requirement shall result in acceptance of the Bidder's Submission to be declared void and forfeiture of the Bidder's Bid Deposit to Metrolinx.

#### **12.0 Bid Deposit**

- 12.1 The Bidder shall comply with "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements" as it relates to the Bid Deposit

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 9 of 22

Addendum No. 2

requirement. Failure to comply with the aforementioned requirement shall result in the Submission being found non-compliant and disqualified.

12.2 The Bidder shall submit the required original Bid Deposit to Metrolinx Procurement Office no later than three (3) Business Days from the stated hour of Closing. (For example, a tender closing at 3:00 pm on Tuesday would require the Bid Deposit be submitted by 3:00 pm on Friday of the same week. A tender closing at 3:00 pm on Thursday would require the Bid Deposit be submitted by 3:00 pm on Tuesday of the following week).

(a) If hand delivering the Bid Deposit to the Procurement Office, the Bidder must present government issued photo identification to the security desk representative(s) upon arrival. Inform the security representative that an envelope is being delivered to the Metrolinx mail room on the 4th floor. The Bidder will not be provided with a receipt upon drop off of any documentation, envelopes or packages.

(b) The envelope should be clearly labelled as follows:

- (i) "URGENT: Agreement to Bond/Bid Deposit  
Attention: [Insert Name of Procurement Representative]  
Procurement Services  
Tender No. [Insert Tender No.]  
Hand Delivered on: [Insert Date and Time the package was delivered]"

12.3 The Bid Deposit shall be in the form of an original bid bond from a recognized Canadian Surety or an original certified cheque or bank draft or letter of credit drawn upon a recognized Canadian Financial institution, payable to "Metrolinx" in the amount of **\$200,000.00** (the "Bid Deposit"). The bid bond shall be duly executed by the Surety and signed by the Bidder. Certified Cheques, Bank Drafts or Letters of Credit shall be duly executed by the financial institution. All signatures and seals (if required) shall be originals.

(a) Failure by a Bidder to provide their original Bid Deposit no later than three (3) Business Days after Closing shall result in the Bidder's Submission being found non-compliant and disqualified, and may also result in the Bidder's bidding rights being suspended by Metrolinx for a period of twelve (12) months. It is the responsibility of the Bidder to properly arrange for the delivery of the original Bid Deposit to the Procurement Office to ensure that Metrolinx receives such original Bid Deposit within the timeframe specified in this Section 12.0, Bid Deposit.

12.4 The Bid Deposit should include the Contract name and number.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 10 of 22  
Addendum No. 2

- 12.5 Certified cheques and bank drafts shall not be deposited and interest shall therefore not be paid.
- 12.6 The original Bid Deposit will be retained until all Submissions received have been reviewed and evaluated by Metrolinx. The Bid Deposits, with the exception of those belonging to the two (2) lowest priced responsive Submissions received, may be returned to Bidders upon request, ten (10) Business Days after the Closing. Otherwise the Bid Deposits, with the exception of a bid bond, shall be returned after a Contract for the Work has been executed.
- 12.7 The Bidder acknowledges and agrees that its Bid Deposit will be forfeited to Metrolinx as liquidated damages upon the occurrence of any of the following events:
- (a) Withdrawal of the Submission by the Bidder after the Closing where such withdrawal has not been requested by Metrolinx; or
  - (b) Failure by the Bidder to execute the Contract; or
  - (c) Failure by the Bidder to provide any of the documents required by the Tender Documents as a condition of entering into the Contract, including, but not necessarily limited to, the Contract Security, Insurance Certificates or Workplace Safety and Insurance Clearance Certificate within the timeframes specified in this Tender Document.

### 13.0 Contract Security

- 13.1 The Bidder shall comply with "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements" as it relates to the Agreement to Bond or specified alternative requirement. Failure to comply with the aforementioned requirement shall result in the Submission being found non-compliant and disqualified.
- 13.2 The Bidder shall submit the required original Agreement to Bond or alternative to the Metrolinx Procurement Office no later than three (3) Business Days after Closing. (For example, a tender closing at 3:00 pm on Tuesday would require the Agreement to Bond or alternative be submitted by 3:00 pm on Friday of the same week. A tender closing at 3:00 pm on Thursday would require the Agreement to Bond or alternative be submitted by 3:00 pm on Tuesday of the following week).
- (a) If hand delivering the Agreement to Bond or alternative to the Procurement Office, the Bidder must present government issued photo identification to the security desk representative(s) upon arrival. Inform the security representative that an envelope is being delivered to the Metrolinx mail room on the 4th floor. The Bidder will not be provided with a receipt upon

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 11 of 22  
Addendum No. 2

drop off of any documentation, envelopes or packages to the Procurement Office.

- (b) The envelope should be clearly labelled as follows:
  - (i) "URGENT: Agreement to Bond/Bid Deposit  
Procurement Services  
Attention: [Insert Name of Procurement Representative]  
Tender No. [Insert Tender No.]  
Hand Delivered on: [Insert Date and Time the package was delivered]"

#### 13.3 The original Agreement to Bond:

- (a) shall be issued by a recognized Canadian Surety,
- (b) shall be for a Performance Bond and a Labour and Materials Payment Bond each equal to fifty percent (50%) of the Subtotal of Year One of the Contract, as specified in "Tender Document Form: Contract Prices".
- (c) shall be in favour of Metrolinx;
- (d) shall be duly executed and sealed by the Surety;
- (e) shall be executed by the Bidder (if required by the form);
- (f) should be duly sealed by the Bidder (if required by the form);
- (g) Failure by a Bidder to provide the Agreement to Bond or specified alternative no later than three (3) Business Days after Closing shall result in the Bidder's Submission being found non-compliant and disqualified and may also result in the Bidder's bidding rights being suspended by Metrolinx for a period of twelve (12) months. It is the responsibility of the Bidder to properly arrange for the delivery of the Agreement to Bond or specified alternative to the Procurement Office and to ensure that Metrolinx receives the original Agreement to Bond or specified alternative within the timeframe provided.

#### 13.4 Specified Alternatives

- (a) In lieu of an Agreement to Bond the Bidder may submit one of the following specified alternative forms:
  - (i) Letter of Credit
    - (A) An original written surety statement from a recognized Canadian financial institution in the amount of twenty five

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 12 of 22

Addendum No. 2

percent (25%) of the Year One Subtotal as specified in Tender Document Form: Contract Prices, stating that a Letter of Credit shall be available upon acceptance of the Bidder's Submission. The surety statement shall be duly executed by the financial institution.

- (B) The Letter of Credit to be provided by the Bidder to Metrolinx upon acceptance of the Bidder's Submission, shall expressly state that it may be drawn upon by Metrolinx on the delivery of a certificate from the President and CEO of Metrolinx confirming that the Bidder has defaulted in the performance of its obligations under the Contract. No other documentary evidence is required to be provided by Metrolinx.
- (C) The Letter of Credit shall indicate that "Metrolinx" is the named beneficiary and should include the Contract name and number.

(ii) Certified Cheque/Bank Draft

- (A) If a Certified Cheque or Bank Draft is used in lieu of an Agreement to Bond, it must be submitted as an original.
- (B) Certified Cheques and Bank Drafts shall be made payable to "Metrolinx" and shall be duly sealed and signed by the financial institution.

- 13.5 All original specified alternative forms of Contract Security submitted shall have original signatures and original seals where required.
- 13.6 Failure by the Bidder to submit an original of the required Agreement to Bond, or specified alternative, to Metrolinx within the allotted time, shall cause the Bidder's Submission to be found non-compliant and disqualified. The same timeframe as specified for the Agreement to Bond in Section 13.2 herein shall apply.
- 13.7 The recommended Bidder shall deliver the Performance Bond and Labour and Materials Payment Bond, or specified alternative, to Metrolinx within five (5) Business Days of notification of acceptance of its Submission by Metrolinx. The Performance Bond and the Labour and Materials Payment Bond shall include the Contract name and number. Failure of the Bidder to fulfill this requirement shall result in acceptance of the Submission by Metrolinx being cancelled and forfeiture of the Bidder's Bid Deposit.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 13 of 22  
Addendum No. 2

#### 14.0 Alternate Products and Materials

- 14.1 Bidders wishing to propose alternate products or materials, other than those specified in the Tender Documents, for use in the Work shall, no later than the date specified in Section 1.4, Tender Timetable, of Instructions to Bidders, submit a request in writing to the Procurement Representative seeking approval for the proposed alternate. The request must include supporting documentation to establish the proposed alternate's equivalence to the product or material specified.
- 14.2 Metrolinx shall, prior to Closing, respond to such requests as follows:
- (a) Should Metrolinx, in its sole discretion, approve the proposed alternate, it will issue an Addendum identifying the alternate and stating it is approved for use as part of the Work; or
  - (b) Should Metrolinx, in its sole discretion, not approve the proposed alternate, it shall only inform the Bidder who proposed the alternate of its decision.
- 14.3 Metrolinx is under no obligation to accept or reject any proposed alternate. Metrolinx shall accept or reject any proposed alternate at its sole discretion. Metrolinx is under no obligation to disclose the reason, or reasons, to any Bidder for the acceptance or rejection of any proposed alternate.

#### 15.0 Mandatory Requirements

- 15.1 The Bidders must meet all mandatory requirements in order for their Submission to be considered further. Failure of a Bidder to meet all of the mandatory requirements listed below shall result in the Bidder's Submission to be found non-compliant and will not be considered further.
- 15.2 The mandatory requirements for this Tender Document are as follows:
- (a) The Submission shall be submitted by the Bidder's E-Bid Authorized Signer. For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall submit the Submission.
  - (b) Pricing information must be completed and submitted using "Tender Document Form: Contract Prices" Excel spreadsheet.
  - (c) The Bidder shall declare any conflicts of interest in "Tender Document Form: Conflict of Interest". If "Tender Document Form: Conflict of Interest" is left blank or is not returned with the Submission, the provisions of Section 1.1 of "Tender Document Form: Conflict of Interest" shall apply.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 14 of 22  
Addendum No. 2

- (d) The Bidder must meet all of the mandatory requirements stated in "Tender Document Form: Mandatory Corporate, Personnel and Technical Requirements".
- (e) The Bidder shall provide the information requested in "Tender Document Form: Vendor Personnel" with the Submission.

#### 16.0 Rights of Metrolinx

16.1 Metrolinx reserves the right, in its sole discretion:

- (a) to cancel this call for Tenders and any acceptance of a Submission for any reason and at any time prior to final execution of the Contract by Metrolinx, without any obligation or any reimbursement to the Bidder except the obligation to return the Bid Deposit;
- (b) to reject any or all Submissions. The Submission with the lowest price will not necessarily be accepted. Metrolinx's selection will be based on which Bidder has provided a Submission which Metrolinx determines, in its sole discretion, to provide the greatest value based on quality, service and price based on the evaluation criteria contained in this Tender Document;
- (c) to disqualify any Submission which contains misrepresentations or any other inaccurate or misleading information;
- (d) to waive any requirement of this Tender Document or request amendment of a Submission by the Bidder where, in the sole opinion of Metrolinx, there is an irregularity or omission in the information provided that is not material to the Submission unless a specific consequence has been identified herein for the commission of such an irregularity or omission;
- (e) to waive the requirement to check references;
- (f) to not respond to a Bidder's questions;
- (g) to use its own experiences, and the experiences of any other third party with the Bidder in previous contracts in order to evaluate the Bidder's Submission. Specifically to:
  - (i) take into account the experience of Metrolinx itself in dealing with the Bidder in circumstances where the Bidder has carried out (or is carrying out) a project for Metrolinx whether or not the Bidder has listed such project in "Tender Document Form: Bidder's Qualifications"; and



## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 15 of 22

Addendum No. 2

- (ii) make general inquiries of third parties with respect to the qualifications of a Bidder and take the results of these general inquiries into account whether or not the Bidder has listed the third party or the applicable project in "Tender Document Form: Bidder's Qualifications".
- (h) to issue or not to issue a notification of acceptance of a Bidder's Submission based on submitted references and/or references independently obtained by Metrolinx;
- (i) to issue or not to issue a notification of acceptance of a Bidder's Submission based on the Bidder's or its Subvendor(s) experiences with Metrolinx or other departments or agencies within the Ontario government, if the Bidder or its Subvendor(s):
  - (i) was/were previously given a "Notification of Submission Acceptance" of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
  - (ii) failed or refused to comply with any applicable federal, provincial or municipal law governing a bid or a prior contract with a department or agency within the Ontario government;
  - (iii) had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
  - (iv) is an affiliate of or successor to any corporation described in Sections 16.1(i)(i) through (iii) above, including any firm that is controlled within the meaning of the Ontario Business Corporations Act by the same person or group of persons who so controlled any corporation described in Sections 16.1(i)(i) through (iii) above.
- (j) to request a listing of all projects, regardless of scope, complexity or estimated value, completed for or terminated by Metrolinx within the past three (3) years or currently active;
- (k) to distribute via Addenda, copies of any Bidder's questions received and responses provided by Metrolinx, to all Bidders who received this Tender Document;
- (l) to request that a Bidder voluntarily withdraw its Submission without penalty, where in the opinion of Metrolinx the Submission is substantially

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 16 of 22  
Addendum No. 2

below internal budget estimates and therefore the Work would not be satisfactorily completed;

- (m) to request that a Bidder voluntarily withdraw from its Submission, without penalty, any conditional and/or qualifying statements, as determined by Metrolinx in its sole discretion;
- (n) to disqualify any Submission where the Bidder does not voluntarily withdraw parts of, or all of, its Submission, as requested by Metrolinx under sections 16.1(l) or 16.1(m);
- (o) to postpone the Closing, at which time all Bidders who received Tender Documents shall be advised of the new Closing via written Addenda;
- (p) to, within one hundred and twenty (120) days following Closing, exercise any rights under Section 7.1 of Instructions to Bidders;
- (q) to correct arithmetical and/or carry forward errors in any or all Submissions where such errors affect extended totals, the Total Contract Price, H.S.T. and/or Grand Total. Arithmetical corrections shall only be made based upon the unit prices submitted by the Bidder. Corrections to extensions, sums, differences, carry forward errors or other arithmetical operations based on the unit prices submitted will be identified on the Tender Document by Metrolinx and acknowledged in each instance by the initials of the Bidder's and Metrolinx's authorized signatories. Such corrections will become part of the Bidder's Submission. Failure of the Bidder to acknowledge such corrections shall result in its Submission being found non-compliant and disqualified;
- (r) to, upon failure of the Bidder whose Submission was accepted to fulfill the conditions of Section 17.2 of Instructions to Bidders, cancel acceptance of the Bidder's Submission by Metrolinx and consistent with industry practice, notify another Bidder who was determined to be qualified in accordance with the Submission Evaluation Criteria stated herein and who submitted a compliant Submission, that its Submission has been accepted and, subsequent to the fulfillment of the conditions of Section 17.2 of Instructions to Bidders, and for Metrolinx to issue a notification of acceptance of the Submission to that Bidder.

#### 17.0 Contract To Be Executed

- 17.1 Metrolinx shall notify the Bidder in writing of acceptance of its Submission. Metrolinx will prepare the Articles of Agreement and bind it into the Contract. Two (2) copies of the Contract will be forwarded to the Bidder for review and execution.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 17 of 22

Addendum No. 2

- 17.2 The Contract shall be executed by the Bidder and delivered to Metrolinx within five (5) Business Days of notification to the Bidder that Metrolinx has accepted its Submission. Failure by the Bidder to execute and deliver the Contract with the required Insurance Certificates, Workplace Safety and Insurance Clearance Certificate and the Performance and Labour and Materials Payment Bonds, or specified alternative (if applicable), and if requested the Parental Guarantee and any other documents as may be required within the specified time, could result in the cancellation of the acceptance of the Bidder's Submission and forfeiture of the Bidder's Bid Deposit.
- 17.3 Upon failure of the Bidder, who's Submission was accepted, to fulfil the conditions of Section 17.2 herein, Metrolinx may, at its sole discretion, cancel acceptance of the Bidder's Submission consistent with Section 16.1(r) of Instructions to Bidders.
- 17.4 There shall be no binding contract for the supply of the Work unless and until Metrolinx and the Bidder who's Submission has been accepted have executed the written agreements contemplated in the Tender Document.
- 17.5 The Bidder shall not start the Work before the Contract has been executed by the Bidder and Metrolinx and all documents required by the Tender Document, as a condition of acceptance, have been delivered to Metrolinx.

#### **18.0 Subvendors and Suppliers**

- 18.1 Bidders shall be responsible for the distribution of all the instruments of the Tender Document and Addenda/Addendum thereto to all Subvendors or Suppliers.
- 18.2 Metrolinx or its representatives will have no obligation whatsoever to supply any Subvendor or Supplier with all or part of the Tender Document and Addenda thereto, and shall not be liable for any damages suffered by any Bidder, Subvendor or Supplier who does not receive or review the Tender Document or Addenda/Addendum. No claims for payment or for a change order will be entertained because of the failure of any Subvendor or Supplier to receive or review the Tender Document or Addenda/Addendum which have been supplied to the Bidders prior to Closing.

#### **19.0 Submission Evaluation**

- 19.1 Subject always to the "Rights of Metrolinx" set out herein and without creating any obligations whatsoever to any Bidder, Metrolinx advises that it shall evaluate Submissions using the following criteria:
- (a) Total Contract Price;

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 18 of 22  
Addendum No. 2

- (b) Bidder's Qualifications;
- (c) Proper Completion of Tender Document Forms;
- (d) Compliance to Tender Document Requirements;
- (e) Compliance to all Mandatory Requirements; and
- (f) Attendance at Mandatory Site Visit, if any.

19.2 Metrolinx's selection of the successful Submission will be based on which Bidder has provided a Submission which Metrolinx determines in its sole discretion, to be most beneficial to Metrolinx.

#### **20.0 Conflict of Interest**

20.1 Conflict of Interest shall be as defined in "Definitions" of this Tender Document. The Conflict of Interest declaration included in "Tender Document Form: Conflict of Interest" shall be completed and provided with the Submission.

20.2 Examples of Conflict of Interest include but are not limited to:

- (a) any director, officer, or employee or advisor of Metrolinx who has any connection or relationship with, or any pecuniary interest in the Bidder or any Subvendor thereof;
- (b) the Bidder or any Subvendor thereof is in possession of confidential information relating to the Work; and
- (c) any director, officer or employee or advisor of Metrolinx who has knowledge of the Work has assisted the Bidder in the preparation of its Submission.

20.3 If, at the determination of Metrolinx in its sole discretion, a Bidder is found to be in a Conflict of Interest that cannot be resolved or the Bidder fails to disclose any actual or potential Conflict of Interest, Metrolinx may, at its sole discretion, disqualify the Bidder from the Tender Process or terminate any agreement entered into with the Bidder pursuant to this Tender Process.

#### **21.0 Joint Ventures**

21.1 If a Joint Venture is proposed, the Bidder shall state in its Submission the Joint Venture agreement that forms the basis on which the Joint Venture plans to carry out its obligations.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 19 of 22

Addendum No. 2

- 21.2 The Joint Venture shall not change its Joint Venture arrangement without the prior written approval of Metrolinx in its sole discretion, in accordance with the process set out in Section 30.0 of Instructions to Bidders.
- 21.3 One of the Joint Venture participants shall be nominated as being in charge during this Tender Process and, in the event of a successful Submission during finalization of the Contract (the "Participant in Charge"). The Participant in Charge shall be authorized by the other joint venture participants to incur liabilities and receive instructions for and on behalf of any and all participants of the Joint Venture.
- 21.4 Each Joint Venture participant shall demonstrate its authorization of the Participant in Charge by submitting with their Submissions a power of attorney, or similar document, signed by a legally authorized representative of the Joint Venture participant or a copy of the Joint Venture agreement electing the Participant-in-Charge.
- 21.5 All participants of the Joint Venture shall be legally liable, jointly and severally, during this Tender Process and during the Contract for carrying out the obligations pursuant to the Contract.

#### **22.0 Prohibited Contacts and Lobbying Prohibition**

- 22.1 A Bidder, Bidder's team members and all of the Bidder's respective Subvendors, advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of this Tender Process.
- 22.2 Without limiting the generality of Section 22.1 above, neither the Bidder nor the Bidder's team members nor any of their respective Subvendors, advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during this Tender Process, any directors, officers, employees and advisors of Metrolinx, other than the Procurement Representative, other than to discuss pre-existing work that is being conducted pursuant to a separate contract.

#### **23.0 Media Releases, Public Disclosures and Public Announcements**

- 23.1 A Bidder shall not, and shall ensure that its team members, advisors, Subvendors, employees or representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press on the radio, television, internet, or any other medium) that relates to this Tender Process, its Submission or any matters related thereto, without the prior written consent of Metrolinx.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 20 of 22

Addendum No. 2

- 23.2 A Bidder shall not, and shall ensure that its team members, advisors, Subvendors, employees and representatives do not make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Bidder or Submission or to publicly promote or advertise its own qualifications, interest in or participation in the Tender Process without the prior written consent of Metrolinx, which may be withheld in the sole discretion of Metrolinx. Notwithstanding this item, the Bidder, Bidder's team members and all of the Bidder's respective advisors, Subvendors, employees and representatives are permitted to state publicly that it/they are participating in this Tender Process.
- 23.3 For greater clarity, this section does not prohibit disclosures necessary to permit the Bidder to discuss this Tender Document with prospective Subvendors regarding their participation in this Tender Process.

#### **24.0 Restriction on Communications Between Bidders - No Collusion**

- 24.1 A Bidder shall not discuss or communicate, directly or indirectly, with any other Bidder, any information whatsoever regarding the preparation of its own Submission or the Submissions of other Bidders. Bidders shall prepare and submit Submissions independently and without any knowledge, comparison of information or arrangements, direct or indirect, with any other Bidder. This obligation extends to all team members of a Bidder and all of the Bidder's respective advisors, Subvendors, employees and representatives.

#### **25.0 Disclosure of Information**

- 25.1 The Bidder hereby agrees that any information provided in its Submission, even where it is identified as being supplied in confidence, may be disclosed by Metrolinx where required by law, order of a court, or tribunal.
- 25.2 The Bidder hereby consents to the disclosure, on a confidential basis, of its Submission by Metrolinx to Metrolinx's advisors retained for the purpose of evaluating or participating in the evaluation of the Submissions.
- 25.3 Under Ontario's Open Data Directive, Metrolinx is required to publish certain procurement information. Accordingly, the Bidder acknowledges that, subject to any applicable FIPPA exemptions, Metrolinx may publish procurement data including but not limited to the names of the Bidders and the winning bid in accordance with Ontario's Open Data Directive. For more information, see: [www.ontario.ca/page/ontarios-open-data-directive](http://www.ontario.ca/page/ontarios-open-data-directive).

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 21 of 22  
Addendum No. 2

#### **26.0 Freedom of Information and Protection of Privacy Act ("FIPPA")**

26.1 Bidders are advised that Metrolinx may be required to disclose all, a part, or parts of a Bidder's Submission and a part or parts of any Submission pursuant to FIPPA.

#### **27.0 Submission to Be Retained by Metrolinx**

27.1 Metrolinx shall not return a Submission or any accompanying documentation submitted, with the exception of a Bid Deposit and/or Agreement to Bond or specified alternatives, submitted by a Bidder.

#### **28.0 Confidential Information of Metrolinx**

28.1 All information provided by or obtained from Metrolinx in any form in connection with this Tender Process;

- (a) is the sole property of Metrolinx and shall be treated as confidential;
- (b) shall not be used for any purpose other than replying to the Tender Document and the performance of any subsequent agreement; and
- (c) shall not be disclosed without prior written authorization from Metrolinx.

#### **29.0 Bidders Shall Bear Their Own Costs**

29.1 The Bidder shall bear all costs associated with or incurred in connection with its participation in this Tender Process, including, but not limited to, preparation of its Submission.

#### **30.0 Changes to Key Personnel or Joint Venture**

30.1 If after the Closing, but prior to the execution of the Contract, the Bidder wishes to request a change in a Key Personnel or Joint Venture participant, the Bidder shall notify the Procurement Representative as soon as possible and the notification shall identify the proposed change in Key Personnel or Joint Venture participants and the proposed substitute, if applicable, and include sufficient documentation that the proposed substitute would have met or exceeded any applicable criteria applied during this Tender Process.

30.2 In response to a request as per Section 30.1 above, Metrolinx may, in its sole discretion provide the Bidder with instructions as to the type of information required by Metrolinx to consider the proposed change to the Bidder's Key Personnel or Joint Venture arrangements as well as the deadlines for submission of information that the Bidder must meet in order to have its request considered by Metrolinx.

## INSTRUCTIONS TO BIDDERS

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 22 of 22

Addendum No. 2

- 30.3 The Bidder shall provide any further documentation as may be required by Metrolinx to assess any proposed substitute or change. If Metrolinx, in its sole discretion, considers the proposed substitute to be acceptable, Metrolinx may consent to the substitution. Metrolinx's consent to such substitution, however, may be subject to such terms and conditions as Metrolinx may require. If the proposed substitute or change is not acceptable to Metrolinx, the Bidder shall propose an alternate substitute or change for review by Metrolinx in the same manner as the first proposed substitute.
- 30.4 Metrolinx may, in its sole discretion, disallow any actual or proposed change.

#### **31.0 Vendor Performance Management Program**

- 31.1 Vendor Performance Management (VPM) Program means Metrolinx policy for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The Vendor Performance Management Program establishes a standard methodology for the incorporation of a vendor's past performance as a criterion in assessing that vendor's bids or tenders for future work with Metrolinx.
- 31.2 Pursuant to Metrolinx's VPM Program, Metrolinx may consider a Bidder's past performance under contracts with Metrolinx in evaluating Submissions received in response to this Tender Document. The Vendor Performance Rating ("VPR") is the average of a vendor's performance evaluation scores (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Bidder has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Bidder will be assigned a VPR which is the straight average of all the VPRs of all vendors who have performed services for Metrolinx during the prior fiscal year.
- 31.3 If the VPR is being applied as a component of the "Tender Submission Evaluation" for this Tender Process, the legal name of the Bidder stated in "Tender Document Form: Form of Tender" will be used. It is the responsibility of the Bidder to ensure that its proper legal name has been stated in "Tender Document Form: Form of Tender". Metrolinx will not accept any requests from the Bidder to change the legal name provided after the Closing.
- 31.4 In case of a Joint Venture where multiple parties will sign the Contract, the VPR of each participant will be added and the average will be applied.
- 31.5 For the purposes of this Tender Process, the application of the VPR is set out in "Contract Performance Appraisal" of "Attachments".

END OF SECTION



**GENERAL CONDITIONS OF THE CONTRACT**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 45

---

The documents, as stated under “General Conditions” of List of Contents, hereby form part of the General Conditions of the Contract and are appended to this Tender Document.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 2 of 45

---

#### 1.0 Interpretation

##### 1.1 Definitions

- (a) Capitalized terms used in this Contract shall have the respective meanings ascribed thereto in Schedule A - Definitions.

##### 1.2 Time of the Essence

- (a) Time is of the essence in the performance of a Party's respective obligations under this Contract.

##### 1.3 Currency

- (a) All prices and sums of money and all payments made under this Contract shall be in Canadian dollars.

##### 1.4 Units of Measure

- (a) All dimensions, quantities, performance specifications, calibrations and other quantitative elements used in this Contract shall be expressed in the International System of Units (SI), except where otherwise indicated.

##### 1.5 Language

- (a) All communication between Metrolinx and the Vendor and between the Vendor and each of the Subvendors with regard to the Work shall be in the English language.

##### 1.6 References

- (a) Each reference to a statute in this Contract is deemed to be a reference to that statute and to the regulations made under that statute, all as amended or re-enacted from time to time. Following any and all changes to Applicable Laws, the Vendor shall perform the Work in accordance with the terms of this Contract, including in compliance with Applicable Laws.
- (b) Any provision establishing a higher standard of safety, reliability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service.
- (c) Each reference, whether express or implied, to a Standard of any technical organization or Governmental Authority is deemed to be a reference, to that Standard as amended, supplemented, restated, substituted or replaced.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 3 of 45

---

- (d) Subject to any express definitions contained in this Contract, words and abbreviations which have well known technical or trade meanings are used in this Contract in accordance with such recognized meanings.
- (e) Where used in this Contract, "including" means including without limitation, and the terms "include", "includes", and "included" have similar meanings.
- (f) Each reference to an Article or Section within the Contract or Schedules shall refer to that Article or Section number in the Contract or the Schedule in which the reference occurs unless otherwise specified.
- (g) The division of this Contract into Articles and Sections, the insertion of headings, and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Contract.

#### 1.7 Time

- (a) Unless otherwise specified, references to time of day or date mean the local time or date in Toronto, Ontario. When any period of time is referred to in this Contract by days between two dates, it will be calculated by excluding the first and including the last day of such period.
- (b) If, under this Contract, any payment or other event falls due on or as of a day that is not a Business Day, that payment or other event shall fall due instead on the next day that is a Business Day, unless expressly stated otherwise.
- (c) Unless otherwise specified, references to "day" shall mean calendar day.

#### 1.8 Schedules

- (a) The following Schedules attached to this Contract shall constitute an integral part of this Contract and all expressions defined in this Contract shall have the same meanings in such Schedules:
  - (i) Schedule A - Definitions
  - (ii) Schedule B - Financial Terms
  - (iii) Schedule C - Insurance
  - (iv) Schedule D - Dispute Resolution
  - (v) Schedule E - Vendor Personnel

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 4 of 45

---

#### 2.0 Performance

##### 2.1 Term of the Contract

- (a) This Contract shall take effect on the Effective Date hereof and shall continue in full force and effect until the earlier of the date that this Contract is terminated in accordance with its terms (the "Term").

##### 2.2 Performance of the Work

- (a) The Vendor shall carry out and complete the work set forth in "Scope of Work" (the "Work") to the satisfaction of Metrolinx in accordance with all the terms of this Contract.
- (b) The Vendor shall supply the Work diligently and continuously in accordance with the scheduling requirements set out in the Project Schedule. Without limiting the generality of the foregoing, the Vendor shall perform the Work so as to enable Metrolinx to meet any timelines imposed on it under any Third Party Contracts, provided that such timelines have been identified in the Project Schedule or otherwise expressly communicated to the Vendor.
- (c) The Vendor acknowledges and agrees that each of the Vendor's Personnel shall be available to perform the Work in accordance with the required duration specified in Schedule E - Vendor Personnel. The Vendor further acknowledges and agrees that Metrolinx may, acting in its sole discretion, change the schedule including in respect of the timing of the provision of the Work and availability and number of the Vendor's Personnel. Without limiting the generality of the foregoing, Metrolinx may from time to time, on prior written notice to the Vendor twenty (20) Business Days', unilaterally extend or reduce the required duration with respect to the availability of any of the Vendor's Personnel or direct the Vendor to increase the number of Vendor's Personnel available. Metrolinx and the Vendor shall meet at a minimum, on a quarterly basis to discuss the progress of the Work and the anticipated scheduling needs with respect to the Vendor's Personnel.
- (d) Metrolinx may, from time to time, in its sole discretion, but is not required to, direct the Vendor to cause specific Vendor Personnel to perform certain tasks or activities that form part of the Work in accordance with the scheduling requirements provided by Metrolinx. Any such instructions shall be provided by Metrolinx in writing to the Vendor no less than five (5) Business Days before the specified tasks or activities are required to be performed by the Vendor Personnel.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 5 of 45

---

- (e) The Vendor shall provide, at the sole cost and expense of the Vendor, save as otherwise provided in this Contract, all necessary equipment, goods, materials, analysis, transportation, accommodation, labour, staff and technical assistance and incidentals required in performing the Work and to undertake, perform and complete its undertakings, obligations and responsibilities provided for in this Contract.
- (f) The Work shall be provided in a professional, timely and economical manner according to the Required Standard of Care. Without limitation, the Vendor shall ensure that the Work is conducted in a manner that will maintain good relations with the general public and property owners.
- (g) The Vendor shall comply with and conform to all Applicable Laws, applicable to the Work to be provided by, and the responsibilities and obligations of, the Vendor under this Contract.
- (h) The Vendor shall not alter any part of a Joint Venture except with the prior written consent of Metrolinx in its sole discretion.

#### 2.3 Subvendors

- (a) Other than the Subvendors identified in the Submission, the Vendor shall not subcontract the Work to any Person without the prior written consent of Metrolinx. No subcontracting by the Vendor shall relieve the Vendor of any responsibility for the full performance of all obligations of the Vendor under this Contract. Notwithstanding the approval of any Subvendors by Metrolinx, the Vendor shall be fully responsible for every Subvendor's activities, works, services and acts or omissions.
- (b) The Vendor shall be solely responsible for the payment of any Subvendors.
- (c) The Vendor shall co-ordinate the services of all Subvendors employed, engaged or retained by the Vendor with Metrolinx and, without limiting the generality of any other provision of this Contract, the Vendor shall be liable to Metrolinx for costs or damages arising from errors or omissions of such Subvendors or any of them. It shall be the Vendor's responsibility to control and review the Work of its own forces and of all its Subvendors and to ascertain that all Work are performed in accordance with this Contract, all governing regulations and the Required Standard of Care.
- (d) In any subcontract, the Vendor shall ensure that the Subvendor is bound by conditions compatible with, and no less favorable to Metrolinx than, the conditions of this Contract.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 6 of 45

---

- (e) The Vendor warrants and represents that it and any of its permitted Subvendors and the respective workforce of each are fully qualified to perform the Work and perform this Contract and hold all requisite Approvals.
- (f) The Vendor shall only employ, for the purposes of this Contract, such persons as are careful, skilled and experienced in the duties required of them and have the required Domain Expertise, and must ensure that every such person is properly and sufficiently trained and instructed. The Vendor shall ensure that all workers and persons employed by them or under their control or employed by or under the control of its Subvendors comply with the terms of this Contract and, in particular without limiting the foregoing, the responsibilities of the Vendor with respect to matters concerning safety, compliance with the Applicable Laws and the conduct of the Work.
- (g) The Vendor shall be an independent vendor with respect to the Work to be provided under this Contract and nothing contained in this Contract shall be construed as constituting a joint venture or partnership between the Vendor and Metrolinx. Neither the Vendor nor its Subvendors shall be deemed to be employees, agents, servants or representatives of Metrolinx in the performance of the Work hereunder.
- (h) The Vendor shall not remove or change any Subvendors, or materially reduce the responsibilities of any Subvendors in relation to the provision of the Work except with the prior written consent of Metrolinx in its sole discretion. The proposed replacement Subvendor shall possess the requisite Domain Expertise and similar qualifications, experience and ability as the outgoing Subvendor.

#### 2.4 Vendor Personnel

- (a) The Vendor shall select and employ a sufficient number of suitably qualified and experienced Vendor Personnel to perform and provide the Work, as determined with reference to the requirements of the Work to be performed by each individual or otherwise as required pursuant to the Contract. All Vendor Personnel shall possess or, where permitted, shall be supervised by persons who possess, the professional accreditation required to complete the Work.
- (b) If a role is described in Schedule E - Vendor Personnel, the Vendor shall fill that role with a person who meets the qualifications, experience and minimum years of experience requirements that are contained in Schedule E - Vendor Personnel.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 7 of 45

---

- (c) The Vendor shall provide effective and efficient supervision to ensure that the quality of workmanship meets the requirements of the Contract.
- (d) The Vendor shall ensure that the Vendor Personnel assigned to perform the Work shall:
  - (i) act in a proper and professional manner in accordance with the standards generally used recognized by the industry; and
  - (ii) comply with all applicable Metrolinx policies and procedures, provided that the Vendor has been made aware of same.

#### 2.5 Third Party Work

- (a) The Vendor shall reasonably cooperate with Metrolinx and any Third Party and shall co-ordinate the Work with any and all Third Party Work. Without limiting the generality of the foregoing, the Vendor shall not alter, unreasonably interfere with or make it difficult to access any Third Party Work, except with the express written consent of Metrolinx.
- (b) The Vendor shall make best efforts to coordinate with Metrolinx and all applicable Third Parties in order to minimize:
  - (i) any delays to or interference with any Third Party Work within the rail corridors;
  - (ii) costs resulting from any delays to or interference with Third Party Work; and
  - (iii) impacts on the operations of, or use of the rail corridors by, Third Party Operators, including any delays to rail passenger or freight service on the rail corridors.
- (c) When and as directed by Metrolinx, the Vendor shall participate with Metrolinx employees and any applicable Third Parties in reviewing their respective schedules and cause designated Vendor Personnel to attend such meetings with Third Parties as may be reasonably requested by Metrolinx from time to time.
- (d) In the event that the proper performance of any part of the Work depends upon Third Party Work, the Vendor shall promptly inspect such Third Party Work and provide written notice to Metrolinx of any delays or defects in such Third Party Work that render such Third Party Work unavailable or unsuitable for integration with the Work.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 8 of 45

---

- (e) Claims, disputes and other matters in question between the Vendor and Third Parties shall be dealt with in accordance with Schedule D - Dispute Resolution, provided that the Third Party has reciprocal obligations. The Vendor and Metrolinx shall be deemed to have consented to arbitration of any dispute with any Third Party whose contract with Metrolinx contains a similar dispute resolution provision that includes an agreement to submit to binding arbitration, provided that Metrolinx, at its sole and absolute discretion, shall be entitled to refuse to include any dispute with a Third Party from this Contract.

#### 2.6 Non-Interference with Operations

- (a) The Vendor understands and agrees that:
  - (i) Metrolinx and Third Party Operators are in the business of moving large volumes of passengers and cargo through rail corridors safely, expeditiously and according to a fixed timetable;
  - (ii) the success of the businesses of Metrolinx and Third Party Operators depends on meeting the above objectives on a daily basis;
  - (iii) Metrolinx has contractual and statutory obligations to ensure the safety of all persons on the rail corridors and the property and facilities adjacent thereto; and
  - (iv) Third Party Operators operating in and through the rail corridors and Third Party Vendors working in the rail corridors have similar restrictions and requirements.
- (b) Notwithstanding any other term or condition set out in this Contract, the safety and non-disruption of all Third Parties operating in the rail corridors is of paramount importance. Consequently, the Vendor acknowledges and agrees that the safety of all trains, passengers, operating and maintenance personnel, goods and other transported cargos, as well as the Vendor Personnel and the public in general will take precedence over all actions or non-actions of the Vendor, whether mandated or not by any other terms and conditions of this Contract.
- (c) The Vendor shall not disrupt the movement of any rail traffic in or through the rail corridors of either Metrolinx or the Third Party Operators except where it has obtained the prior written consent of Metrolinx to such disruption (which consent may be withheld in the sole discretion of Metrolinx).

#### 2.7 Key Personnel



## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 9 of 45

---

- (a) All Key Personnel will possess the requisite Domain Expertise.
- (b) The Vendor shall not, for the duration specified in Schedule E - Vendor Personnel, require or request any Key Personnel to be involved in any other project on behalf of the Vendor or any Subvendor if, in the opinion of Metrolinx acting reasonably, such involvement would have a material adverse effect on the Work. The Vendor will not remove any Key Personnel from the provision of the Work, or materially reduce the responsibilities of any Key Personnel in relation to the provision of the Work except with the prior written consent of Metrolinx (which consent shall not be unreasonably withheld).
- (c) Notwithstanding Section 2.7(b) but subject to Section 2.7(d), if at any time the Vendor, for reasons beyond its reasonable control, is unable to provide the services of any Key Personnel, the Vendor shall provide a replacement person who possesses similar qualifications, experience and ability and possesses the requisite Domain Expertise; provided, however, that the Vendor shall first provide written notice to Metrolinx of the requirement to replace or substitute that person. For the purposes of this clause, only the following reasons will be considered beyond the reasonable control of the Vendor; death; sickness; maternity and parental leave; compassionate care leave; retirement; resignation; dismissal for cause; or termination of an agreement for default. The notice shall identify: the person being replaced; their role and responsibility in the performance of the Work; the reason why it is necessary to replace that person; and the replacement person's name, curriculum vitae in the form set out in Schedule E - Vendor Personnel of these General Conditions of the Contract and the replacement person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. The nominated replacement person must be acceptable to Metrolinx. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Vendor written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Vendor in writing why that person is not acceptable and the Vendor shall nominate an alternate person pursuant to the process identified in this Section 2.7(c).
- (d) If Metrolinx determines in its sole discretion that it is in the best interests of Metrolinx that any Key Personnel be replaced, either permanently or temporarily, Metrolinx shall notify the Vendor, and, within thirty (30) days of receipt by the Vendor of such notice, the Vendor shall provide Metrolinx with relevant information on the proposed replacement, including the replacement person's name, rates, and curriculum vitae in the form set out in Schedule E - Vendor Personnel and the replacement

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 10 of 45

---

person's available start date. Metrolinx in its sole and absolute discretion may choose to interview the proposed replacement person in Toronto. If the replacement person is acceptable to Metrolinx, Metrolinx shall give the Vendor written permission to make the replacement or substitution. In the event the nominated person is not acceptable to Metrolinx, acting reasonably, Metrolinx shall inform the Vendor in writing why that person is not acceptable and the Vendor shall nominate an alternate person pursuant to the process identified in this Section 2.7(d). The rates for the proposed replacement shall not exceed the approved Rate of the person being replaced.

#### 2.8 Vendor's Representative

- (a) The Vendor shall assign a Vendor's Representative who will direct the provision of the Work. During the Term, the Vendor's Representative will maintain ongoing contact with Metrolinx to ensure that issues are dealt with in an efficient, effective and timely manner. The Vendor's Representative shall be the primary point of contact for Metrolinx for significant issues including commercial issues and Disputes and shall have overall responsibility for coordinating the performance of the Vendor's obligations under this Contract.

#### 2.9 Metrolinx Responsibilities

- (a) Metrolinx shall designate an individual to act as its representative (the "Metrolinx Representative") who will transmit instructions to, and receive information from the Vendor. The Metrolinx Representative will be accountable for all project expenditures relative to design, procurement and construction activities.

#### 2.10 French Language Services

- (a) Insofar as this Contract relates to the provision of services directly to the public on behalf of Metrolinx, the French Language Services Act shall be applicable to the performance of the Work. A service for the purposes of the French Language Services Act refers to any service or procedure provided to the public. Services being provided in French must be equivalent to those offered in English, and must be available within the same timeframe and of the same quality.
- (b) The Vendor shall provide and perform the Work in a manner so as to comply with the requirements set out in the French Language Services Act.
- (c) Without limitation, services and communications which must be provided in French in French Designated Areas may include:

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 11 of 45

---

- (i) Consultations/Public Meetings: Presentation materials, displays, comments cards/feedback mechanism or other materials. Vendor must have at least one bilingual staff or interpreter on hand able to answer questions and discuss technical drawings/documents in French. As applicable, the Vendor shall compile and analyze the views of Francophones separately, as they may have different concerns.
- (ii) Signage: Construction contracts may from time to time involve erecting temporary signage to redirect or warn the public of hazards. Such signage shall be bilingual.
- (iii) Communications: Communication plans, customer impact documents, information bulletins, notices of service disruption and public relations information.

#### 2.11 Vendor Work Performance Rating

- (a) Metrolinx shall during the term of a Contract, maintain a record of the Vendor's performance pursuant to this Contract. This information shall be used to complete a "Contract Performance Appraisal" report, a copy of which will be forwarded to the Vendor upon the termination or expiration of the Contract. Interim Contract Performance Appraisal reports may be issued, as deemed appropriate by the Metrolinx Representative, at any time during the term of the Contract.
- (b) The prior history of the Vendor in performing work for Metrolinx, including the Vendor's performance pursuant to this Contract, will be considered in the evaluation of future bids from the Vendor.
- (c) Metrolinx reserves the right in future bid requests to reject any bid submitted by a company with an unsatisfactory performance history with Metrolinx.
- (d) Non-compliance with Contract requirements will be identified to the Vendor.
- (e) The information contained in the Contract Performance Appraisal may be provided to other ministries and agencies and such performance reviews may be relied upon by other ministries and agencies to reject the Vendor on any bid submitted on any future requests.

### 3.0 Health and Safety

#### 3.1 Occupational Health & Safety Act

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 12 of 45

---

- (a) The Vendor shall comply with OHSA, and any obligations of the Vendor as an "employer" thereunder, and with all regulations made under the OHSA.
- (b) The Vendor shall report to Metrolinx any non-compliance by a Subvendor in the performance of the Work with the regulations under the OHSA if and when brought to the attention of the Vendor.
- (c) The Vendor acknowledges that lack of compliance with applicable provincial or municipal health and safety requirements will be and are intended to be documented and kept on file, and that such lack of compliance may cause:
  - (i) the Vendor's performance of the Work to be suspended; or
  - (ii) this Contract to be cancelled by Metrolinx.
- (d) The Vendor will be under an obligation to cease the Work, or any part thereof, if an authorized representative of Metrolinx so requires orally or in writing on the grounds that there has been any violation of the OHSA or any of the regulations under it, and thereafter the Work or affected part thereof shall not resume until any such violation has been rectified.
- (e) The Vendor shall be responsible for any delay caused by the Vendor in the progress of the Work as a result of any violation of provincial or municipal health and safety requirements by the Vendor, it being understood that such delay shall be not be a Force Majeure for the purposes of extending the time for performance of the Work or entitling the Vendor to additional compensation, and the Vendor shall take all necessary steps to avoid delay in the final completion of the Work without additional cost to Metrolinx, which shall not be responsible for any additional expense or liability resulting from any such delay.
- (f) Nothing in this Section 3.1 shall be taken as making Metrolinx the "employer" (as described in Section 3.1(a) of any workers employed or engaged by the Vendor for the Work, either instead of or jointly with the Vendor.

#### 3.2 Safety Requirements

- (a) The Vendor shall comply with "Safety Requirements" and "Environmental Protection" of Scope of Work. Safety of Persons at or near a Place of Work and the public is of paramount concern to Metrolinx. In the performance of the Work, the Vendor shall not in any manner endanger the safety of, or

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 13 of 45

---

unlawfully interfere with, Persons on or off the Place of Work, including the public.

- (b) The Vendor specifically covenants and agrees that:
- (i) it shall comply with best industry practice in Ontario respecting health and safety in a manner that recognizes and minimizes the risk to workers, other individuals, property and the operations of Metrolinx and any railways, to the extent that such practices are not inconsistent with an express instruction set out in this Contract or provided by Metrolinx;
  - (ii) it shall comply, and shall ensure that all Vendor Personnel comply, in all regards with the requirements of OHSA and/or the Canadian Labour Code, Part II, as applicable;
  - (iii) it shall comply, and shall ensure that all Vendor Personnel comply, in all regards with the safety requirements set out in the Contract Documents;
  - (iv) it shall maintain, strictly enforce and comply, and ensure that all Vendor Personnel comply, in all regards with the Vendor's own health and safety program, to the extent not inconsistent with this Contract and Metrolinx' health and safety program;
  - (v) it shall comply, and shall ensure that all Vendor Personnel comply, with any and all safety-related directives or instructions issued by Metrolinx;
  - (vi) it shall take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under OHSA; and
  - (vii) it shall make available, at Metrolinx' request, such policies and procedures relating to its occupational health and safety matters as Metrolinx may from time to time request, and hereby covenants that all Vendor Personnel have been properly trained and are knowledgeable with respect to these policies and procedures.

#### 3.3 Railway Safety

- (a) If applicable, the Vendor shall comply with "Railway Safety Requirements" of Scope of Work and acknowledges and agrees that:

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 14 of 45

---

- (i) access to the rail corridors by the Vendor and any Vendor Personnel, shall at all times be subject to the direction of Metrolinx and/or a third party designated by Metrolinx as to rail safety matters and any applicable railway operating rules; and
  - (ii) any and all questions, matters or disputes which may arise affecting the safety of railway operations or the maintenance of the railways shall be referred to Metrolinx which shall in its discretion decide all such questions, matters and disputes.
- (b) The Vendor shall perform the Work, and shall ensure that all Vendor Personnel perform the Work, in accordance with the Canadian Rail Operating Rules from time to time approved by the Minister of Transport under the authority of the Railway Safety Act (Canada), the Standards, and all other applicable Transport Canada guidelines, railway standards, and practices.
- (c) In the event that the Work are the subject of an audit or inspection by any Governmental Authority, the Vendor shall at its own expense:
- (i) provide notice of such audit or inspection to Metrolinx;
  - (ii) make available or cause to be made available such reasonable information and material as may be required and shall otherwise reasonably cooperate with Transport Canada officials;
  - (iii) provide Metrolinx with a copy of any audit or inspection report or other results or recommendations issued by Transport Canada, as soon as practicable but in any event within five (5) Business Days of receipt thereof by the Vendor; and
  - (iv) take all steps necessary to rectify, in consultation with and as directed by Metrolinx, any issues identified by Transport Canada.

#### 3.4 Workers' Rights

- (a) The Vendor shall at all times pay or cause to be paid any assessments or compensation required to be paid by the Vendor or its Subvendors pursuant to any applicable workers' compensation legislation, and upon failure to do so, Metrolinx may pay such assessments or compensation to the Workplace Safety and Insurance Board and may deduct such assessments or compensation from monies due to the Vendor. The Vendor shall comply with all regulations and laws relating to workers' compensation.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 15 of 45

---

#### 4.0 Financial Terms

##### 4.1 Financial Terms

- (a) All financial and payment terms applicable to this Contract and the Work are set out in Schedule B - Financial Terms.

#### 5.0 Construction Lien Act

##### 5.1 Construction Lien Act

- (a) If applicable, Metrolinx shall retain an amount equal to the amount required to be held back Pursuant to the Construction Lien Act from each sum otherwise payable to the Vendor under this Contract that is not a release of any monies so retained.
- (b) Subject to Section 5.1(c), any holdbacks retained pursuant to Section 5.1(a) shall not be due and payable until after the expiry of the applicable period for preservation of liens under the Construction Lien Act, and provided that no liens are preserved by persons supplying services or materials to the Vendor.
- (c) Notwithstanding any provision of this Contract,
  - (i) The Vendor shall cause any and all construction liens and certificates of action relating to the Work registered or preserved by any Subvendor, supplier, Vendor's employees, or any other party to whom the Vendor is or may be responsible at law, to be discharged or vacated, or cause to be discharged or vacated, immediately but in any case no later than five (5) Business Days of the date of registration or reservation, all at the Vendor's sole expense. The Vendor shall not be entitled to receive any payment from Metrolinx until all such claims for lien and certificates of action have been vacated or discharged.
  - (ii) The Vendor shall cause any and all written notices of lien relating to the Work given to any person, including, but not limited to, Metrolinx by any Subvendor, supplier, Vendor's employees, or any party to whom the Vendor is or may be responsible at law, to be withdrawn, and the Vendor shall do so immediately but in any case no later than ten (10) Business Days of the written notice of lien having been given, all at the Vendor's sole expense.
  - (iii) If the Vendor fails to discharge or vacate any such lien or certificate of action, or to have any such written notice of lien withdrawn, within five (5) days, then Metrolinx may, at its sole option, do so and set off

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 16 of 45

---

and deduct from any amount owing to the Vendor, all costs and expenses of so doing, and of defending any related action, including without limitation, the costs of borrowing the appropriate cash, letter of credit or bond as security, and legal fees and disbursements on a full indemnity basis. If there is no amount owing by Metrolinx to the Vendor, then the Vendor shall reimburse Metrolinx for all of the said costs and expenses of so doing.

#### 6.0 Right of Ownership and Use

##### 6.1 General

- (a) The Vendor shall be responsible for procuring for Metrolinx the right to use all Vendor Intellectual Property required in connection with the Work.
- (b) In the event that any third party Intellectual Property (other than the Metrolinx Intellectual Property) is required in connection with the Work, the Vendor shall, at its own cost, be responsible for entering into and fully maintaining, during the Term, all related and applicable license, and maintenance and support agreements for such third party Intellectual Property.
- (c) If during the Term, third party Intellectual Property (other than Metrolinx Intellectual Property) used in connection with the Work ceases to be commercially available, then the Vendor shall:
  - (i) promptly provide Metrolinx with notice of such event; and
  - (ii) promptly replace such third party Intellectual Property with an alternative product.
- (d) Any increased costs resulting from the foregoing shall be addressed pursuant to the change management process described in Article 8; provided that, in the event such Intellectual Property ceases to be available as a result of any act or omission of the Vendor, the Vendor shall be responsible for all costs associated therewith.

##### 6.2 Ownership of Metrolinx Intellectual Property

- (a) As between Metrolinx and the Vendor, Metrolinx owns and shall own all right, title and interest in and to the Metrolinx Intellectual Property. To the extent that the Vendor requires the use of any Metrolinx Intellectual Property in connection with this Contract or the Work, Metrolinx hereby grants to the Vendor, during the Term, a non-exclusive, non-transferable, non-sublicenseable, fully paid-up, royalty-free right and license for the



## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 17 of 45

---

Vendor and the Vendor Personnel to access, use, copy, support, maintain and, to the extent reasonably necessary to provide the Work, modify, the Metrolinx Intellectual Property solely for the purposes of fulfilling the Vendor's obligations under this Contract, subject to compliance with the confidentiality obligations set out in this Contract.

- (b) Metrolinx grants no rights other than explicitly granted herein, and the Vendor shall not exceed the scope of this license. Except for the limited right to use such Metrolinx Intellectual Property as set forth in this section, the Vendor shall not have or acquire any rights in or to the Metrolinx Intellectual Property.

#### 6.3 Ownership of Vendor Intellectual Property

- (a) As between Metrolinx and the Vendor, the Vendor owns all right, title and interest in and to the Vendor Intellectual Property. The Vendor hereby grants to Metrolinx a non-exclusive, irrevocable, perpetual, fully paid-up, royalty-free and worldwide right and license to access, use, copy, support, maintain, modify (including create derivative works from), sublicense (through multiple tiers), assign, distribute or otherwise exploit any Vendor Intellectual Property that is integrated with, embedded in, forms part of or is otherwise required to access, use, copy, support, maintain, modify (including create derivative works from), sublicense, assign, distribute or otherwise exploit any Custom Intellectual Property; provided, however, that the foregoing license does not permit Metrolinx to use the Vendor Intellectual Property in its standalone form or for any purpose other than as part of or in conjunction with the Custom Intellectual Property it is associated with. The Vendor grants no rights other than explicitly granted herein, and Metrolinx shall not exceed the scope of this license.
- (b) If the Vendor integrates with or embeds in any Deliverables any Intellectual Property provided by a third party vendor, Subvendor, independent vendor, Subvendor or other Person, the Vendor shall obtain for Metrolinx the same license rights for Metrolinx has set forth in Section 6.3(a).

#### 6.4 Ownership of Custom Intellectual Property

- (a) Metrolinx owns and shall own all right, title and interest in and to the Custom Intellectual Property. The Vendor hereby irrevocably assigns and transfers to Metrolinx all right, title and interest, throughout the world in and to all Custom Intellectual Property produced pursuant to this Contract including all applicable Intellectual Property Rights thereto. If the Vendor has any rights to Custom Intellectual Property that cannot, or which the Parties agree will not, be assigned to Metrolinx, the Vendor hereby grants

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 18 of 45

---

to Metrolinx a non-exclusive, irrevocable, perpetual, fully paid-up, royalty-free and worldwide right and license to access, use, copy, support, maintain, modify (including create derivative works from), sublicense (through multiple tiers), assign, distribute or otherwise exploit the Custom Intellectual Property.

#### 6.5 Employee and Subvendor Contracts

- (a) The Vendor shall obtain from each of the Contract Personnel an assignment of rights to the Custom Intellectual Property and a waiver of any moral rights (and any similar rights to the extent that such rights exist and may be waived in each and any jurisdiction throughout the world) in and to the Custom Intellectual Property, for the benefit of Metrolinx and its respective successors, assigns, licensees and vendors, prior to the performance of any Work by each such individual. The Vendor shall provide copies of such documentation to Metrolinx upon request.

#### 6.6 Title and Risk of Loss

- (a) Risk of loss of or damage to the goods shall remain with the Vendor, and shall pass to Metrolinx upon acceptance of the goods at the designated Place of Work.
- (b) The Vendor shall be liable for all costs up to the full replacement value of any good(s) prior to passage of title of the goods to Metrolinx. Any goods, which prior to acceptance by Metrolinx shall become damaged from any cause whatsoever, shall be made good at the expense of the Vendor, except that, in the event that and to the extent that negligence on the part of Metrolinx or its employees or representatives causes the above-mentioned damage, Metrolinx shall accept responsibility and reimburse the Vendor for the price of necessary repairs. In either event the time for delivery shall be adjusted accordingly.
- (c) Risk of loss of or damage to spare parts, capital spares, diagnostic tools and other deliverables covered by the Contract shall remain with the Vendor until, and shall pass to Metrolinx upon, delivery and acceptance of the good by Metrolinx at the designated Place of Work.
- (d) The Vendor shall be liable for all costs up to the full replacement value of any spare parts, capital spares, diagnostic tools and other deliverables covered by this Contract prior to acceptance by Metrolinx.
- (e) Upon any payment being made to the Vendor for or on account of materials, parts, Work-in-process, or finished Work, either by way of progress payments or accountable advances or otherwise, title in and to all

**GENERAL CONDITIONS OF THE CONTRACT**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 19 of 45

---

materials, parts, Work-in-process and finished Work so paid for by such progress payments or accountable advances or otherwise shall vest and remain in Metrolinx unless already so vested under any provision of the Contract and the Vendor shall be responsible therefor in accordance with the provisions of Section 6.6 herein, it being understood and agreed that such vesting of title in Metrolinx shall not constitute acceptance by Metrolinx of such materials, parts, work-in-progress and finished work and shall not relieve the Vendor of its obligations to perform the Work in conformity with the requirements of the Contract.

- (f) The Vendor shall take reasonable and proper care of all property, title to which is vested in Metrolinx, while the same is in, on or about the plant and premises of the Vendor or otherwise in his possession or subject to his control and shall be responsible for any loss or damage resulting from his failure to do so other than loss or damage caused by ordinary wear and tear.

**7.0 Insurance**

7.1 Insurance Requirements

- (a) The Vendor agrees to purchase and maintain in force, at its own expense and for the duration of this Contract, the policies of insurance set forth in Schedule C - Insurance, which policies will be in a form and with an insurer or insurers acceptable to Metrolinx. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer and copies of the policies must be delivered to Metrolinx prior to the commencement of the Work.

**8.0 Changes and Cash Allowances**

8.1 Changes Requested by Metrolinx

- (a) Metrolinx may, in writing, request changes or alterations to the Work, or request additional services from the Vendor (any of the foregoing, "Changes"). Subject to this Article 8, the Vendor shall comply with and implement all reasonable Metrolinx Change requests, and the performance of such requests shall be in accordance with this Contract.

8.2 Changes Recommended by the Vendor

- (a) The Vendor shall promptly notify Metrolinx in writing if the Vendor considers that any notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 20 of 45

---

Change, and seek instructions as to whether or not to proceed to implement such Change.

#### 8.3 Change Management Process

- (a) Where a Change request is initiated by Metrolinx pursuant to Section 8.1, Metrolinx shall set out, in the Change request:
  - (i) the proposed prices for the contemplated changes;
  - (ii) the timing requirements for the implementation of the Change; and
  - (iii) any other information which may reasonably be required.
- (b) The Vendor shall respond to Metrolinx' Change request in writing within ten (10) Business Days.
- (c) Where a Change is initiated by the Vendor pursuant to Section 8.2, the Vendor shall set out in the Change request, conforming to Section 8.3(a):
  - (i) a description of the proposed Change;
  - (ii) the estimated cost of the proposed Change;
  - (iii) any proposals, designs or other details or information which may be reasonably required; and
  - (iv) the reasons for the proposed Change, including the benefits of the proposed Change and any consequences of not proceeding with the Change.
- (d) No Changes shall be implemented and no Change request shall become effective until an amendment or change order documenting the Change has been executed by both Parties, and such executed instrument shall be the final determination of any adjustments to the Contract price, the Project Schedule, or the terms and conditions of the Contract, as applicable, with respect to the Change set out therein.
- (e) Where Metrolinx and the Vendor cannot agree as to whether or not a particular notice, direction, requirement, request, correspondence, or other fact, event, or circumstance comprises, requires, or results in a change to the scope of the Work, then either Party may refer the issue to dispute resolution in accordance with Article 16.

#### 8.4 Cash Allowance Items and Task Assignment Process

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 21 of 45

---

- (a) The Vendor shall include all Cash Allowance Items in the Project Schedule and perform all Work related thereto within the Project Schedule. Where applicable, the Project Schedule shall take into account the time required to facilitate the Task Assignment Process described in this Section, including the time required to obtain Quotations pursuant to Section 14.0 of Schedule B - Financial Terms.
- (b) Cash Allowance Items shall be administered and authorized as follows (the "Task Assignment Process"):
  - (i) The Metrolinx Representative shall submit to the Vendor a request to proceed with a Cash Allowance Item.
  - (ii) Upon receipt of such request from Metrolinx, the Vendor shall, in respect of the identified Cash Allowance Item, provide to Metrolinx a response setting out:
    - (A) the estimated hours of Work and expected completion date;
    - (B) subject to Section 8.5, the Vendor Personnel, suppliers, Subvendors or specialized services providers which the Vendor proposes to perform the Work; and
    - (C) any requirements for testing and reporting.
- (c) As and if required, the Parties shall meet to review the requirements for the Cash Allowance Item.
- (d) Subsequent to the review meeting, and based on the results of the review meeting, the Vendor shall make its own determination of the Vendor's work effort and fee cost to provide the Vendor's scope of services for the task.
- (e) No amounts shall be payable in respect of any Cash Allowance Items unless and until Metrolinx has approved such expenditure in writing, and shall be subject to Schedule B - Financial Terms.
- (f) Upon the approval by Metrolinx of any Cash Allowance Item, the Vendor shall be responsible for the completion thereof in accordance with the terms and conditions set out in this Contract. For greater certainty, the Vendor's responsibilities for Cash Allowance Items approved by Metrolinx pursuant to this Section are the same as for all other Work.

#### 8.5 Performance of Changes and Cash Allowance Items

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 22 of 45

---

- (a) Metrolinx shall determine by whom and for what amounts the items included in each Change or Cash Allowance Item will be performed.
- (b) Metrolinx shall have the right, exercisable at its sole discretion, to require the Vendor to use a third party to perform or provide any Cash Allowance Items or any Work related to a Change. Metrolinx may exercise this right generally, by requiring the Vendor to provide the Work through a third party selected by the Vendor, or by requiring the Vendor to utilize a third party identified by Metrolinx.
- (c) The Vendor shall obtain prior approval of Metrolinx before entering into a subcontract, amending an existing subcontract or performing own forces work included in a Change or Cash Allowance.

#### 8.6 Task Release Process for Emergent/Remedial Work

- (a) Upon request of the Metrolinx Representative, the Contractor shall prepare a work plan (the “Task Plan”) clearly defining the work required by a specified Work (the “Task”), and setting out the following:
  - (i) description of the work required by the Task and Task deliverables;
  - (ii) projected milestones and schedule for completion of the Task;
  - (iii) resources required for the completion of the Task;
  - (iv) calculation of fees;
  - (v) proposed list of staff for the Task; and
  - (vi) any other information or documents as required by the Metrolinx Representative.
- (b) The Contractor shall not proceed with the Task unless approved pursuant to Section 8.6(a) in the form of a “Task Release” and only to the Upset Limit or fixed price as indicated therein notwithstanding the total Upset Limit price established by the Contract.
- (c) The Contractor shall proceed with the Task and the fee will be established for each Task as agreed upon by the Parties using the rates identified in the Articles of Agreement.
- (d) The Upset Limit or fixed fee for each Task shall be in Canadian funds, not subject to adjustment unless agreed otherwise in writing and shall be inclusive of all applicable costs.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 23 of 45

- (e) Prior to finalizing each Task Plan, Metrolinx and the Contractor will establish either an Upset Limit on the fee if the Task is to be completed on a Time and Expense basis or a Fixed Fee basis.
  - (i) Time and Expense: The fee shall be calculated on the basis of the work actually performed for a Task based on the rates provided by the Contractor for Contractor Personnel.
  - (ii) Fixed Price: The fee shall be calculated for the completion of a Task based on the rates provided by the Contractor for Contractor Personnel. The Contractor shall submit an itemized cost breakdown of the various parts of the Task with its work plan, which together shall aggregate the total price for that Task.
- (f) Metrolinx reserves the right to withhold payment for any Work performed by the Contractor or its Subcontractors prior to the issuance of an authorized Task Release or outside the scope of a Task Plan approved by a Task Release.

#### **9.0 Additional Resources**

##### 9.1 Additional Resources

- (a) In addition to, or in connection with, a request for additional or altered services pursuant to Article 8, at any time during the Term, Metrolinx shall have the right in its discretion to require the Vendor to increase the number of Vendor Personnel upon twenty (20) days' notice.
- (b) Unless otherwise agreed to in writing by Metrolinx, such additional Vendor Personnel shall be available to report for work at any Place of Work designated by Metrolinx within twenty (20) days of receipt of a written request from Metrolinx pursuant to Section 9.1(a).
- (c) The hourly rate payable in respect of additional Vendor Personnel shall be as set out in the Articles of Agreement.

#### **10.0 Confidential Information, Personal Information, Freedom of Information, Access and Audit Rights**

##### 10.1 Confidential Information

- (a) The Vendor shall keep all Confidential Information confidential. Without limiting the generality of the foregoing, the Vendor shall:
  - (i) not disclose, reveal, publish, or disseminate any Confidential Information to anyone, except as permitted pursuant to this Contract;

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 24 of 45

---

- (ii) shall use Confidential Information only in connection with this Contract and the performance of the Work;
- (iii) shall take all reasonable steps required to prevent any unauthorized reproduction, use, disclosure, publication, or dissemination of the Confidential Information;
- (iv) shall not copy, reproduce in any form or store the Confidential Information in a retrieval system or database, without the prior written consent of Metrolinx; and
- (v) shall immediately notify Metrolinx in the event that it becomes aware of any unauthorized disclosure of Confidential Information.

#### 10.2 Permitted Disclosure

- (a) Notwithstanding the obligations set out in Section 10.1, the Vendor may disclose Metrolinx' Confidential Information to those of its Subvendors and Vendor's Personnel who need to know such Confidential Information in connection with this Contract, provided that such Subvendor or Vendor's Personnel, as applicable, is subject to obligations of confidentiality substantially similar to those contained in this Article 10.

#### 10.3 Exceptions

- (a) The obligations of confidentiality set out in Section 10.1 shall not apply to Confidential Information which:
  - (i) becomes generally available to the public through no fault of the Vendor;
  - (ii) prior to receipt from Metrolinx, was known to the Vendor on a non-confidential basis and is not subject to another obligation of secrecy and non-use, as documented by written records possessed by the Vendor;
  - (iii) was independently developed by the Vendor prior to receipt from Metrolinx, as documented by written records possessed by the Vendor; or
  - (iv) becomes available to the Vendor on a non-confidential basis from a source other than Metrolinx that is not under other obligations of confidence.
- (b) If the Vendor becomes compelled to disclose any Confidential Information pursuant to Applicable Law, the Vendor shall provide Metrolinx with



## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 25 of 45

---

prompt written notice of any such requirement and shall cooperate with Metrolinx in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the relevant Confidential Information is preserved. If such an order or arrangement is not obtained, the Vendor shall disclose only that portion of the Confidential Information as is required pursuant to Applicable Law. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Article 10.

- (c) Without limiting the generality of Section 10.3(a) and notwithstanding Section 10.3(b), the Parties acknowledge and agree that the treatment and disclosure of Confidential Information shall in all cases be subject to the requirements of FIPPA and the Construction Lien Act.

#### 10.4 Security Measures

- (a) The Vendor shall select, implement (prior to the commencement of the Work), use and maintain the most appropriate products, tools, measures and procedures to ensure the security of all Confidential Information, as determined with reference to and generally in compliance with Applicable Laws, Industry Standards, the security requirements specified in "Scope of Work" and best practices, or as otherwise prescribed by Metrolinx during the Term. Without limiting the generality of the foregoing, such practices shall include:
  - (i) privacy due diligence safeguards; and
  - (ii) physical and electronic security measures and confidentiality enhancing technologies to guard against unauthorized disclosures, access and use, such as firewalls, encryption, the use of user identification and passwords, software or other automated systems to control and track the addition and deletion of users, and software or other automated systems to control and track user access to areas and features of information systems.
- (b) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which Vendor shall perform its obligations relating to this Section 10.4.

#### 10.5 Intellectual Property Rights

- (a) Metrolinx, its vendors, Subvendors, consultants, advisors, agents, strategic business partners, and affiliates shall retain all right, title and interest, including all Intellectual Property Rights, in and to its Confidential Information.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 26 of 45

---

#### 10.6 Return or Destruction of Confidential Information

- (a) Immediately upon expiration or termination of this Contract or at any other time upon the request of Metrolinx, and subject to Section 10.10, the Vendor agrees to:
  - (i) promptly return all Confidential Information (other than the Contract Records) to Metrolinx; or
  - (ii) promptly delete or destroy the Confidential Information (other than the Contract Records) and all copies thereof in any form whatsoever under its power or control and provide Metrolinx with a destruction certificate signed by an appropriate officer of the Vendor certifying such destruction.
- (b) Notwithstanding the foregoing, the Vendor shall have no obligation to return or destroy:
  - (i) Confidential Information that is captured and retained within the Vendor's routine computer systems backup processes, provided that (a) no specific effort is made to retrieve such archived Confidential Information for purposes that would violate the confidentiality obligations under this Contract and (b) the confidentiality obligations under this Contract shall continue to apply to such archived Confidential Information for so long as such information is retained; and
  - (ii) working papers or other documentation which it is required to retain pursuant to Applicable Law or any rules of professional conduct applicable to the Vendor or the Vendor Personnel.

#### 10.7 FIPPA and Personal Information

- (a) Metrolinx and the Vendor acknowledge and agree the collection, use, retention and disclosure of Personal Information is governed by FIPPA. Metrolinx acknowledges that the Vendor may also be subject to the requirements of PIPEDA. In the event of a conflict between the requirements of FIPPA and the requirements of PIPEDA or any other legislation governing the treatment of Personal Information, the more onerous provision shall apply.
- (b) The Vendor shall ensure that all collection, access, use, retention and disclosure of Personal Information under this Contract, whether through the performance of the Work or otherwise, complies with Applicable Laws including FIPPA, PIPEDA, Standards, and applicable requirements to

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 27 of 45

---

collect, record and retain relevant consents pertaining to the collection, access, use, retention and disclosure of Personal Information in respect of the Work.

- (c) At Metrolinx's request at any time during the Term, the Vendor shall fully participate in a Privacy Impact Assessment with respect to the performance of the Work. The Privacy Impact Assessment may be conducted by Metrolinx or external third party advisors to Metrolinx at various times throughout the Term. The Vendor and all Vendor Personnel shall cooperate with Metrolinx and/or its third party advisors to provide the resources required facilitating and fulfilling this assessment. The Vendor shall implement any recommendations resulting from the Privacy Impact Assessment process.
- (d) The Vendor shall ensure the security and integrity of any Personal Information collected by the Vendor and shall protect it against loss, unauthorized access, destruction, or alteration, in accordance with the following:
  - (i) The Vendor shall not directly or indirectly collect, use, disclose, store or destroy any Personal Information, or give, exchange, disclose, provide, or sell Personal Information to any third party, except as expressly permitted, and for a purpose(s) authorized, under this Contract or otherwise agreed to in writing by Metrolinx.
  - (ii) The Vendor shall ensure that access to Personal Information is restricted to those Vendor Personnel who have a need to know or use such information in the performance of the Work and who have been specifically authorized to have such access for the purposes of performing the Work. Access shall be limited to only that Personal Information which is required for the performance of the Work.
  - (iii) All Personal Information shall be kept in a physically secure location and separate from all other records and databases. The Vendor shall not place, input, match, insert or intermingle, nor shall it permit any Person to place, input, match or intermingle, any data or records in any form whatsoever into or with any records or database containing such Personal Information.
- (e) For greater certainty, Metrolinx reserves the right to prescribe the specific manner in which the Vendor shall perform its obligations relating to this Section 10.7.

#### 10.8 FIPPA and Freedom of Information

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 28 of 45

---

- (a) The Vendor acknowledges that Metrolinx is a provincial crown agency subject to FIPPA, and acknowledges and agrees as follows:
  - (i) All FIPPA Records are subject to, and the collection, use, storage and treatment thereof are governed by FIPPA. The Vendor agrees to keep all FIPPA Records secure and available, in accordance with the requirements of FIPPA. The Vendor acknowledges that all information, data, records and materials, however recorded, that are held by the Vendor and/or created by the Vendor in the course of performing the Work are considered to be FIPPA Records and subject to FIPPA.
  - (ii) Section 10.5 shall apply to all FIPPA Records (other than the Contract Records), which shall be returned and/or destroyed in accordance with that section.
  - (iii) In the event of a conflict between the requirements of this Contract and the requirements of FIPPA, the requirements of FIPPA shall take precedence.
  - (iv) In the event that a request is made under FIPPA for the disclosure of any FIPPA Records, Metrolinx shall provide prompt written notice thereof to the Vendor and the Vendor shall provide any and all relevant FIPPA Records to Metrolinx on demand for the purposes of responding to an access request under FIPPA. In these circumstances, the Vendor shall provide all FIPPA Records requested to Metrolinx's Freedom of Information Coordinator (or equivalent) within seven (7) Business Days of receipt of the request from Metrolinx. Notwithstanding anything to the contrary in this Contract and subject to the Vendor's rights of appeal pursuant to Section 28(9) of FIPPA, Metrolinx shall determine what FIPPA Records will be disclosed in connection with any such request, in accordance with the requirements of FIPPA (including, without limitation, the requirements with respect to affected persons set out in Section 28 thereof).
  - (v) Storage of FIPPA Records (including the Contract Records) at a location outside Canada shall only be permitted with Metrolinx's express written consent.

#### 10.9 Access

- (a) The Vendor shall provide to Metrolinx the network access requirements and access level that will be required by the Vendor to perform the Work.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 29 of 45

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All requests to access Metrolinx's network will be subject to Metrolinx's written approval.

- (b) The Vendor shall aggregate all access into a central network access point before network access is granted to Metrolinx's information systems. The network controls used to facilitate access between the Vendor and Metrolinx will be subject to Metrolinx's written approval.
- (c) Contract Personnel shall not attempt to access, or allow access to, any Metrolinx data to which they are not permitted access under this Contract. If such access is attained, the Vendor shall immediately report such incident to Metrolinx, describe in detail any accessed Metrolinx data, and return to Metrolinx any copied or removed Metrolinx data.
- (d) The Vendor is responsible for ensuring that Vendor Personnel do not access, or allow access, to any Metrolinx data to which they are not permitted access under this Contract. The Vendor shall utilize commercially reasonable efforts, including through the use of rigorous systems security measures, to guard against, identify and promptly terminate the unauthorized access, alteration or destruction of software and Metrolinx data.

#### 10.10 Audit Rights

- (a) During the Term and for a period of seven (7) years thereafter, the Vendor shall, at its cost and expense, retain and maintain, in an organized, accurate and accessible mode and manner, all financial and other books, records and documentation relating or pertaining to the Contract and the performance of the Work, including (i) original invoices and accounts, along with related records showing costs and expenses incurred, including but not limited to the cost to the Vendor of the Work and of all expenditures or commitments made by the Vendor in connection therewith; (ii) correspondence, e-mails, tenders, minutes of meetings, notes, reports, timesheets, memoranda and other documents associated with the Contract; (iii) records relating to any service level agreements and key performance indicators included in the Contract, and (iv) records related to matters of security and privacy (collectively, the "Contract Records").
- (b) The Contract Records shall be retained and maintained in accordance with all generally acceptable accounting principles and Applicable Laws and Industry Standards, or as otherwise may be required to substantiate compliance with this Contract and/or any payment to be made to the Vendor under this Contract.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 30 of 45

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- (c) During the Term and for a period of seven (7) years thereafter, Metrolinx or any third party acting on behalf of Metrolinx, shall have the right, upon no less than twenty-four (24) hours' notice in writing to the Vendor and during normal office hours, to inspect and audit, and to have access to, all Contract Records whether maintained by the Vendor or a Vendor Personnel, reasonably required to confirm the Vendor's compliance with the terms of this Contract and Applicable Laws, and to make copies thereof. The Vendor shall make available or cause to be made available the Corporate Records that are requested by Metrolinx or that may be required given the scope of the audit (provided such scope is disclosed to the Vendor), and shall otherwise reasonably cooperate with Metrolinx and any third party acting on Metrolinx's behalf, including by providing reasonable access to all of the Vendor's premises and to the Vendor's employees. Where access is needed to a Vendor Personnel's employees or to Contract Records that are maintained by a Vendor Personnel, the Vendor shall use reasonable efforts to arrange for such access on a timely basis. Without limiting the generality of the foregoing, the rights set out in this Section 10.10 shall extend to any Governmental Authority exercising its right to audit pursuant to Applicable Law or any contract with Metrolinx.
- (d) The Vendor shall maintain a competent and independent audit function to assess the internal controls over its environment and its compliance with Applicable Laws and Industry Standards. The Vendor shall provide Metrolinx, upon request, the results of all internal controls and security audits performed by the Vendor's auditors.
- (e) The Vendor shall upon advance written request, provided by e-mail or otherwise, provide Metrolinx with reasonable access to all premises that may reasonably be required to enable Metrolinx and/or Metrolinx's agents to monitor the progress of the Work. Any such monitoring or verifications shall be without prejudice to any other rights of Metrolinx under this Contract and shall not relieve the Vendor from any of its obligations under this Contract nor shall such verification be used by the Vendor as evidence of effective control of quality.
- (f) The Vendor and Metrolinx shall meet to review each audit report promptly after the issuance thereof and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested or issued identified by the audit report. Without limiting any remedies which may be available to Metrolinx, the Vendor shall promptly remedy any violations of this Contract of which it becomes aware, pursuant to any audit or otherwise.

#### 10.11 Vendor Compliance

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 31 of 45

---

- (a) The Vendor shall advise all of its Vendor Personnel, all of its Subvendors, and all of its Subvendor's Vendor Personnel of the requirements of this Article 10, and associated requirements set out elsewhere in this Contract, and take appropriate action to ensure compliance by such persons with the terms of this Article 10. In addition to any other liabilities of the Vendor pursuant to this Contract or otherwise at law or in equity, the Vendor shall be liable for all claims arising from any non-compliance with this Article 10 by the Vendor, any of its Vendor Personnel, any Subvendor and of its Subvendor's Vendor Personnel.
- (b) The Vendor warrants that each of its Vendor Personnel, each of its Subvendors and each of its Subvendor's Vendor Personnel engaged by the Vendor to provide the services pursuant to this Contract is under a written obligation to the Vendor requiring such person to comply with the terms of this Article 10.

#### 10.12 Publicity

- (a) Neither Party may make any disclosure to any other person or any public announcement or press release regarding this Contract or any relationship between the Vendor and Metrolinx, without the other Party's prior written consent.

#### 10.13 Damages

- (a) The Vendor acknowledges and agrees that any breach or threatened breach of this Article 10 or the obligations set out herein shall cause immediate and irreparable harm to Metrolinx for which damages alone are not an adequate remedy. The Vendor hereby acknowledges and agrees that Metrolinx shall be entitled to seek, in addition to any other legal remedies which may be available to it, such equitable relief as may be necessary and available to protect Metrolinx against such breach or threatened breach. No failure or delay by Metrolinx in exercising any right hereunder shall operate as a waiver hereof, or shall estop Metrolinx from obtaining permanent injunctive relief.

### 11.0 Representations, Warranties and Covenants

#### 11.1 Representations, Warranties and Covenants of the Vendor

- (a) The Vendor covenants and agrees with and represents and warrants to Metrolinx, and acknowledges and confirms that Metrolinx is relying on such covenants, agreements, representations and warranties, as follows:

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 32 of 45

---

- (i) the Vendor is validly existing under the laws of the location of its head office and the Vendor has all necessary corporate power, authority and capacity to enter into this Contract and to perform its obligations hereunder;
- (ii) the entering into of this Contract by the Vendor and the performance of its obligations hereunder has been authorized by all necessary corporate action;
- (iii) the execution and delivery of this Contract, the consummation of the transactions contemplated herein and compliance with and performance of the provisions of this Contract does not and shall not:
  - (A) result in a breach of or constitute a default under, or create a state of fact, which after notice or lapse of time or both, or otherwise, would constitute a default under any term or provision of the constating documents of the Vendor, the by-laws or resolutions of the Vendor or any agreement or instrument to which the Vendor is a party or by which it is bound, or
  - (B) require the Vendor to obtain any Approval or action of any other Persons and, if required, any such Approvals have already been obtained as of the date of this Contract;
- (iv) this Contract constitutes a legally valid and binding obligation of the Vendor enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally, the principles of equity and that equitable remedies such as specific performance and injunction are available only in the discretion of a court of competent jurisdiction;
- (v) the Vendor has carefully reviewed the whole of this Contract, including all of the Contract Documents, and all other documents made available to the Vendor by Metrolinx, and, to the Vendor's knowledge, nothing contained herein or therein inhibits or prevents the Vendor from performing the Work in accordance with the Required Standard of Care so as to achieve and satisfy the requirements of this Contract;
- (vi) the Vendor has engaged and shall engage only Subvendors and Vendor Personnel that are qualified and competent to perform the portions of the Work they are responsible for and possess the requisite Domain Expertise;



## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 33 of 45

---

- (vii) the Vendor has available the resources and personnel to complete all of its obligations under this Contract in a timely, efficient and professional manner in accordance with the Required Standard of Care;
- (viii) the Vendor is not aware of any legal action instituted, threatened or pending against the Vendor that could have a material adverse effect on its ability to perform its obligations under this Contract;
- (ix) Except as disclosed in the Submission, the Vendor is free of any actual or potential Tender Conflict of Interest;
- (x) the Vendor is registered as an employer pursuant to the Workplace Safety and Insurance Act (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder;
- (xi) the Vendor is familiar with the obligations imposed on an "employer" as defined in OHSA, and that it has in place a health and safety program to ensure that it takes all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under that Act; and
- (xii) the Vendor represents, warrants and covenants to Metrolinx that the Vendor is and shall remain duly registered for the purposes of Part IX of the Excise Tax Act.

#### 11.2 Continuing Effect of Representations, Warranties and Covenants

- (a) The Vendor hereto agrees that its covenants, representations and warranties contained in this Article 11 are continuing covenants, representations and warranties and shall apply and be true and correct at all times during the Term.

## 12.0 Indemnity

### 12.1 Indemnification

- (a) The Vendor shall at all times indemnify and save harmless Metrolinx, its officers, directors, employees, members, agents, representatives, successors and assigns (hereinafter the "Indemnified Parties"), from and against any and all Losses resulting from:

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 34 of 45

---

- (i) any breach, violation or non-performance by or on behalf of the Vendor of any covenant, obligation or agreement of the Vendor contained in this Contract, including any warranty;
- (ii) any negligent acts, errors or omissions or wilful misconduct by or on behalf of the Vendor relating to the Work to be provided under this Contract;
- (iii) any acts performed or omitted to be performed by or on behalf of the Vendor beyond the authority of the Vendor hereby conferred;
- (iv) any inaccuracy in or breach of any of the representations or warranties of the Vendor contained in this Contract;
- (v) any preserved or perfected lien under the Construction Lien Act filed or made on account of the Work performed hereunder, provided that the liens herein referenced are not the direct result of the default in payment by Metrolinx to the Vendor of amounts properly due under this Contract. The Vendor shall cause any such lien or claim which may be filed or made to be released, vacated or otherwise discharged within five (5) days of obtaining notice of the lien or claim or from receipt by the Vendor of written notice from Metrolinx. If the Vendor fails to release, vacate or discharge any such lien or claim, then Metrolinx may, but without obligation to do so, discharge or release the lien or claim or otherwise deal with the lien or claim, and the Vendor shall pay any and all reasonable costs and expenses, including but not limited to reasonable legal fees incurred by Metrolinx in so releasing, discharging, or otherwise dealing with such lien or claim;
- (vi) any breach of the terms and conditions set out in Article 3 or arising as a result of any illness, injury or death of any employee of the Vendor or any Subvendor, including:
  - (A) any resulting expenses incurred by Metrolinx as a result of stoppage of the Work on account of failure by the Vendor to meet its obligations under and/or with respect to the OHSA; and
  - (B) any resulting fine(s) levied against Metrolinx as a result of any breach of the responsibilities of the employer for the work, to the extent attributable to the Vendor's failure to fulfil its obligations as described in Section 3.1; and/or
- (vii) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trademark, industrial design or other proprietary rights conferred by

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 35 of 45

---

contract, common law, statute or otherwise in respect to the Work or any matter provided to Metrolinx or performed by the Vendor, or anyone else for whom at law the Vendor is responsible provided, however, the Vendor shall not be required to indemnify the Indemnified Parties pursuant to this subsection if (i) the infringement or alleged infringement was caused by the modification of a deliverable or work product prepared pursuant to this Contract by any person other than the Vendor or a Vendor Personnel, (ii) the deliverable or work product was based upon designs provided by Metrolinx, or (iii) the Work relating to the infringement or alleged infringement were used in a manner not permitted by the Contract.

- (b) The Vendor shall pay all reasonable costs, expenses and legal fees that may be incurred or paid by the Indemnified Parties in connection with any demand, claim, execution, action, suit or proceeding with respect to a matter for which the Vendor is obligated to indemnify the Indemnified Parties pursuant to this Article 12, provided that the indemnity obligations of the Vendor under this Article 12 shall not extend to Loss attributable to the negligence or willful misconduct of any Indemnified Parties to the extent that such Indemnified Parties' negligence or willful misconduct caused the Loss.
- (c) In the event any Loss is asserted in respect to which an Indemnified Party is entitled to indemnification under this Article 12, and without prejudice to any other right or remedy Metrolinx may have, Metrolinx shall be entitled to deduct or withhold a reasonable sum on account of such claim, action, suit, execution or demand, including legal costs, from monies owed or payable by Metrolinx to the Vendor under this Contract pending the final determination or settlement of such claim, action, suit, execution or demand. In the event,
  - (i) the Vendor is, becomes, or is deemed to be bankrupt or an insolvent person pursuant to the Bankruptcy and Insolvency Act (Canada);
  - (ii) the Vendor makes a general assignment for the benefit of creditors; or
  - (iii) a receiver or interim-receiver is appointed with respect to some or all of the Vendor's business, assets, or property, then Metrolinx shall be entitled, without prejudice to any other right or remedy Metrolinx may have, to further deduct or withhold a reasonable sum on account of such Loss, from any monies owed or payable by Metrolinx to the Vendor under any other agreement or account. The provisions of this Section 12.1(c) shall not apply in the event that such Loss is otherwise provided for under any insurance provided by the Vendor to or for the benefit of Metrolinx.

**GENERAL CONDITIONS OF THE CONTRACT**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 36 of 45

---

**13.0 Limitation of Liability**

13.1 General Intent

- (a) It is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred by the non-breaching Party as a result of the breaching Party's failure to perform its obligations in the manner required by the Contract.

13.2 Limitations on Liability

- (a) Subject to Section 13.2(c), in no event shall either Party be liable for indirect, consequential, exemplary, punitive or special damages relating to the Contract even if such Party has been advised in advance of the possibility of such damages.
- (b) Subject to Section 13.2(c), each Party's aggregate liability to the other under the Contract for direct damages for all events giving rise to liability hereunder shall be limited to an amount equal to two times the Total Contract Price.
- (c) The limitations of liability set forth in Sections 13.2(c) and 13.2(b) shall not apply with respect to Losses:
  - (i) that are the subject of indemnification pursuant to Articles 12.1(a)(ii), (iii), (v), (vi) or (vii); or
  - (ii) occasioned by a breach of Article 10.
- (d) Each party shall have a duty to mitigate damages for which the Vendor is responsible.

**14.0 Termination**

14.1 Termination for Cause by Metrolinx

- (a) Metrolinx may, by ten (10) days' written notice to the Vendor, suspend or terminate the whole or any part of the provision of the Work or this Contract for cause in the event that the Vendor is in breach of any of its obligations under this Contract, and it fails to cure such breach (which breach must be curable) within thirty (30) days of being notified thereof, and thereupon:
- (b) Metrolinx may appoint officials of Metrolinx or any other person or persons in the place and stead of the Vendor to perform the Work or any portion thereof;

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 37 of 45

---

- (c) the Vendor shall immediately discontinue the Work on the date and to the extent specified in the notice and place no further orders for materials or services for the terminated portion of the Work;
- (d) nothing contained herein shall limit the rights of Metrolinx to recover damages from the Vendor arising from the failure of the Vendor to perform the Work satisfactorily in accordance with the terms of this Contract.

#### 14.2 Termination for Convenience by Metrolinx

- (a) Metrolinx may, by thirty (30) days' written notice to the Vendor, terminate this Contract for convenience, and thereupon Metrolinx shall be liable for payment to the Vendor for those monies attributable to the part of the Work performed to the satisfaction of Metrolinx to the date of termination stipulated in such notice. Metrolinx shall also be liable for any reasonable demobilization costs and the reasonable cost of cancellation of any contracts, but in no event will Metrolinx be liable for any loss of profits, loss of revenue or other consequential damages.

### 15.0 Force Majeure

#### 15.1 Force Majeure

- (a) Neither Party shall be liable for Losses caused by a delay or failure to perform its obligations under this Contract where such delay or failure is caused by an event beyond its reasonable control (a "Force Majeure Event"). The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as the provisions of this Contract would have put in place contingency plans to either materially mitigate or negate the effects of such event.
- (b) Without limiting the generality of the foregoing, the Parties agree that Force Majeure Events may include acts of God, natural disasters, acts of war, war-like operations, civil war, acts of foreign enemy, plagues, epidemics, insurrection and terrorism (provided that the conditions of Section 15.1(a) are met) but shall in no event include:
  - (i) shortages or delays relating to supplies or services; or
  - (ii) on the part of the Vendor, lack of financing or inability to perform because of the financial condition of the Vendor.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 38 of 45

---

- (c) A failure by Metrolinx to furnish instructions is not a Force Majeure Event until fourteen (14) days after a demand for such instructions has been made in writing by the Vendor and not then unless such claim is reasonable and justified to Metrolinx.

#### 15.2 Process

- (a) If a Party seeks to excuse itself from its obligations under this Contract due to a Force Majeure Event:
  - (i) that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period thereof; and
  - (ii) the Party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation for the period of time directly attributable to such Force Majeure Event.
- (b) This Section shall not apply or be available to a Party in respect of any event, or resulting delay or failure to perform, occurring more than fourteen (14) days before notice is given to Metrolinx pursuant to Section 15.2(a).
- (c) In the case of a continuing Force Majeure Event, only one notice shall be necessary.

#### 15.3 Metrolinx Rights

- (a) Without limiting any other rights available to Metrolinx under this Contract, Metrolinx reserves the right to contract any Work from a third party during any period of Force Majeure claimed by the Vendor.

### 16.0 Dispute Resolution

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule D - Dispute Resolution.

### 17.0 Set Off

- (a) Metrolinx shall have the right to satisfy any amount from time to time owing by it to the Vendor under the Contract by way of a set-off against any amount from time to time owing by the Vendor to Metrolinx under the Contract, including but not limited to any amount owing to Metrolinx pursuant to the Vendor's indemnification of Metrolinx in this Contract.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 39 of 45

---

#### 18.0 General

##### 18.1 Entire Agreement

- (a) This Contract constitutes the entire agreement between the Parties regarding the Work and supersedes any prior understandings, negotiations, representations or agreements, whether written or verbal.

##### 18.2 Governing Law and Jurisdiction

- (a) This Contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws applicable therein, without regard to principles of conflicts of law that would impose the law of another jurisdiction. The Parties hereby irrevocably and unconditionally attorn and submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

##### 18.3 Survival

- (a) The obligations set out in Articles 1, 2, 3, 7, 8, 10, 11 and 12 and this Article 18 of this Contract shall continue to bind the Vendor notwithstanding expiration or termination of this Contract for any reason whatsoever or completion of the Work as contemplated hereunder.

##### 18.4 Enurement

- (a) This Contract shall enure to the benefit of, and be binding upon the Parties and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

##### 18.5 Assignment

- (a) The Vendor shall not be entitled to assign this Contract in whole or in part without the prior written consent of Metrolinx, which consent shall not be unreasonably withheld or delayed.

##### 18.6 Independent Parties

- (a) This Contract does not create and is not intended to create an agency or employment relationship, partnership, joint venture or other similar association between the Parties. The relationship between the Parties is to be considered at all times as that of a purchaser and an independent vendor. Neither Party shall have the right to bind the other to any agreement with any third party or to incur any obligation or liability on behalf of the other Party. Except as expressly provided for in this Contract, neither Party shall

**GENERAL CONDITIONS OF THE CONTRACT**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 40 of 45

---

represent, directly or indirectly by conduct, to any third party that it is an agent, employee, partner or joint venture of the other.

- (b) The Vendor Personnel and all other personnel providing the Work are solely the employees of the Vendor and applicable Subvendors (and not Metrolinx') for all purposes under this Contract, including for all purposes under any Applicable Laws. Accordingly, none of the foregoing personnel is entitled to any benefits respecting any pension or other benefit plan, program or policy of Metrolinx.

**18.7 Third Party Beneficiaries**

- (a) This Contract is made solely for the benefit of the Parties and, to the extent expressly and specifically stated, any other Parties made beneficiaries of this Contract. No terms of this Contract shall be deemed to confer upon any other third parties any claim, remedy, reimbursement or other right.
- (b) The Vendor represents and warrants to Metrolinx that the Vendor is entering into this Contract solely on the Vendor's own behalf and not as an agent for any other Person.

**18.8 Joint and Several Liability**

- (a) Where the Vendor comprises two or more Persons, each of them shall be jointly and severally liable for the obligations of the Vendor under this Contract.

**18.9 Notice**

- (a) Unless expressly provided elsewhere in the Contract Documents, every notice required or permitted under this Contract must be in writing and may be delivered in person, by courier or by fax to the applicable party at the address or fax number in the Articles of Agreement or to any other address, fax number or individual that a party subsequently designates by notice.
- (b) Any notice under this Contract, if delivered personally or by courier on a Business Day will be deemed to have been given when actually received, if delivered by fax before 3:00 p.m. on a Business Day will be deemed to have been delivered on that Business Day and if delivered by fax after 3:00 p.m. on a Business Day or on a day that is not a Business Day will be deemed to be delivered on the next Business Day. For greater clarity, notice shall not be given by email.

**18.10 Amendments**



## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 41 of 45

---

- (a) Except as expressly provided in this Contract, no amendment, supplement or restatement of any provision of this Contract is binding unless it is in writing and signed by both Parties.

#### 18.11 No Waiver

- (a) No provision of this Contract shall be deemed waived, amended or modified by either Party unless such waiver, amendment or modification is in writing and signed by the Party against whom it is sought to enforce the waiver, amendment or modification. The failure by a Party to exercise any of its rights, powers or remedies hereunder or its delay to do so does not constitute a waiver of those rights, powers or remedies. No waiver made with respect to any instance involving the exercise of any such right is to be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

#### 18.12 Severability

- (a) If any term or condition of this Contract, or the application thereof to the Parties or circumstances, is to any extent invalid or unenforceable in whole or in part, the remainder of this Contract shall continue in full force and effect, and the application of such term or condition to the Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

#### 18.13 Further Assurances

- (a) Each Party agrees that it shall at any time and from time to time, at its own expense, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request for the purpose of giving effect to this Contract or carrying out the intention or facilitating the performance of the terms of this Contract.

#### 18.14 Conflict of Interest Acknowledgement and Agreement

- (a) For the purposes of this Contract, a "Conflict of Interest" includes any situation or circumstances where, in relation to the performance of its contractual obligations in this Contract, the Vendor's other commitments, relationships or financial interests:
  - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment (this includes, but is not limited to, any work which involves an audit function); or

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 42 of 45

---

- (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.
- (b) The Vendor acknowledges that participation (directly or indirectly) in any procurement process arising from or related to this Contract (the "Prohibited Procurements") would constitute a Conflict of Interest with this Contract, and the Vendor agrees that it shall not, and shall take reasonable steps (including obtaining covenants substantially similar to those set out in this section) to ensure that its Subvendors do not participate in or be involved with such Prohibited Procurements either directly or indirectly, including as a bidder or as a Subvendor or advisor to any bidder.
  - (i) Further to this, any procurement process involving an audit function would constitute a conflict of interest. Unless said conflict can be mitigated, the Vendor would be prohibited from participating (directly or indirectly) in any procurement process arising from or related to the Work of this Contract.
- (c) The Vendor shall:
  - (i) avoid all Conflict of Interest in the performance of its contractual obligations;
  - (ii) disclose to Metrolinx without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
  - (iii) comply with any requirements prescribed by Metrolinx to resolve any Conflict of Interest.
- (d) In addition to all other contractual rights or rights available at law or in equity, Metrolinx shall have the right to immediately terminate this Contract, by giving notice in writing to the Vendor, where:
  - (i) the Vendor fails to disclose an actual or potential Conflict of Interest;
  - (ii) the Vendor fails to comply with any requirements prescribed by Metrolinx to resolve a Conflict of Interest; or
  - (iii) the Vendor's Conflict of Interest cannot be resolved.
- (e) This section shall survive any termination or expiry of this Contract.

#### 18.15 Counterparts

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 43 of 45

---

- (a) This Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or electronic form, provided that the Party providing its signature in electronic form shall promptly forward to the other Party an original signed copy of this Contract which was so sent electronically.

#### 19.0 Warranty

##### 19.1 General

- (a) The Vendor represents, warrants and covenants:
  - (i) That all workmanship shall be in compliance with the requirements of the Contract;
  - (ii) That all goods shall be in compliance with the requirements of the Contract and be free from defects in design, material, workmanship, manufacture, fabrication, packaging, shipment and delivery.
- (b) The express warranties contained herein are in addition to all other warranties and conditions, express or implied, including all legal and statutory warranties, all warranties arising at law, warranties of merchantability and fitness for a particular purpose, and warranties of the Vendor.
- (c) The warranty period shall commence upon acceptance of goods by Metrolinx.

##### 19.2 Warranty Conditions

- (a) If, within twenty-four (24) months, the goods supplied by the Vendor or any part thereof become defective or fails due to any default by the Vendor in fulfilling the requirements of the Contract including, without limitation, improper, faulty or defective design, materials, workmanship, manufacture, fabrication, packaging, shipment or delivery, then the Vendor, upon notification in writing from Metrolinx, shall forthwith repair or remedy every such defect or failure, or replace the goods, without cost (including without limitation transportation cost) to Metrolinx.
- (b) All labour cost incurred by Metrolinx in respect of the repair or remedy of defects or failures, and of the replacement of goods during the warranty period, shall be reimbursed to Metrolinx by the Vendor in accordance with the agreed to hourly rates to be negotiated.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 44 of 45

---

- (c) Metrolinx shall provide the Vendor with reasonable access to the Place of Work for the purpose of performing warranty work when practical.
- (d) The Vendor shall prepare and furnish data and reports pertaining to any repairs, replacements and remedies pursuant to the Warranty, including, but not limited to, revisions and updating of contract drawings, data and contract deliverables.
- (e) In the event the Vendor fails to fulfil any obligation stipulated in this Warranty, Metrolinx shall have the right to repair, remedy or replace the goods at the Vendor's expense.
- (f) The Vendor shall cause those warranties that are provided by Subvendors and suppliers that extend beyond the Vendor's warranty period, be assigned to Metrolinx. Should there be any claim under the said warranties after the expiration of the Vendor's warranty period, such claim shall be made and processed directly by Metrolinx with the relevant Subvendors or suppliers. Subvendors' and suppliers' warranties shall also pass to Metrolinx in the event that the Vendor is unable to complete its obligations under the Contract. In any event, the Vendor shall make provision in all subcontracts and purchase orders for all warranties to be directly assigned to Metrolinx.
- (g) Any product that does not meet the Contract Scope of Work, notwithstanding tests, inspection or acceptance at any time or location, are found to contain deficiencies, will be subject to rejection and shall be returned to the Vendor. The Vendor shall be entitled to a joint inspection of the defective component at the premises of Metrolinx. The Vendor shall assume the expenses of handling and transportation in both directions.

#### 19.3 Intellectual Property

- (a) In addition to the warranties and conditions implied by the Sales of Goods Act (Ontario), the Vendor represents and warrants that there are no patents, trademarks, copyrights or other rights restricting the use, repair or replacement of the goods, or any part thereof, furnished under this Contract.

#### 20.0 Custom Duties and Import Charges

- 20.1 The Vendor shall be responsible for all costs, including administrative costs, relating to delivery of the goods and shall acquire and pay for all necessary permits and licences required for the importation and delivery of goods to the Place of Work.

## GENERAL CONDITIONS OF THE CONTRACT

### PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS

Contract No. PT-2016-SIG-091

Page 45 of 45

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20.2 The Vendor shall be responsible for freight, insurance, importation taxes and duties, custom broker and/or clearance fees and container packing (direct labour and packing material) costs for delivery of goods, components, diagnostic tools, equipment and spare parts and shall pay for such costs. The Vendor shall use commercially reasonable efforts to minimize freight, duty and other delivery costs reimbursed to the Vendor by Metrolinx and incurred under the Contract during the Term. The Vendor shall provide to Metrolinx on a semi-annual basis during the Term of the Contract evidence of the costs in this Section 20.2 incurred under the Contract and any actions taken to minimize these costs. Reductions in freight, insurance, importation taxes and duties, custom broker and/or clearance fees and container packing (direct labour and packing material) costs shall inure to the benefit of Metrolinx.

#### 20.3 Customs Clearance Services

- (a) The Vendor shall be the importer of record for this Contract. The Vendor shall provide and shall arrange for customs brokerage services and other services required complying with all requirements imposed or administered by Canada Border Services Agency regarding the import of the goods into Canada. All communications with customs authorities or customs brokers shall be handled by the Vendor. In the event that a document or thing is required from Metrolinx as the ultimate owner of the goods, the Vendor shall prepare such document or thing for review by Metrolinx prior to submission of such document or thing to the Party requiring same. All costs for these services are included in the Total Contract Price.

END OF SECTION

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE A - DEFINITIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 9

---

**1.0 In this Contract Document,**

- 1.1 "Acceptance" or "Acceptable" or "Accepted" means the act of formal notification by Metrolinx of no further objections regarding content, construction or compliance.
- 1.2 "Applicable Laws" means all applicable laws, statutes, regulations, orders, by-laws, treaties, judgements, decrees and ordinances applicable from time to time and, whether or not having the force of law, all applicable Approvals, Standards, codes, requirements, requests, directives, rules, guidelines, instructions, circulars, manuals, and policies of any Governmental Authority having or purporting to have jurisdiction or authority over a Party, property, transaction or event, including laws relating to workplace safety and insurance, occupational health and safety and employment standards.
- 1.3 "Approvals" means any permits, licences, consents, approvals, clearances, orders, ordinances, registrations, filings or other authorizations respecting the work undertaken as part of the Work as may be required from any applicable Governmental Authority or otherwise by the Vendor's contract documents.
- 1.4 "Arbitration Act" means the Arbitration Act, 1991, S.O. 1991, Chapter 17.
- 1.5 "Business Day" means any day other than: (a) a Saturday or Sunday and (b) any other day on which Metrolinx Head Office is not open for business. Each Business Day will end at 4:00 p.m. on that day.
- 1.6 "Cash Allowance", if applicable, means a sum included in the Total Contract Price by Metrolinx as a predetermined allowance to cover the items identified in "Tender Document Form: Contract Prices" which shall form part of the Articles of Agreement.
- 1.7 "Cash Allowance Items", if applicable, means those items, work and/or services identified in the "Tender Document Form: Contract Prices" which shall form part of Articles of Agreement as items to be paid for using the designated Cash Allowance.
- 1.8 "Changes" has the meaning ascribed to it in Section 8.1 of the General Conditions.
- 1.9 "Construction Lien Act", if applicable, means the Construction Lien Act, R.S.O. 1990, Chapter C.30.
- 1.10 "Confidential Information" means all information of a confidential nature (as determined with reference to its treatment by Metrolinx) which is provided,

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE A - DEFINITIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 9

---

disclosed or made available (orally, electronically or in writing or by any other media) by Metrolinx (or its representatives) to the Vendor (including to employees, vendors, or other representatives thereof). For greater certainty, all Personal Information, Contract Records, construction documents, personal information, and anything else specifically marked or identified by Metrolinx as confidential or proprietary are deemed to be "Confidential Information" for the purposes of this Contract.

- 1.11 "Conflict of Interest" has the meaning ascribed to it in Section 18.14 of the General Conditions.
- 1.12 "Contract" means this contract between the Vendor and Metrolinx pursuant to Tender No. PT-2016-SIG-091 including the Articles of Agreement, the General Conditions and the Schedules thereto and the Contract Documents.
- 1.13 "Vendor Intellectual Property" means any Intellectual Property which (a) the Vendor has already created, developed or produced prior to the Effective Date; (b) which the Vendor creates, develops or produces independently of this Contract and/or the performance of the Work; (c) which the Vendor licenses from a third party; (d) all documentation or source materials (including source code) related to any of the foregoing; and (e) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Vendor Intellectual Property by the Vendor and/or any third party not performing work under this Contract; provided, however, that Vendor Intellectual Property does not include Custom Intellectual Property.
- 1.14 "Vendor Personnel" or "Vendor's Personnel" means (a) with respect to the Vendor, all of the Vendor's personnel, employees and independent vendors (including the Key Personnel and the Vendor's Representative) engaged in the performance of the Work; and (b) with respect to each Subvendor, all of that Subvendor's personnel, employees and independent vendors engaged in the performance of the Work.
- 1.15 "Vendor Policies" has the meaning ascribed to it in Schedule C - Insurance of General Conditions.
- 1.16 "Vendor's Representative" means the person identified by the Vendor, and Accepted by Metrolinx, as the Vendor's authorized representative pursuant to Section 2.8 of the General Conditions.
- 1.17 "Contract Documents" means the Contract and those documents listed in "Scope of Work" and any written amendments thereto as agreed to by the Parties.

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE A - DEFINITIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 9

---

- 1.18 "Contract Performance Appraisal" has the meaning ascribed to it in Section 2.11(a) of the General Conditions.
- 1.19 "Contract Records" has the meaning ascribed to it in Section 10.8 of the General Conditions.
- 1.20 "Custom Intellectual Property" means any Intellectual Property created, developed or produced by the Vendor or any Vendor Personnel under this Contract specifically for use in connection with the performance of the Work, all documentation and media related thereto, and all Intellectual Property Rights therein.
- 1.21 "Deliverables" means the work product created by the Vendor and/or the Vendor Personnel in connection with or as a requirement of the Work, including all reports, drawings, plans, designs, processes, tools, standards, registers, logs, updates, files, databases, Software, and documentation.
- 1.22 "Dispute" means all disputes, controversies, or claims arising out of or relating to: (a) this Contract; (b) the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Contract; and/or (c) the interpretation, enforceability, performance, application, or administration, breach, termination, or validity of this Contract or any failure to agree where agreement between the Parties is called for.
- 1.23 "Dispute Notice" has the meaning given in Schedule D - Dispute Resolution of General Conditions.
- 1.24 "Domain Expertise" means the required level of depth and breadth of qualifications and experience in respect of the tasks to be performed in connection with the Work, gained through a practical application of the knowledge underlying the tasks in an environment substantially similar to that of the Work.
- 1.25 "Drawings" describe the detailed technical requirements of the Work and form part of the Scope of Work.
- 1.26 "Effective Date" means the final date of execution of this Contract by both Parties.
- 1.27 "Encumbrance" means any mortgage, charge, pledge, hypothecation, Lien, security interest, hypothec, easement, right-of-way, right-of-first refusal, option, encroachment, building or use restriction, conditional sales agreement, personal property lease, licence, restrictive covenant, adverse claim, promissory right or other encumbrance of any nature however arising, or any other security



**GENERAL CONDITIONS OF THE CONTRACT**  
**SCHEDULE A - DEFINITIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 4 of 9

---

agreement or arrangement creating in favour of any creditor a right in respect of any property that is prior to the right of any other creditor in respect of such property.

- 1.28 "Excise Tax Act" means the Excise Tax Act, R.S.C. 1985, Chapter E-15.
- 1.29 "FIPPA" means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter F.31.
- 1.30 "FIPPA Records" means all information, data, records and materials, however recorded, in the custody or control of Metrolinx, including Confidential Information, Personal Information and Contract Records. For the purposes of this definition, documents held by the Vendor in connection with this Contract are considered to be in the control of Metrolinx.
- 1.31 "French Designated Area" means an area designated as such in the Schedule to the French Language Services Act. A map and complete listing of French Designated Areas is available at <http://www.ofa.gov.on.ca/en/flsa-mapdesig.html>.
- 1.32 "French Language Services Act" means the French Language Services Act, R.S.O. 1990, Chapter F.32.
- 1.33 "Governmental Authority" means any domestic government, including any federal, provincial, territorial, municipal, regional or other local government, and any government established court, agency, tribunal, commission or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions respecting government; provided, however, "Governmental Authority" does not include Metrolinx.
- 1.34 "Income Tax Act" means the Income Tax Act, R.S.C. 1985, Chapter 1 (5th Supp.).
- 1.35 "Indemnified Parties" has the meaning ascribed to it in Section 12.1 of the General Conditions.
- 1.36 "Intellectual Property" means all intellectual and industrial property, including:  
(a) materials, images, reports, Software, applications, audio or video recordings, specifications, performance requirements, software development tools, technologies, content, data (including all information whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of Metrolinx), technical information, interfaces, web portals, components, services, information, databases, and documentation; (b) patents, patent application rights, rights to file patents, inventions, trade-marks

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE A - DEFINITIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 5 of 9

---

(whether registered or not), trade-mark applications, rights to file trade-marks, trade names, copyrights (whether registered or not), design registrations, trade secrets, confidential information, industrial and similar designs, rights to file for industrial and similar designs, processes, methodologies, techniques and know-how; and (c) all Intellectual Property Rights therein.

- 1.37 "Intellectual Property Rights" means any right to Intellectual Property recognized by law, including any Intellectual Property right protected by legislation or arising from protection of information as a trade secret or as confidential information.
- 1.38 "Joint Venture" is the business arrangement of two or more parties proposed as identified in the Submission.
- 1.39 "Key Personnel" mean the people identified by name in Vendor Personnel.
- 1.40 "Key Responsibilities" means the main responsibilities and tasks to be performed by each category of Vendor Personnel, as identified in Schedule E: Vendor Personnel.
- 1.41 "Losses" means claims, actions, suits, executions, and demands and all loss, liability, judgments, costs, charges, damages, liens and expenses of any nature whatsoever and howsoever caused.
- 1.42 "Metrolinx" means Metrolinx, a provincial crown agency continued under the Metrolinx Act, S.O. 2006, Chapter 16, and its successors and assigns.
- 1.43 "Metrolinx Intellectual Property" means: (a) all Intellectual Property that is proprietary to, or controlled or licensed by, Metrolinx and provided to the Vendor; (b) all Metrolinx Marks; (c) all procurement documents issued by Metrolinx; (d) all documentation or source materials (including source code) related to any of the foregoing; and (e) all copies, translations, improvements, modifications, enhancements, adaptations, or derivations made to the Metrolinx Intellectual Property by Metrolinx and/or any third party not performing work under this Contract.
- 1.44 "Metrolinx Marks" means any trademarks, service marks, trade names, logos or other commercial or product designations owned or licensed by Metrolinx, whether registered or not.
- 1.45 "Metrolinx Representative" or "Metrolinx's Representative" has the meaning ascribed to it in Section 2.9 of the General Conditions.

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE A - DEFINITIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 6 of 9

---

- 1.46 "OHSА" means the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1.
- 1.47 "Parties" means both of Metrolinx and the Vendor and a "Party" means either one of them.
- 1.48 "Person" means any individual, sole proprietorship, partnership, limited partnership, corporation or company (with or without share capital), trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.
- 1.49 "Personal Information" has the meaning ascribed to it in FIPPA.
- 1.50 "PIPEDA" means the Personal Information Protection and Electronic Documents Act, S.C. 2000, Chapter 5.
- 1.51 "Place of Work" is the designated site or location of the Work.
- 1.52 "Privacy Impact Assessment" refers to a systematic and consistent method of analysis to identify and analyze privacy risks in a program, technology or service.
- 1.53 "Prohibited Procurements" has the meaning ascribed to it in Section 18.14 of the General Conditions.
- 1.54 "Product" means any goods, machinery, equipment, fixtures and Software (including any components of any of the foregoing) forming part of the Deliverables, but does not include machinery and equipment used solely to perform the Work.
- 1.55 "Professional Engineer" means an engineer licensed to practice engineering in the Province of Ontario.
- 1.56 "Project Schedule" means the schedule of work identified in Section 6.0, Project Schedule, of Tender Document Form: Form of Tender, which shall form part of the Contract and may be amended at the sole discretion of Metrolinx.
- 1.57 "Quotation" has the meaning given in Section 15.0 of Schedule B - Financial Terms of General Conditions.
- 1.58 "Rates" has the meaning ascribed to it in Section 1.1 of Schedule B - Financial Terms of General Conditions.
- 1.59 "Required Standard of Care" means: (a) using the Standards, practices, methods and procedures among the highest commercial standards of practice and

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE A - DEFINITIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 7 of 9

---

professionalism as understood in the Province of Ontario; (b) confirming to Applicable Laws and all rules of professional conduct applicable to the Vendor or the Vendor Personnel; (c) exercising that degree of skill and care, diligence, prudence and foresight which would be expected from a leading Person or professional performing work similar to those called for under this Contract; and (d) using only proper materials and methods as are suited to the function and performance intended.

- 1.60 "Software" means any set of machine readable instructions that directs the performance of specific operations, including computer programs, computer code, software programs (whether executable or not executable), system software, application software, embedded software, databases, data, middleware, GUI's, objects, firmware, components and modules and related documentation.
- 1.61 "Standards" means, at a given time, those standards, specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care.
- 1.62 "Subvendor" means an individual, firm, partnership, corporation or design professional having a direct contract with the Vendor or another Subvendor to perform a part or parts of the Work as identified in the Submission or as otherwise identified in a request to add a new Subvendor.
- 1.63 "Submission" means all documentation and other materials and information submitted by the Bidder in response to Tender No. PT-2016-SIG-091.
- 1.64 "Supplier" means an individual, firm, partnership or corporation having a direct contract with the Vendor or another Subvendor to provide goods and/or services required to carry out the Work of the Contract.
- 1.65 "Scope of Work" describes the general and detailed requirements of the Work and is to be read in conjunction with any Drawings, if applicable, contained herein.
- 1.66 "Task Assignment Process" has the meaning ascribed to it in Section 8.4(b) of the General Conditions.
- 1.67 "Taxes" means all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority (including, income, capital (including large corporations), gross receipts, consumption, sales, use, transfer, goods and services or other Value Added Taxes, excise, customs or other import, anti-dumping, countervail, net worth, alternative or add-on minimum, windfall profits, stamp, registration, franchise, payroll, employment insurance, Canada

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE A - DEFINITIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 8 of 9

---

Pension Plan, worker's compensation, health, education, school, business, property, local improvement, environmental, development and occupation taxes, surtaxes, duties, levies, imposts, rates, fees, premiums, assessments, withholdings, dues and charges) together with all fines, interest and penalties in respect thereof or in lieu of or for non-collection thereof.

- 1.68 "Tender Conflict of Interest" means the Vendor had an unfair advantage or engaged in conduct, directly or indirectly, that gave it an unfair advantage, including but not limited to (i) having, or having had access to, confidential information of Metrolinx in the preparation of its submission during the Tender process that was not available to other bidders, (ii) communicating with any person with a view to influencing preferred treatment in the Tender process (including but not limited to the lobbying of decision makers involved in the Tender process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the Tender process.
- 1.69 "Term" has the meaning ascribed to it in Section 2.1 of the General Conditions.
- 1.70 "Third Party" or "Third Parties" means any Third Party Vendors or Third Party Operators.
- 1.71 "Third Party Contract" means a contract between Metrolinx and any other Person which is in any way related to, impacts or is impacted by the Work and/or the Vendor's acts or omissions, whether expressly identified to the Vendor or not.
- 1.72 "Third Party Vendors" means vendors, suppliers, service providers, utility owners or any other third party (excluding the Vendor and any Subvendors and Vendor Personnel) performing work and/or providing products and services in, or in respect of, the rail corridors, where such work, products or services (a) are on behalf and for the benefit of Metrolinx or (b) are being undertaken to enable work, products or services on behalf of and for the benefit of Metrolinx.
- 1.73 "Third Party Operators" means (a) any third party providing products and/or services in the rail corridors on their own behalf, pursuant to rights granted by Metrolinx, including VIA Rail Canada Limited, Canadian Pacific Railway Company and Canadian National Railway Company; and (b) any third party who otherwise has a right to occupy, access, or use property or facilities on or adjacent to the rail corridors.
- 1.74 "Third Party Work" means work and services conducted or provided by Third Parties.
- 1.75 "Total Contract Price" means the amount identified as such in Tender Document Form: Contract Prices which shall form part of the Articles of Agreement.

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE A - DEFINITIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 9 of 9

---

- 1.76 "Value Added Taxes" means such sum as shall be levied upon amounts payable to the Vendor under this Contract by any Governmental Authority that is computed as a percentage of the amounts payable to the Vendor (including all other Taxes but excluding Value Added Taxes), and includes the HST, and any similar tax, the payment or collection of which, by the legislation imposing such tax, is an obligation of the Vendor.
- 1.77 "Work" means all the tangible and intangible activities, services, goods, equipment, matters and things required to be done, including all of the work, labour, services, goods, equipment, if applicable, described in the Scope of Work and Drawings and is further described in Section 2.2(a) of General Conditions.
- 1.78 "Working Day" means for railway corridor related routine maintenance work under this Contract on the Kingston, GO, Oakville, Weston and Pearson Subdivisions anytime during days, nights and weekends excluding statutory holidays. Work on all other subdivisions and layover yards may be Monday to Friday between 9 AM to 5 PM, excluding statutory holidays. Emergency restoration services will be performed 24/7 on an as-needed basis regardless of location.
- 1.79 "Upset Limit" means the ceiling amount to be spent in each Year of the Contract for emergent/remedial work or work being carried out under cash/contingency allowances, as indicated in Contract Prices (Excel spreadsheet) which shall form part of the Articles of Agreement.

**END OF SECTION**

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE B – FINANCIAL TERMS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 7

---

**1.0 Payment**

- 1.1 Metrolinx will pay the Vendor for the Work performed by the Vendor pursuant to this Contract, in the amounts and manner, at the rates set out in the Articles of Agreement (the "Rates") and at the times, set forth in the Articles of Agreement and this Schedule B - Financial Terms.
- 1.2 The Vendor shall perform all of the Work notwithstanding that the value of the time spent by the Vendor in performance thereof may exceed the maximum amount payable to the Vendor pursuant to Section 3.0 of this Schedule B - Financial Terms.

**2.0 Limitation of Expenditure**

- 2.1 It is understood that the Contract is based on reimbursement for actual Work requested by Metrolinx and performed by the Vendor, to the satisfaction of Metrolinx.
- 2.2 Metrolinx does not guarantee any minimum or maximum of work.
- 2.3 The Upset Limit amount for emergent services to be provided under this Contract shall be as stated in the Articles of Agreement.
- 2.4 The Contractor shall not perform any Work under this Contract which would cause the total cost of Emergent/Remedial Work in each year of the Contract to exceed the awarded Upset Limit amount stated in the Articles of Agreement unless an increase is so authorized by Metrolinx and affected by a written amendment to the Contract.

**3.0 Total Contract Price**

- 3.1 Subject to Sections 8.1, 8.2 and Article 9 of the General Conditions, Metrolinx and the Vendor acknowledge and agree that Total Contract Price set out in the Articles of Agreement is the maximum amount payable in respect the provision of the Work; provided, however, that the foregoing is not an entitlement to, nor a guarantee that the Vendor will be paid the full amount of the Total Contract Price. The Total Contract Price includes all Cash Allowances identified in this Contract.

**4.0 Rates for Work**

- 4.1 The Vendor acknowledges and agrees that the Rates are inclusive of all labour and materials, insurance costs, disbursements and all other overhead including any fees or other charges required under Applicable Laws. Without limiting the

**GENERAL CONDITIONS OF THE CONTRACT**  
**SCHEDULE B – FINANCIAL TERMS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 7

---

generality of the foregoing, the Rates include costs for the coordination, administration of the provision and management of the Work necessary to achieve compliance with external agencies and Governmental Authorities as required to obtain any Approvals, provided, however, that the specific costs associated with application and permit fees in respect of the Approvals shall be paid directly by Metrolinx.

- 4.2 Metrolinx shall not reimburse the Vendor for any hospitality, food or incidental expenses incurred. Subject to the prior consent of Metrolinx, Metrolinx shall reimburse the Vendor for reasonable traveling expenses incurred in connection with the performance of the Work, such reimbursement to be made in accordance with the Government of Ontario's Travel, Meal, and Hospitality Expenses Directive.
- 4.3 As part of the Work, the Vendor shall also be responsible for obtaining and registering all of the Software licenses and long term support agreements, as and if applicable, on behalf of Metrolinx, and any costs incurred by the Vendor in connection thereto shall be included in the Rates set out in the Articles of Agreement.

**5.0 Taxes**

- 5.1 The Total Contract Price and all amounts payable under the Contract shall be inclusive of all Taxes (except for HST) in effect as at the date of this Contract. Unless otherwise expressly specified in this Contract or otherwise required by Applicable Law, the Vendor shall be responsible for remittance of any and all Taxes due and payable in respect of the Work.
- 5.2 Any amount to be levied against Metrolinx in respect of the HST or any similar successor tax levied under the Excise Tax Act and applicable to the Work, is to be shown separately on all invoices for Work performed by the Vendor. The Vendor shall remit any HST paid or due to Revenue Canada Customs & Excise in accordance with Applicable Laws, and shall, at the request of Metrolinx, provide evidence of payment of same.
- 5.3 In the event that Metrolinx is entitled to a rebate under the Retail Sales Tax Act (Ontario) or the Excise Tax Act in whole or in part, for Value Added Taxes paid under this Contract, the Vendor shall show on each invoice, and in the manner directed by Metrolinx, either the actual Value Added Taxes paid by the Vendor by category or the portion of the Vendor's fees eligible under Applicable Law for the rebate.
- 5.4 Certain payments to non-resident corporations or individuals may be subject to withholding taxes, under the Income Tax Act. Non-residents can apply in



**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE B – FINANCIAL TERMS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 7

---

advance to Revenue Canada, Taxation, for a waiver or reduction of the withholding tax requirement. Unless Metrolinx is provided with a copy of the written information as a result of the waiver application to the Tax Services Office of Canada Customs and Revenue Agency, taxes will be withheld as determined under the Income Tax Act. The Vendor shall be responsible for investigating whether they are subject to the withholding of taxes under the Income Tax Act and obtaining the necessary waiver or reduction as needed.

**6.0 Invoicing and Payment Process**

- 6.1 Unless otherwise specified in the Articles of Agreement or in a Task Plan, the Vendor shall submit an invoice for payment for Work completed no less than ten (10) Business Days following the end of the month in respect of which the related Work were rendered. The invoice shall be in form and substance satisfactory to Metrolinx acting reasonably and shall set out with sufficient particularity the Work performed in the previous month and the total time spent by each category of Vendor Personnel multiplied by the applicable Rate.
- 6.2 The aggregate amount invoiced by the Vendor shall not exceed the Total Contract Price, unless such additional amount is agreed by the Parties pursuant to the change management process set out in Article 8 of the General Conditions.
- 6.3 Unless there is a Dispute with respect to the content of an invoice and subject to the other provisions of this Schedule B, Metrolinx shall make payment to the Vendor no later than thirty (30) Business Days following receipt of the invoice for payment from the Vendor, unless otherwise provided or permitted in the Contract. The Vendor shall accept any payments made by Metrolinx by way of Electronic Funds Transfer, and shall, if requested by Metrolinx, provide the account information required to complete an Electronic Funds Transfer.

**7.0 Statutory Holdback**

- 7.1 Not Applicable.

**8.0 Withholding of Payment**

- 8.1 Not Applicable.

**9.0 Substantial Performance**

- 9.1 Not Applicable.

**10.0 Release of Statutory Holdback Upon Substantial Performance**

- 10.1 Not Applicable.

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE B – FINANCIAL TERMS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 4 of 7

---

**11.0 No Progressive Release of Holdback**

11.1 Not Applicable.

**12.0 Final Payment Certificate**

12.1 Not Applicable.

**13.0 Cost of Changes**

13.1 Changes shall be implemented by the Vendor without any additional charge, unless the Vendor is able to demonstrate (with supporting documentation) that the Change causes the Vendor to incur additional costs.

13.2 The Vendor shall implement all Changes for a reasonable price in accordance with the same pricing principles and price levels as originally agreed in the Articles of Agreement. Where Rates apply to Vendor Personnel, those same Rates shall apply with reference to the applicable level of experience and/or expertise.

13.3 With respect to any Changes that (in whole or in part) require the services of a third party, Metrolinx (at its sole discretion) shall have the right to require the Vendor to provide three (3) quotes to Metrolinx in respect of such third party services, in accordance with Section 14.0 of this Schedule B - Financial Terms.

13.4 Metrolinx shall have the right to request such documentation and other supporting information as it reasonably requires to confirm and substantiate the costs associated with any Change request, and the Vendor shall provide same to Metrolinx within five (5) Business Days of the request therefor.

**14.0 Expenditure of Cash Allowance**

14.1 Where the expenditure of a Cash Allowance has been approved by Metrolinx, the value of completed or delivered Cash Allowance Items may be claimed as part of the Vendor's monthly application for payment, in accordance with Section 6.0 of this Schedule B - Financial Terms. Cash Allowance expenditures must not exceed the values set out in the Total Contract Price.

14.2 The Vendor is not entitled to any extra payment on account of a specified Cash Allowance Item and is not entitled to any unexpended Cash Allowance amounts.

14.3 A Cash Allowance is in no way a guarantee of monies and shall only be expended for the portion of the Cash Allowance Items specified in the Articles of Agreement and authorized by Metrolinx pursuant to Section 8.4 of the General Conditions.

**GENERAL CONDITIONS OF THE CONTRACT**  
**SCHEDULE B – FINANCIAL TERMS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 5 of 7

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- (a) The Cash Allowance shall cover the net cost of performing all Cash Allowance Items, excluding Vendor's overhead and profit which shall be included in the Rates, exclusive of the Cash Allowance. Should the cost of performing the Cash Allowance Items be less than the identified amount of the Cash Allowance, the Vendor shall only be compensated for the actual cost of performing the Work.
- (b) In the event that the Vendor reasonably anticipates that the cost of performing the Work under the Cash Allowance will exceed the amount of the Cash Allowance, the Vendor shall immediately notify Metrolinx and the matter shall be addressed pursuant to the change management process set out in Article 8 of the General Conditions. The Vendor shall not be compensated for any amount exceeding the Cash Allowance unless and until same has been authorized in writing in accordance with Article 8 of the General Conditions.
- (c) All expenditures by the Vendor under the Cash Allowance must be substantiated with appropriate documentation clearly documenting the amount of the expenditure and the goods and/or services to which it relates. The Vendor shall only be compensated for expenditures under the Cash Allowance that are substantiated.

**15.0 Quotations - Changes and Cash Allowance Items**

- 15.1 With respect to any Changes or Cash Allowance Items (or any part thereof), the Vendor shall, upon request by Metrolinx (at its sole discretion), submit up to three (3) quotes detailing the estimated cost of the applicable Change or Cash Allowance Item (each a "Quotation"). Where Metrolinx has not provided the names of third parties from which quotations should be obtained, the Vendor shall have the right to choose which third parties shall provide quotations. Subject to any instruction to the contrary issued by Metrolinx pursuant to Section 8.5 of the General Conditions, where a Cash Allowance Item includes work that the Vendor proposes would be most efficiently performed by the Vendor's own workforces, the Vendor shall include as one of the three (3) quotes the price proposal for having its own workforce perform the work.
- 15.2 Any and all costs incurred by the Vendor for providing a Quotation or obtaining quotations from third parties, shall be borne by the Vendor.
- 15.3 All Quotations shall be prepared on the Vendor's letterhead and in a format agreed to by Metrolinx and the Vendor. The Quotation shall at a minimum contain the following information:
  - (a) a description of the work required by the Work;

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE B – FINANCIAL TERMS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 6 of 7

---

- (b) Curriculum Vitae for each required position and two (2) references for each individual;
- (c) estimated hours of work for each identified key role;
- (d) any requirement for additional positions other than those listed in Schedule E - Vendor Personnel;
- (e) required Subvendors; and specialized service providers;
- (f) any requirements for testing and/or reporting;
- (g) detailed breakdown of costs;
- (h) detailed work schedule which complies with completion date provided by Metrolinx (as required by Metrolinx); and
- (i) any other requirements/instructions.

15.4 The Vendor shall, upon request, disclose to Metrolinx the originals of all bids, quotations and other price related information received from suppliers or Subvendors.

15.5 Metrolinx reserves the right to accept or reject a Quotation, in whole or in part.

**16.0 Metrolinx Property**

16.1 All tangible property purchased and charged to Metrolinx' account is and shall be deemed and shall remain the property of Metrolinx.

**17.0 Payment Schedule**

17.1 Payment Schedule

- (a) Payments for the Work by Metrolinx to the Vendor shall be in Canadian dollars.

**18.0 Contract Security**

18.1 Within five (5) Business Days of receipt of notice of acceptance of its Submission by Metrolinx the Vendor shall provide Metrolinx with a Performance Bond and a Labour and Material Payment Bond each equal to fifty percent (50%) of the "Year One Subtotal" referenced under Contract Prices, or a Letter of Credit, Bank Draft or Certified Cheque equal to twenty-five percent (25%) the "Year One Subtotal" referenced under Contract Prices ("Contract

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE B – FINANCIAL TERMS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 7 of 7

---

Security"), in favour of Metrolinx. All signatures and seals (if applicable) shall be original.

- 18.2 The Letter of Credit, if used as Contract Security, shall be from a bank acceptable to Metrolinx and shall expressly state that it may be drawn on by Metrolinx at the bank's counter(s) in Toronto, Ontario, Canada upon the delivery of a certificate from the President and CEO of Metrolinx confirming that the Vendor has defaulted in the performance of its obligations under the Contract. No other documentary evidence is required to be provided by Metrolinx. The Letter of Credit shall state that Metrolinx is the named beneficiary and include the Contract name and number.
- 18.3 The Vendor shall maintain the Contract Security in good standing during the entire term of the Contract. The Contract Security shall remain in effect from the time of Contract Award until the expiry of all Option Years.

END OF SECTION

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE C – INSURANCE**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 4

---

**1.0 Vendor Insurance Requirements**

1.1 The Vendor shall, at its own expense, obtain and maintain for the entire Term minimum insurance coverage as follows:

(a) Commercial General Liability

(i) The policy shall provide a policy limit of not less than ten million dollars (\$10,000,000) per occurrence for all claims arising out of bodily injury (including death), personal injury, and damage to property of others. Such policy shall not contain any exclusion that conflict with the Work required to be performed under this Contract. The Vendor shall cause the interest of Metrolinx, and such other Person as Metrolinx may determine at its sole and absolute discretion, to be noted on the Vendor Policies hereof as "Additional Insured". The policy shall contain a waiver of subrogation, cross liability and severability of interest.

(b) Automobile Liability Insurance

(i) If required, the policy shall provide coverage for liability arising out of the use of owned, non-owned, leased or hired automobiles in connection with the performance of the Work. Coverage shall consist of a combined single limit of not less than five million dollars (\$5,000,000) per occurrence. Alternatively, for Work that do not require the use of owned, non-owned, leased or hired automobile, the Vendor shall provide a written confirmation within five (5) Business Days of contract award, stating same, in place of the insurance coverage.

(c) Property All Risk Insurance

(i) The policy shall provide a policy limit of not less than five million dollars (\$5,000,000) per occurrence for all claims arising out damage to Metrolinx property that the Vendor will operate within.

(d) Equipment Insurance

(i) The Contractor shall, at its own expense, obtain and maintain insurance covering construction machinery and equipment used by the Contractor for the performance of the Work, including boiler insurance on temporary boilers and pressure vessels. The policy shall be in a form acceptable to the Owner and shall not allow subrogation claims by the insurer against the Owner.

**GENERAL CONDITIONS OF THE CONTRACT**  
**SCHEDULE C – INSURANCE**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 4

---

- (e) Any other valid or collectible insurance available to Metrolinx shall not apply to any loss until the coverage and limits available under the insurance policies maintained by the Vendor in accordance with this Contract have been exhausted.
  
- 1.2 Certificates for General Liability Insurance shall include, in addition to the Contractor, the following as additional insureds:
  - (a) Metrolinx;
  - (b) PNR RailWorks Inc.;
  - (c) A & B Rail Services Ltd.;
  - (d) Bombardier Transportation Canada Inc.;
  - (e) VIA Rail Canada Inc.;
  - (f) Amtrak (National Railroad Passenger Corp.);
  - (g) Canadian National Railway Company;
  - (h) Canadian Pacific Railway Company; and
  - (i) Genesee & Wyoming Inc.
  
- 1.3 Additional Coverage
  - (a) Without prejudice to any other provisions of this Contract (including Section 1.1 of this Schedule C - Insurance), the Vendor shall, at all relevant times and at its own expense, obtain and maintain, or cause to be obtained and maintained (during the Term plus thirty-six (36) months after termination or expiration of this Contract):
    - (i) those insurances that are reasonable for the performance of the type and scope of Work set out by this Contract (including, as applicable, insurance as would typically be required by prudent designers or consultants); and/or
    - (ii) those insurances that the Vendor is required to obtain and maintain, or cause to be obtained or maintained, by Applicable Law.
  
- 1.4 Requirements for Insurance

**GENERAL CONDITIONS OF THE CONTRACT**  
**SCHEDULE C – INSURANCE**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 4

---

- (a) All of Vendor's policies of insurance, as required under this Contract (the "Vendor Policies"), shall be taken out with insurance companies licensed to transact business in the Province of Ontario with an AM Best rating of no less than A.
- (b) Any deductible or self-insured retention amounts are the responsibility of the Vendor. Notwithstanding the foregoing, such deductibles or self-insured retention must be consistent with standard commercial practice and acceptable to Metrolinx, acting reasonably.
- (c) All Vendor Policies shall be kept in full force and effect during the Term, including any requirements for the period following the Term.
- (d) In the event that the Vendor fails to obtain and/or maintain in full force and affect any such insurance as aforementioned, then Metrolinx shall have the right as the Vendor's true and lawful attorney to do all things necessary for this purpose. The Vendor shall be responsible, and shall reimburse Metrolinx, all amounts paid by Metrolinx for insurance premiums and any and all costs incurred by Metrolinx in connection with this Contract. Without limitation, any premiums due on any insurance policy under this Schedule C - Insurance, but not paid by the Vendor may be paid directly to the insurer(s) or broker(s) by Metrolinx, which shall be entitled to deduct the amount of same along with its reasonable costs in so doing from any monies otherwise due to the Vendor by Metrolinx either under this Contract or otherwise.
- (e) All Vendor Policies shall be endorsed to provide Metrolinx with not less than thirty (30) days' advance written notice of cancellation.
- (f) Irrespective of the insurance requirements above, the insolvency, bankruptcy, or failure of any such insurance company providing insurance for the Vendor, or the failure of any such insurance company to pay claims that occur will not be held to waive any of the provisions hereof.

1.5 Proof of Insurance

- (a) The Vendor shall, prior to the commencement of the Work and thereafter upon request, provide to Metrolinx original signed certificates of insurance for the Vendor Policies, confirming that the required coverage has been placed and maintained. In addition, at least fifteen (15) days prior to the expiry date or replacement of any policy, the Vendor shall provide original signed certificates evidencing renewals or replacements of such policy to Metrolinx, without notice or request by Metrolinx.



**GENERAL CONDITIONS OF THE CONTRACT**  
**SCHEDULE C – INSURANCE**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 4 of 4

---

- (b) The Vendor shall, upon request, provide evidence to Metrolinx that the premiums associated with the Vendor Policies have been paid; however, receipt by Metrolinx of the above information will in no way constitute confirmation by Metrolinx that the insurance complies with the requirements of this Contract. Responsibility for ensuring that the insurance coverage outlined in this Contract is in place rests solely with the Vendor.
- (c) The Vendor also agrees to provide Metrolinx with proof of errors and omissions insurance maintained by any Subvendor, where such Subvendor is under a professional obligation to maintain the same, and with proof of such insurance to be provided to Metrolinx no later than the execution of this Contract by the Vendor and to be in a form and with an insurer acceptable to Metrolinx.

**1.6 Vendor's Liability Preserved**

- (a) The provisions of this Contract as they relate to insurance do not diminish, limit or otherwise affect the liability of the Vendor to Metrolinx under or in relation to any other provisions of this Contract.

**1.7 Workplace Safety & Insurance Board Protection**

- (a) With respect to the WSIB coverage as required under the Workplace Safety and Insurance Act (Ontario), the Vendor unconditionally guarantees to Metrolinx full compliance with the conditions, regulations and laws relating to workplace safety insurance by itself and by all Subvendors.
- (b) Without restricting the indemnity obligations of the Vendor in Article 12 of the General Conditions, unless the Vendor is WSIB exempt, the Vendor shall produce, at the commencement of this Contract, from time to time as may be required by Metrolinx and prior to issuance of the Final Payment Certificate, a valid Workplace Safety and Insurance Clearance Certificate, issued by the WSIB, for the premium rate class, subclass or group appropriate to the Work.

**1.8 Certificates of Insurance shall include:**

- (a) A reference to the Project description and Contract number; and
- (b) Confirmation the policy includes a waiver of subrogation against Metrolinx as required by General Conditions of the Contract.

END OF SECTION

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE D – DISPUTE RESOLUTION**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 4

---

**1.0 Bona fide efforts to resolve**

1.1 The Parties shall at all times during the Term make bona fide efforts to resolve any and all Disputes arising between them by amicable negotiations and to have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in the balance of this Schedule D - Dispute Resolution.

**2.0 Continuance of the Work During Dispute**

2.1 Unless expressly directed otherwise by Metrolinx, the Vendor shall not stop or delay the performance of the Work, in whole or in part, on account of a Dispute between the Vendor and Metrolinx or between the Vendor and any other Person. Without limiting the generality of the foregoing, at all times during the course of a Dispute, the Vendor shall:

- (a) continue with the Work in a diligent manner and without delay;
- (b) conform to Metrolinx' decisions and directions; and
- (c) be governed by all applicable provisions of this Contract.

2.2 The Parties acknowledge and agree that the Vendor's compliance with this Section 2.0 shall not operate to waive any claim or contention that the Vendor may have in relation to any Dispute.

**3.0 Tiered-Dispute Resolution**

3.1 The Parties agree that any Dispute which cannot be resolved to the satisfaction of both Parties by direct discussions between staff members of the Parties, may be referred for negotiation between senior management of both Parties by delivery from one Party to the other Party of notice in writing requesting dispute resolution, which notice shall set out the Dispute in reasonably sufficient detail (a "Dispute Notice").

**4.0 Negotiation**

4.1 In the event a Party issues a Dispute Notice to the other Party, on conflictMetrolinx Senior Legal Counsel (or if that position no longer exists at the time the Dispute Notice is issued, the person performing an equivalent function) and an authorized representative of the Vendor, of equivalent seniority and duly appointed to represent the Vendor in this regard, shall meet and make a good faith effort, on a without prejudice basis, to resolve the Dispute as set out in the Dispute Notice in a prompt manner and, for the purpose of same, each Party shall provide its

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE D – DISPUTE RESOLUTION**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 4

---

representative with full and timely disclosure of all relevant facts information and documents as may be reasonably required or may be reasonably requested by the other Party, on a without prejudice basis, to facilitate such negotiation.

- 4.2 Negotiations under this Section 4.0 shall be commenced within ten (10) Business Days of delivery of a Dispute Notice and shall, unless otherwise agreed by the Parties, be concluded within fifteen (15) Business Days of their commencement. In the event that a resolution satisfactory to all Parties is achieved through such negotiations, the Parties shall issue a joint statement detailing the manner in which the Dispute has been resolved.

**5.0 Mediation**

- 5.1 If a Dispute has not been resolved through high-level negotiation as contemplated in Section 4.0, either Party may refer the Dispute to be resolved through mediation.
- 5.2 The Parties shall mutually agree to the appointment of the mediator within thirty (30) Business Days, or within such other time as the Parties may agree, of any Party issuing a supplementary Dispute Notice requesting mediation.
- 5.3 If the Parties cannot agree on the appointment of a mediator, the appointment of a mediator shall be determined by the Ontario Superior Court of Justice following an application by either Party.
- 5.4 The mediator shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and the mediation skills to mediate a Dispute.
- 5.5 Unless the Parties otherwise agree, the mediation shall proceed in accordance with the following procedures:
- (a) Each Party shall prepare a summary of the issues in dispute, with the Party's position with respect to those issues. The summary shall be delivered to the mediator and the other Parties, at least seven (7) Business Days before the first mediation conference.
  - (b) The goal of the mediation is to reach an agreed upon settlement and, therefore, all individuals with the appropriate authority to agree to the settlement terms and conditions shall be present at the mediation.
  - (c) A Party may be represented at the mediation by counsel or another representative at the sole cost of such Party.

**GENERAL CONDITIONS OF THE CONTRACT**  
**SCHEDULE D – DISPUTE RESOLUTION**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 4

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- (d) The mediator, the Parties and their counsel or representatives shall keep confidential all matters relating to the mediation, except where disclosure of a settlement agreement is necessary to implement or enforce that agreement and except as otherwise required by Applicable Law.
  - (e) In all respects, the mediation is deemed to be a "without prejudice" proceeding.
- 5.6 The costs of the mediator shall be apportioned equally between the Parties unless otherwise agreed under any settlement reached under this Section 5.0.
- 5.7 If the Parties achieve a resolution of the Dispute, the mediator shall confirm the resolution in writing, which will be signed by the Parties. If the Parties do not resolve the Dispute, the mediator shall provide a written confirmation that the Parties were unable to resolve the Dispute.
- 5.8 Both Parties acknowledge and agree that they may not refer a Dispute for resolution by arbitration under Section 6 of this Schedule D prior to attempting to resolve such Dispute through mediation pursuant to this Section 5.0.

**6.0 Arbitration**

- 6.1 Any Party may, within ten (10) Business Days of the delivery of the mediator's confirmation that the Parties were unable to resolve their Dispute, issue a supplementary Dispute Notice requesting arbitration. Subject to Applicable Law, if such a supplementary Dispute Notice is issued, the Parties shall proceed to arbitration in the manner described below.
- 6.2 If the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within ten (10) Business Days of the submission of a Dispute to arbitration under this Section 6.0. If the Parties are unable to agree on an arbitrator, each Party shall appoint an arbitrator, and the two arbitrators so chosen shall select a third arbitrator acceptable to both of them within ten (10) Business Days of their selection.
- 6.3 The arbitrator(s) shall be independent of and at arm's length to the Parties and shall be a person who by training and experience has the qualifications and arbitration skills to arbitrate a Dispute.
- 6.4 The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, except to the extent they are modified by the express provisions of this Schedule D - Dispute Resolution or unless the Parties otherwise agree.

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE D – DISPUTE RESOLUTION**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 4 of 4

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- 6.5 If the issue in dispute is particularly time sensitive, the Parties shall, in good faith, take such reasonable steps as may be required to expedite the arbitration process in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute.
- 6.6 The arbitrator(s) has the jurisdiction to deal with all matters relating to a Dispute.
- 6.7 Unless otherwise agreed, the arbitration shall be conducted in the City of Toronto, Province of Ontario at the location determined from time to time by the arbitrators, but the arbitrators may meet in any other place the arbitrators considers necessary for consultation, to hear witnesses, experts or other parties, or for the inspection of documents, goods or other property.
- 6.8 In addition to the examination of the Parties by each other, the arbitrator(s) may examine, in the ordinary course, the Parties or either of them and the witnesses in the matter referred to the arbitrator(s), and the Parties and witnesses, if examined, shall be examined on oath or affirmation.
- 6.9 The language of the arbitration shall be English.
- 6.10 The arbitrator(s) shall, after full consideration of the issues in dispute, the relevant facts and Applicable Law, render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than thirty (30) Business Days after argument of the issue to the arbitrator(s), which decision shall be final and binding on the Parties and not subject to appeal or challenge, except such limited relief provided under Section 45(1) (appeal on a question of law, with leave) or Section 46 (setting aside award) of the Arbitration Act.
- 6.11 The costs of the arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under Applicable Law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) consider appropriate in the circumstances. The submission to the arbitrator(s), and any award made in pursuance of it, may, at the instance of either of the Parties and without notice to the other of them, be made an Order of the Ontario Court (General Division), pursuant to the Arbitration Act and the Courts of Justice Act (Ontario).

END OF SECTION

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE E – VENDOR PERSONNEL**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 3  
Addendum No. 2

**1.0 Vendor Personnel**

1.1 The following are roles that shall be filled by the Vendor in accordance with the following requirements in respect of qualifications, experience and minimum years of experience. Each individual performing one of the roles below shall perform the key responsibilities listed below as well as any other responsibilities as requested by Metrolinx, in accordance with the Contract, for the duration specified in the table below.

(a) Key Personnel

<b>Role</b>	<b>Key Responsibilities</b>	<b>Qualifications and Experience</b>	<b>Required Duration</b>	<b>Name of Individual</b>	<b>Actual Years of Experience</b>
Engineer of Record P Eng.	Remedial Work; Re-design and retrofit required for commissioning.	P Eng. licensed to practice in the Province of Ontario	Entire Term of the Contract		
Master Power Line Technician	For work on voltages required for the power assets (Primary /Secondary substations)	Certificate of Qualification for Power Line Technician	Entire Term of the Contract		
Electrical General Foreman	required to maintain assets below 750V	Certificate	Entire Term of the Contract		

Note to Vendor: This table shall be populated using "Tender Document Form - Vendor Personnel" upon notification of acceptance of the Bidder's Submission.

**2.0 Replacement of Key Personnel**

2.1 Where the Vendor is proposing the replacement of Key Personnel, the Vendor shall provide the following documentation to the designated Metrolinx representative for review and approval:

(a) Curriculum Vitae

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE E – VENDOR PERSONNEL**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 3  
Addendum No. 2

- (i) The Vendor should, using the template below, for each proposed Key Personnel provide a Curriculum Vitae of up to three (3) pages for each Key Personnel, including biographical information, which clearly identifies:
  - (A) Name of individual and proposed Key Personnel role;
  - (B) Qualifications that relate to the proposed Key Personnel role, as specified in this Schedule E, relative to the Work being requested;
  - (C) Experience in performing the proposed Key Personnel role, as specified in this Schedule E herein, relative to the Work being requested (include project names and brief project overviews);
  - (D) Number of years in the proposed role on each project as well as the start date and completion date of each project;
  - (E) Responsibilities on each project while performing the proposed role;
  - (F) Details of accomplishments while performing the proposed role;
  - (G) Education; and
  - (H) Professional memberships and affiliations.
  
- (b) Key Personnel References
  - (i) Immediately following the curriculum vitae for each proposed Key Personnel, the Vendor should use the template below to provide a list of three (3) references and contact information for relevant projects successfully delivered on-time and on-budget within the past five (5) years, while performing work in the same capacity as the proposed Key Personnel role.
  
  - (ii) The Vendor shall ensure that all contact information provided for references is current and accurate in order to enable Metrolinx to obtain all necessary information for evaluation purposes in a timely manner. If Metrolinx is unable to contact any of the references provided in order to verify the Vendor's qualifications and experience, the Vendor may, in Metrolinx's sole discretion, receive no score for that reference.

**GENERAL CONDITIONS OF THE CONTRACT  
SCHEDULE E – VENDOR PERSONNEL**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 3  
Addendum No. 2

---

- (iii) The list of three (3) references submitted when combined should demonstrate that the named Key Personnel has the required qualifications and experience as stated in this Schedule E herein, and for work similar in size, scope and complexity to the Work to be provided herein.
  
- (iv) Such references shall relate directly to the experience, responsibilities and details of project accomplishments noted above. The information should include:
  - (A) Name of the company for which the work was performed;
  
  - (B) Contact person's name, title, telephone number and e-mail address; and
  
  - (C) Start and completion date of each reference project.

END OF SECTION



## **SCOPE OF WORK**

### **PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 1

---

The Scope of Work is comprised of those documents listed under “Scope of Work” of List of Contents.

**SCOPE OF WORK  
GENERAL INSTRUCTIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 7  
Addendum No. 2

**1.0 Documents Required**

1.1 Maintain at the Place of Work, one (1) copy of following:

- (a) Contract Document;
- (b) Amendments to Contract/Change Orders;
- (c) other modifications to Contract;
- (d) Vendor's Occupational Health and Safety Policy, the program to implement the Occupational Health and Safety Policy and the site safety plan;
- (e) any other documentation required to be posted as per the OHSA and any subsequent regulations; and
- (f) any other documentation required to carry out the Work.

**2.0 Work Schedule**

2.1 Interim reviews of Work progress based on the schedule submitted by Vendor will be conducted. Update Vendor's schedule and cash flow chart when requested by Metrolinx.

**3.0 Location and Hours of Work**

**3.1 Location(s) of Work**

(a) The Work shall be carried out at the following location(s):

(i) Primary Substations (Paired with generators):

No.	Plant	Address
1	Airway Plant	2695 Drew Road Mississauga, Ontario L4T 3X1
2	Wice Plant	540 Carlingview Drive Toronto, Ontario M9W 5H2
3	Humberview Plant	15 Resources Road Toronto, Ontario M9P 3V6
4	Nickel Plant	51 Cobalt Street Toronto, Ontario M6M 2K1
5	Parkdale Plant	1 St. Clarens Avenue Toronto, Ontario M6K 2S2

(ii) Secondary Substations:

**SCOPE OF WORK  
GENERAL INSTRUCTIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 7  
Addendum No. 2

These substations are strictly for stepping down power to the bungalows, and therefore do not have a generator or the associated transfer switches.

(iii) Generators:

No.	Generators	Address
1	ARL #1	6209 Northwest Drive Mississauga, Ontario L4V 1P6
2	ARL #2	5955 Airport Road Mississauga, Ontario L4V 1W5
3	West Toronto Diamond	143 Old Weston Road Toronto, Ontario M6N 1B5

(iv) Pumping Stations & High Water Detectors (HWDs):

No.	Pumping Stations & HWDs	Address
1	West Toronto Diamond	143 Old Weston Road Toronto, Ontario M6N 1B5
2	Weston Tunnel	35 King Street York, Ontario M9N 3R8

3.2 Hours of Work

(a) The Vendor's hours of work for this Contract are as follows:

- (i) Railway Corridor related routine maintenance work under this Contract shall be performed on the Kingston, GO, Oakville, Weston and Pearson Subdivisions at any time during days, nights and weekends, excluding statutory holidays, subject to the availability of track protection. .
- (ii) Work on all other Subdivisions and Layover Yards may be conducted Monday to Friday between 9 AM to 5 PM, excluding statutory holidays, subject to the availability of track protection.
- (iii) Emergency restoration services will be performed 24/7 on an as-needed basis regardless of location.
  - (A) Response times for all emergency related call-outs for all locations shall be required 24 hours a day, 7 days a week as follows:

**SCOPE OF WORK  
GENERAL INSTRUCTIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 7  
Addendum No. 2

- I) Mechanical Serviceperson with Qualified Flagman - 60 minutes.
  - II) Electrical Serviceperson with Qualified Flagman - 180 minutes.
- (iv) Work on the railway corridor outside of these hours will only be permitted with the prior written approval of the Owner.
  - (v) Regular maintenance hours of work to be determined by the Vendor under approval of Metrolinx for all locations.
  - (vi) For railway corridor related work, the Vendor's hours in one day on site shall not exceed 12 hours (per Working Day). Railway flag protection, provided under this contract will not be available for more than 12 hours per day. The Working Day shall include time for daily job briefing and mobilization and/or demobilization on site.

**4.0 Subvendors and Suppliers**

- 4.1 The Vendor shall submit within five (5) Working Days of execution of the Contract a complete list of Subvendors and Suppliers that shall include the names of all Subvendors and Suppliers that will be employed to perform or supply the following Divisions or Sections of the Work:
  - (a) Railway Track Protection/Flagging;
  - (b) Electrical; and
  - (c) Mechanical.
- 4.2 The Vendor shall not change the identified Subvendors or Suppliers listed without written consent of Metrolinx.
- 4.3 Pre-qualified Subcontractors and Suppliers
  - (a) Contractors shall note that for some Sections or Divisions of the Work specific Subcontractors or Suppliers may be named in the Contract Documents as having been pre-qualified to perform or supply that Section or Division of Work. In such instances only those Subcontractors or Suppliers are to be named as performing or supplying, and shall perform or supply, those Sections or Divisions of the Work. The Contractor shall not use "Own Forces" for such Sections or Divisions of the Work unless the Contractor is named in the Contract Documents as having been pre-qualified for the Section or Division of the Work.

**SCOPE OF WORK  
GENERAL INSTRUCTIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 4 of 7  
Addendum No. 2

- (b) Where more than one Subcontractor or Supplier is named as having been pre-qualified to supply a Section or Division of the Work, the Contractor shall select one of its own choices from those so named.
  
- (c) Only the following pre-qualified Subcontractors below are permitted to perform the Work of this section of this Contract. No other Subcontractor will be permitted to perform this Work. The Contractor shall not use its "Own Forces" for this section of the Work unless its name appears on the list below:
  - (i) Railway Track Protection/Flagging
    - (A) A & B Rail Services Ltd.  
12623 Coleraine Drive  
Bolton, ON  
905-727-2382  
Attn: Dave Wilfong
  
    - (B) PNR RailWorks Inc.  
2380 Royal Windsor Drive, Unit 11  
Mississauga, ON  
519-837-2018  
Attn: Darryl Pater
  
    - (C) Toronto Terminals Railway Co. Ltd.  
50 Bay Street, Suite 1400B  
Toronto, ON  
416-864-3440  
Attn: Alexander White

**5.0 Vendor's Use of Site**

- 5.1 Perform Work, and schedule deliveries, in a manner that will interfere as little as possible with Metrolinx's operations.

**6.0 Codes and Standards**

- 6.1 Perform Work in accordance with applicable acts administered by other authorities having jurisdiction.
  
- 6.2 Work to meet or exceed requirements of specified standards, codes and referenced documents.

**SCOPE OF WORK  
GENERAL INSTRUCTIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 5 of 7  
Addendum No. 2

---

- 6.3 Codes, specification standards, manuals and installation, application and maintenance instructions, referred to in the Contract shall be of latest published editions at date of Closing.

**7.0 Project Meetings**

- 7.1 Hold project meetings at times and locations approved by Metrolinx.
- 7.2 Designated parties shall take required action on decisions made at meeting. Metrolinx will record minutes of meetings and distribute to parties prior to next meeting.

**8.0 Final Cleaning**

8.1 Products

- (a) Use only cleaning materials recommended by manufacturer of surface to be cleaned, and as recommended by cleaning material manufacturer.

8.2 Cleaning

- (a) Ensure that the Place of Work is kept clean and tidy at all times throughout the term of the Contract. Remove all rubbish and debris promptly as it accumulates. Ensure that all sub-trades conform similarly.
- (b) Promptly remove from the Place of Work and dispose of surplus materials.
- (c) Do not accumulate scrap piles at any time. Fires will not be permitted at the Place of Work.
- (d) Remove dust and soil from all surfaces affected by Work by vacuuming, damp mopping, washing or scrubbing, as required.

**9.0 Systems Demonstration**

- 9.1 Prior to final inspection, demonstrate operation of each system to Metrolinx.
- 9.2 Instruct personnel in operation, adjustment, and maintenance of equipment and systems, using provided operation and maintenance data as basis for instruction.

**10.0 Operations and Maintenance Data**

- 10.1 On completion of project, submit to Metrolinx one (1) soft copy and four (4) hard copies of Operations Data and Maintenance Manual, made up as follows:

**SCOPE OF WORK  
GENERAL INSTRUCTIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 6 of 7  
Addendum No. 2

- (a) bind data in vinyl, hard covered, three ring, loose leaf binder for 215 x 280mm sized paper;
- (b) enclose title sheet, labelled "Operation Data and Maintenance Manual", project name, date and list of contents; and
- (c) organize contents into applicable sections of work. Mark each section by labelled tabs protected with celluloid covers fastened to hard paper dividing sheets.

10.2 Include following information plus data specified:

- (a) description operation and maintenance instructions for equipment and systems, including a complete list of equipment and parts list. Indicate nameplate information such as make, size, capacity, serial number;
- (b) names, addresses and phone numbers of Subvendors and suppliers;
- (c) guarantees, warranties and bonds showing:
  - (i) name and address of projects;
  - (ii) guarantee commencement date (date of Final Certificate of Completion);
  - (iii) duration of guarantee;
  - (iv) clear indication of what is being guaranteed and what remedial action will be taken under guarantee; and
  - (v) signature and seal of Vendor; and
- (d) additional material used in project listed under various sections showing name of manufacturer and source supply.

10.3 Neatly type lists and notes. Use clear Drawings, diagrams or manufacturer's literature.

**11.0 Date-Related Compliance**

11.1 All materials, equipment, systems and components thereof used in connection with the provision of the Work, individually or in combination as the case may be, shall accurately and automatically process any and all date and date-related data including, but not limited to calculating, comparing and sequencing when used in accordance with the documentation provided by the Vendor.

**SCOPE OF WORK  
GENERAL INSTRUCTIONS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 7 of 7  
Addendum No. 2

---

- 11.2 Metrolinx may, at no additional cost to itself, require the Vendor to demonstrate date-related compliance as specified in Section 11.1 above and/or compliance techniques and test procedures the Vendor followed in order to comply with these requirements.

END OF SECTION



**SCOPE OF WORK  
QUALITY CONTROL**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 2

---

**1.0 Inspection**

- 1.1 The materials furnished by the Vendor shall be inspected by Metrolinx at the time of delivery and at such other times as Metrolinx may elect.
- 1.2 Metrolinx shall have access to the work. If parts of the work are in preparation at locations other than the Place of the Work, access shall be given to such work whenever it is in progress.
- 1.3 Metrolinx may order any part of the work to be examined to ensure compliance with the Contract. If, upon examination such work is found not in accordance with the Contract, correct such work and pay the cost of examination and correction.
- 1.4 The review of the information covering materials and equipment by Metrolinx shall in no way release the Vendor from his responsibility for the proper design, installation and performance of any material, equipment or arrangement or from the liability to replace same should it prove defective or deficient.

**2.0 Independent Inspection Agencies**

- 2.1 Independent Inspection/Testing Agencies may be engaged by Metrolinx for inspecting and/or testing portions of work.
- 2.2 Provide samples and/or assistance required for inspection and testing by the appointed agencies.
- 2.3 Employment of Inspection/Testing Agencies does not remove the responsibility to perform Work in accordance with the Contract.
- 2.4 If defects are revealed during inspection and/or testing, the appointed agency will request additional inspection and/or testing to ascertain full degree of defect. Correct defects and irregularities as advised by Metrolinx at no cost to Metrolinx. Pay costs for retesting and re-inspection.

**3.0 Procedures**

- 3.1 Notify the appropriate agency and Metrolinx a minimum of two (2) Working Days in advance of the requirement for tests, in order that arrangements can be made with the testing company.
- 3.2 Submit samples and/or materials required for testing, as specifically requested in Scope of Work. Submit with reasonable promptness and in an orderly sequence so as not to cause delay in the Work.

**SCOPE OF WORK  
QUALITY CONTROL**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 2

---

- 3.3 Provide labour and equipment to obtain and handle samples and materials at the Place of Work.

**4.0 Rejected Work**

- 4.1 If, in the opinion of Metrolinx, it is not expedient to correct defective work, or work not performed in accordance with the Contract, Metrolinx may deduct from the Total Contract Price the difference in value between the work performed and that called for by the Contract, the amount of which shall be determined by Metrolinx.

**5.0 Reports**

- 5.1 Reports on materials testing as arranged by Metrolinx shall contain the following information:
- (a) Date and time of inspection or test.
  - (b) Weather conditions and ambient air temperatures during the inspection.
  - (c) Testing method employed by proper standard reference and specific paragraph or other detailed information as applicable.
  - (d) Inspection description and detailed and other relevant information.
  - (e) Test results in detail, complete with applicable graphs and other clarifying documents and information.
  - (f) Printed name and signature of person having conducted inspection or test, and name, title and signature of Supervisor having verified the report.
- 5.2 Inspection and Testing Agency shall provide a written report for each inspection and test made, three copies to Metrolinx; three copies to the Vendor direct, who shall forward one copy to the Subvendor, supplier or manufacturer concerned.

END OF SECTION

**SCOPE OF WORK  
RAILWAY SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 5

---

**1.0 Vendor Safety Plan & Railway Safety Orientation**

- 1.1 The Vendor shall submit to and have reviewed by Metrolinx, the Vendor Safety Program and those of any Subvendors as detailed in Scope of Work: Safety Requirements before commencing with any activity at the Place of Work. The vendor shall submit a site specific safety plan for the "Scope of Work" indicated in the Contract. This plan shall be comprised of a risk assessment / hazard analysis for the Work of the Contract. Authority to commence work will be authorized only after this is completed.
- 1.2 The Vendor shall designate a full time safety officer responsible for enforcing the Vendor's safety program for the duration of the Work and shall indicate to Metrolinx in writing the name of that person as well as his/her alternate.
- 1.3 An adequately trained safety representative shall be appointed by the Vendor for the purposes of enforcing safety requirements defined under the OHSA R.S.O. 1990, Chapter 0.1 Section (8) and (9) if more than five (5) employees are present at the Place of Work.
- 1.4 The Vendor shall ensure that all employees granted access to Metrolinx right-of-way are trained and current in one of the following applicable railway safety training courses:
  - (a) GO-Safe Railway Orientation (available at [www.gotransitcontractor.com](http://www.gotransitcontractor.com)) (All personnel must take the GO-Safe Railway Orientation to maintain access to Metrolinx owned rail corridors. This will be required on a yearly basis); or
  - (b) Specific Railway Corridor Orientation requirements at other than Metrolinx owned rail corridors may be required to maintain access to the Right of Way at these work locations and in addition to the Metrolinx GO Safe Orientation.
- 1.5 The Vendor shall ensure that all its employees and its Subvendors and their employees working within the railway right-of-way have taken, and are registered as having successfully completed, the course "GO-Safe Railway Orientation". The Vendor shall maintain an up-to-date list of all such trained employees at the Place of Work and ensure all such trained employees wear the sticker, issued upon successful completion of the course on a readily visible location on their hardhats, and carry the wallet card with photo identification issued upon successful completion of the course, at all times when within the railway right-of-way. Authority to commence work will only be given when this requirement has been fulfilled.

**SCOPE OF WORK  
RAILWAY SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 5

---

- 1.6 Observe and enforce all safety measures as set out in "Scope of Work: Safety Requirements".
- 1.7 The Vendor shall ensure that appropriate railway entry permits are completed and at the Place of Work prior to starting Work.

**2.0 Emergency Procedures**

- 2.1 At the Place of Work, provide and maintain readily accessible first aid equipment and installations required by the Workplace Safety and Insurance Act, Regulation 1101 and all safety and lifesaving equipment appropriate to the nature of the work.
- 2.2 Prior to commencement of Work, the Vendor shall prepare emergency procedures and an evacuation plan for the work to be carried out at the Place of Work.
  - (a) The Vendor shall post this plan in a conspicuous place and ensure that all persons having access to the Place of Work are familiar with the plan.
- 2.3 The emergency procedure and evacuation plan shall include, but not be limited to, the following information:
  - (a) Emergency phone numbers for police, fire, ambulance, hospital and utility companies.
  - (b) Emergency phone number for PNR RailWorks and Metrolinx.
  - (c) Phone numbers of the Vendor's Project Manager/Superintendent, site Supervisor/Foreman and Safety Officer.
  - (d) Phone numbers of the Metrolinx site representatives and PNR site Supervisor.
  - (e) Map showing the route and location of the nearest hospital.
  - (f) List of qualified on-site first aid attendants.
  - (g) All material safety data sheets for materials used at the Place of Work.
  - (h) Phone number of Vendor's twenty-four (24) hour emergency contact person.

**SCOPE OF WORK  
RAILWAY SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 5

---

**3.0 Rail Traffic Protection**

- 3.1 Note that part of the Work shall be carried out under and adjacent to the railway's operating tracks.
  - (a) All Work must be carried out and protected in accordance with the applicable requirements set out in Attachments - "GO Transit Track Worker Safety Instructions". Sections 1 through 10 shall apply.
- 3.2 All track protection/flagging will be done in accordance with the Canadian Railway Operating Rules and GO Track Worker Safety Instructions.
- 3.3 GO Transit Rail Corridors will audit compliance to the rules and instructions and investigate any and all reported or observed violations or safety concerns relate to the rules and instructions.
- 3.4 The Contractor will be responsible for ensuring that construction operations are carried out without interfering with the continued safe movement of rail traffic. The Contractor will be liable for the cost of train delays and for the cost of repairs to any rail, ties and ballast required as a result of damage caused by his/her operation.
- 3.5 The Contractor shall submit work schedules to GO Transit Rail Corridors at least 30 days in advance which includes the desired method and forms of track protection and times to ensure appropriate communication with the Metrolinx "Centralized Work Block Coordination" function.
- 3.6 Ensure that a responsible person is present at all times to whom the Railway personnel will issue orders regarding work near the tracks. Comply immediately with such orders and instructions.
- 3.7 Red colour shall not be used for safety helmets, safety vests or survey markers on railway right-of-way in order to avoid conflict with Railway Operational Practice. Other highly visible colours such as orange are acceptable.
- 3.8 At no time shall idling equipment be left unattended by the operator.
- 3.9 Ensure that both rails of the same track are never connected with any conductor of electricity such as steel measuring tapes or metal traction equipment.

**4.0 Track Protection**

- 4.1 At all locations where there is a possibility of rocks or other debris falling on the tracks, provide track protection such as timber mats or an approved equivalent in order to prevent possible damage to rail, ties and ballast.

**SCOPE OF WORK  
RAILWAY SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 4 of 5

---

**5.0 Restrictions on the Work**

- 5.1 In order to ensure the continued safe movement of rail traffic, certain restrictions shall be imposed on the work operations. Without in any way limiting the generality of the foregoing statement, the following are some of the limitations or restrictions that shall be imposed:
- (a) When operations are being carried out which may endanger the existing track or impede the safe passage of trains, perform such work only during such times as there is a block on the mainline rail traffic.
  - (b) Confine all work activities to daylight hours, except where noted otherwise, or as directed by Metrolinx, and do not exceed twelve (12) hours per day unless authorized by Metrolinx.
  - (c) All men and equipment within ten (10) metres or thirty (30) feet from the nearest rail must stop working on the approach of a train and remain stopped until permission has been given to resume work by the flag person.
  - (d) Do not work closer than four (4) metres or thirteen (13) feet from the nearest rail without the prior consent of Metrolinx and only during such times as there is rail traffic protection provided by the railway authority.

**6.0 Crossing Tracks**

- 6.1 Do not cross tracks of the railway authority with scrapers, bulldozers, trucks, barrows or other mechanical equipment at grade nor place crossing planks except by authority of Metrolinx who will designate the location(s). Ensure that both rails of the same tracks are never connected with any conductor of electricity such as steel measuring tapes or metal traction equipment.
- 6.2 If necessary, with the Owner's approval, the Vendor will install and remove temporary crossings. The Vendor shall supply the required 7" x 10" planking of length to suit their needs (7 planks per track), shim stock and filter fabric. The Vendor shall be responsible for constructing and maintaining the approaches to the crossing to a standard acceptable to the railway company standard or specifications. Crossings constructed shall only be used by equipment when flagging protection has been provided by the prequalified Track Protection personnel.
- 6.3 The crossing shall:
- (a) have a level gradient on either side for a distance of eight (8) metres or not less than the maximum length of vehicle using it.

**SCOPE OF WORK  
RAILWAY SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 5 of 5

---

- (b) have approach grades not greater than five percent (5%).
- 6.4 To minimize fouling the ballast, install filter fabric over the entire ballast section under the crossing planks and approaches.
- 6.5 Each rail of the track shall be protected by use of rubber mats or tires, before any crawler mounted equipment is allowed to cross the track affected.
- 6.6 Upon completion of all work requiring use of the temporary crossings and gates, the Vendor shall remove the approaches and restore the track ballast section, all to the satisfaction of Metrolinx.
- 6.7 Install temporary gates, on both approaches to meet the GO Transit Engineering Track Standard or the applicable Railway Standard or Specification, approved by Metrolinx, to prevent use of the crossings by unauthorized personnel and keep gates locked when crossings are not in use. The Vendor shall be responsible for gate operation and affixing "Danger" signage.

**7.0 Material Storage**

- 7.1 Due to the area of the work and the possibility of vandalism, all materials must be physically removed from the Place of Work or placed in secure bins or areas on a daily basis. No loose material will be allowed at the Place of Work.
- 7.2 The Vendor shall be held accountable for all damages to Metrolinx operations or property, railway operations or property, and all persons or their property, that is found to be a result of improper materials storage practices by the Vendor or their Subvendors.

END OF SECTION

**SCOPE OF WORK  
ENVIRONMENTAL SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 2

---

**1.0 Fires**

- 1.1 Fire and burnings of rubbish at the Place of Work will not be permitted.

**2.0 Disposal of Wastes**

- 2.1 Do not bury rubbish and waste materials at the Place of Work.
- 2.2 Do not dispose of waste or volatile materials, such as mineral spirits, oil or paint thinner into waterways, storm or sanitary sewers.
- 2.3 Except as indicated otherwise, surplus materials shall become the property of the Vendor and shall be removed from the premises promptly as they become surplus, at the cost of the Vendor.

**3.0 Drainage**

- 3.1 Where applicable, do not pump water containing suspended materials into waterways, sewer or drainage systems.
- 3.2 If Section 3.1 herein is applicable, provide pumping units of sufficient number to comply with the above requirements and keep a minimum of one (1) unit in operating condition as a spare at the Place of Work.

**4.0 Pollution Control**

- 4.1 Operations generating smoke, fumes, gases, dusts, vapours and odours shall be exhausted at source to the outdoor atmosphere or utilize smoke extraction devices in a manner approved by Metrolinx.
- 4.2 Take precautions necessary to keep dust, smoke, fumes, dirt and vibration to an acceptable level as determined by Metrolinx.
- 4.3 Prevent extraneous materials from contaminating the environment immediately to and beyond the application area, by providing temporary enclosures or other appropriate preventative measures.
- 4.4 Spill containment devices and spill kits shall be required at the Place of Work where there is the potential for any hazardous products to accumulate or enter the environment.



**SCOPE OF WORK  
ENVIRONMENTAL SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 2

---

**5.0 Noise**

- 5.1 Prevent excessive noise which will be disturbing to the occupant of building. Machine tools which are set up in fixed locations shall be so located to minimize noise and suitable sound deflectors shall be used if directed by Metrolinx.
- 5.2 Use air compressors and pneumatic hammers only with the expressed authorization of Metrolinx.
- 5.3 The Vendor shall take all measures reasonably necessary to protect workers from hazardous sound levels in compliance with the OSHA O.Reg 318/15:Noise

**6.0 Spills**

- 6.1 The Vendor shall provide Metrolinx with a written program for spills response and reporting. Copies of training records shall also be provided.
- 6.2 All spills shall immediately be reported to the GO Transit Communications Center, (416) 601-2174, or as directed by Metrolinx.

**7.0 Dust Control**

- 7.1 The Vendor shall take any and all steps necessary to prevent a dust nuisance from occurring as a result of performance of the Work. This may include the need for additional exhausting methods and air quality monitoring as determined by Metrolinx.
- 7.2 Where the Work requires the sawing or grinding of concrete, which produces silica, wet type blades and grinders shall be used together with sufficient water to prevent the occurrence of dust. Cost of all such preventative measures and clean-up of all residual contaminants shall be borne by the Vendor.

END OF SECTION

**SCOPE OF WORK  
SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 9

---

**1.0 Safety Measures**

- 1.1 The Vendor's representative shall be responsible for ensuring that the provisions of statutes, regulations and by-laws pertaining to safe performance of the work and the work of other vendors/Subvendors at the Place of Work are observed and that the methods of performing the work do not endanger the personnel employed thereon, the general public, and are in accordance with best safety practices and the latest edition of the OHSA and applicable Regulations.
- 1.2 Prior to the Vendor's representative being absent from the Place of Work, the Vendor's representative will name another person, in writing to Metrolinx, who is competent to assume these responsibilities as the Vendor's representative.

**2.0 Project Health and Safety Compliance**

- 2.1 The Vendor and the Vendor's representative shall ensure that:
- (a) All measures and procedures prescribed by the following Acts and Regulations (applicable Provincial) are carried out at the Place of Work;
    - (i) The Occupational Health and Safety Act;
    - (ii) The Regulations for Industrial Establishments;
    - (iii) The Canada Labour Code Part II;
    - (iv) The Environmental Protection Act and Regulations;
    - (v) WHMIS Regulations;
    - (vi) Smoke-Free Ontario Act;
    - (vii) All other legislation, regulations and standards as applicable; and
    - (viii) Metrolinx's "Safety Guidelines For Vendors, Consultants and Project Coordinators";
- 2.2 Every employer and every worker performing work at the Place of Work complies with all of the requirements referred to in Section 2.1 above; and
- 2.3 The health and safety of workers and the general public are protected in relation to the work performed at the Place of Work. In addition to compliance with all occupational health and safety legislation, every employer and every worker performing Work at the Place of Work is required to demonstrate a willingness to participate in occupational health and safety program(s).

**SCOPE OF WORK  
SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 9

---

**3.0 Deliverables**

- 3.1 The Vendor shall within five (5) Business Days of the date of final execution of the Contract submit the following to Metrolinx for its review and acceptance:
- (a) A copy of the Vendor's Occupational Health and Safety Policy, and a copy of the Vendor's program to implement its Occupational Health and Safety Policy, which in each case shall comply with all the requirements of Regulations for Industrial Establishments, Occupational Health and Safety Act, as amended from time to time; and
  - (b) A copy of the Vendor's site specific safety plan that includes site-specific hazard and risk assessment plans that will effectively prevent and control incidents and/or accidents. Specific Work plans may be required for tasks deemed to be safety critical such as crane lifts, confined space entry, or working from heights.
  - (c) Work shall not commence at Place of Work until Metrolinx has reviewed and accepted the above referenced documents. Metrolinx shall not entertain any claim on the part of the Vendor for any extension to the Contract Time or the Total Contract Price as a result of the Vendor's failure to submit an Occupational Health and Safety and/or program and Site specific safety plan that are acceptable to Metrolinx.
- 3.2 The Vendor shall, within five (5) Business Days of the date of final execution of the Contract, deliver to Metrolinx copies of all training records for Occupational Health and Safety related courses taken by a "competent person" as defined by the Occupational Health and Safety Act, paragraph 1(i) and designated as the Supervisor as per Part III (2)(c). Relevant course subjects may, without limitation, include or be similar to the following:
- (a) Certified Joint Health and Safety Committee Management Member Training;
  - (b) Basics of Supervising;
  - (c) Occupational Health and Safety Act;
  - (d) Accident Investigation and Reporting; and
  - (e) Any other courses that relate directly to the Occupational Health and Safety Act.
- 3.3 The Vendor shall deliver to Metrolinx as required:

**SCOPE OF WORK  
SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 9

---

- (a) A copy of all inspection reports made by the Vendor in compliance with the employer's responsibility under the Occupational Health and Safety Act.
- (b) A copy of all safety information pertaining to the Contract made and furnished by the Vendor's own "Safety Officer" or outside consultants/advisers engaged for the purpose of inspecting the workplace for occupational health and safety.
- (c) A verification that all workers in the employ of the Vendor at the Place of Work, have had WHMIS training or refresher course within the last twelve (12) months.
- (d) Verification that all workers in the employ of the Vendor have had "Explosive Activated Tool Training" on the type of tools being used, as applicable.
- (e) A verification that the instruction manuals are at the Place of Work for all tools and equipment being used.
- (f) A copy of the most recent workers compensation experience rating account, i.e., CAD-7, NEER or MAP
- (g) Copies of all injury and accident reports for occurrences at the Place of Work. This shall include copies of all remedial measures taken to prevent recurrence.
- (h) Copies of all weekly safety talks shall be maintained on file for review by Metrolinx upon request.
- (i) Statistical information for the purpose of determining injury frequency and severity rates (hours worked, first-aid injuries, medical aid/reportable injuries, lost time injuries, restricted workday injuries, incident/accident and significant occurrence data), in a timely manner on a monthly basis or as required by Metrolinx.
- (j) The immediate reporting to Metrolinx of all instances that are defined in the Occupational Health and Safety Act as "Notices of Injuries" and "Occurrences" under Sections 51, 52 and 53, and any occasion that a worker exercises their "Right to Refuse Unsafe Work".
- (k) Metrolinx reserves the right to require additional or amended deliverables pertaining to safety during the duration of the Work at no additional cost to Metrolinx.

**SCOPE OF WORK  
SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 4 of 9

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**4.0 Due Diligence**

- 4.1 The Vendor acknowledges that it has read and understands the measures and procedures relating to occupational health and safety as prescribed in Sections 2.0 and 3.0 above. The Vendor acknowledges and understands its duties as therein set out and hereby expressly undertakes and agrees to comply with all such requirements and standards in their entirety and at the Vendor's expense.
- 4.2 The Vendor further agrees to fully cooperate with all health and safety requirements, rules, regulations, standards and criteria set out in the Contract, which agreement is in furtherance of the Vendor's duties and responsibilities under occupational health and safety legislation.
- 4.3 The Vendor agrees that if, in the opinion of Metrolinx, the health and safety of a person or persons is endangered or the effective operation of the system put in place to ensure the health and safety of workers on the Place of Work is not being implemented, Metrolinx may take such action as it deems necessary and appropriate in the circumstances, including, without limitation, the following:
  - (a) Require the Vendor to correct the condition forthwith at no expense to Metrolinx;
  - (b) Require that the Place of Work be shut down in whole or in part until such time as the condition has been corrected. Metrolinx will not reimburse the Vendor for any costs caused by such a delay nor will Metrolinx extend the time to complete the Work of the Contract because of such a delay;
  - (c) Correct the problem and deduct the cost thereof from any payment then or thereafter due the Vendor; and/or
  - (d) Terminate the Contract in whole or in part.

**5.0 Joint Health and Safety Committee and/or Representative**

- 5.1 The Vendor shall be responsible for the establishment and operation of the JHSC as required or the selection of a safety representative as required by the Occupational Health and Safety Act or the Canada Labour Code, Part II as applicable to the operations of the Vendor.
- 5.2 In advance of commencement of the Work, the Vendor shall provide its plan of compliance with the Occupational Health and Safety Act, Part II, Administration, to Metrolinx where:

**SCOPE OF WORK  
SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 5 of 9

---

(a) the number of workers employed at the Place of Work regularly exceeds five (5); or

(b) the duration of the Work is three (3) months or longer.

5.3 A site file shall be maintained of all information specific to the Joint Health and Safety Committee for the Project. This file shall be made available to Metrolinx for review upon request.

**6.0 Alcohol and Drug Abuse Prevention**

6.1 The following rules shall apply to all persons while at the Place of Work and/or on Metrolinx property:

(a) The use, possession, distribution and/or sale of illegal drugs or drug paraphernalia is prohibited;

(b) The use, possession, distribution and/or sale of any any form of alcohol, including alcoholic beverages;

(c) Workers must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which will adversely affect, in any way and to any extent, their ability to work safely;

(d) Individuals shall ensure that prescribed or over-the-counter medications are used responsibly and in accordance with the applicable instructions. Persons taking prescription drugs shall advise their supervisor if there is potential for performance to be negatively affected;

(e) No distribution, offering or sale of prescription medications is permitted; and

(f) Individuals must report for duty, free of the negative effects of alcohol and other drugs, including the effects of such use, and remain so during the entire period of duty.

6.2 Where a worker is suspected of being intoxicated, the following procedures must be followed:

(a) The worker will be escorted to a safe location away from the work area, and asked to remain there pending further action;

**SCOPE OF WORK  
SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 6 of 9

---

- (b) The worker's supervision, worker health and safety representative (if applicable), union steward (if applicable) and the designated Metrolinx's Contract representative will be requested to attend;
  - (c) The group present will determine an appropriate course of action and a means of transport to a suitable safe location;
  - (d) Where there are differences of opinion with respect to the worker's fitness for duty, the dispute will be resolved with a view to ensuring safety, and the worker will be transported home, or required to remain in a safe location until this can be arranged; and
  - (e) The local police may be called if the worker was operating any motorized vehicle requiring a valid driver's license.
- 6.3 Metrolinx will maintain a position of zero tolerance to any violations of these rules. At the sole discretion of Metrolinx, rule contraventions may result in:
- (a) Verbal and written reporting to the person's supervisor/employer;
  - (b) Issuance of a written warning, and recording of same;
  - (c) Reporting to the appropriate police department for investigation and subject to criminal prosecution;
  - (d) An order to leave the Place of Work temporarily or permanently; or
  - (e) Remedies as may be specified in the Contract.

**7.0 Smoking in the Workplace**

- 7.1 The Vendor shall comply with, and enforce, all the provisions of the Smoke Free Ontario Act at all times while on Metrolinx's property.
- 7.2 A designated smoking area may be created at the Place of Work providing Metrolinx and the Vendor can mutually agree that one can be provided within the provisions of the Smoke Free Ontario Act. The Vendor shall be responsible for providing any and all signage required for the designated smoking area in the event a designated smoking area is created.

**8.0 Barricades**

- 8.1 Observe all necessary precautions and provide, erect and maintain suitable signs, barricades and lights to protect all persons from injury and all vehicles from

**SCOPE OF WORK  
SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 7 of 9

---

damage during the progress of the work, all to the approval of Metrolinx or any authority having jurisdiction at this location.

8.2 Provide all means necessary to prevent the entrance of unauthorized personnel at the Place of Work and from using access roads.

8.3 Protect the work in conformity with the Contract.

**9.0 Vehicle Traffic Protection**

9.1 Provide qualified signal persons to protect vehicular and pedestrian traffic during the operations, at any time when workers or equipment could endanger such traffic, all to the complete satisfaction of Metrolinx and any other authority having jurisdiction at this location.

9.2 Accept responsibility for any damage to vehicles and damage and injury to pedestrians or occupants of vehicles resulting from the operations or the operating of equipment by others. Provide adequate protection to the satisfaction of Metrolinx.

9.3 Wherever the Place of Work is intersected by public or private roads, provide convenient openings to pass and maintain all crossings in a condition so they can be used safely and without any just grounds for complaint during the progress of the work; all to the satisfaction of Metrolinx and respective road authority.

**10.0 Workplace Hazardous Materials Information System (WHMIS)**

10.1 Be familiar with and comply to WHMIS Regulations:

10.2 Properly label controlled products.

10.3 Provide proper warning labels and training at the Place of Work.

10.4 Prior to delivery of products to the Place of Work, provide copies of the material safety data sheets (MSDS) for any controlled products.

10.5 Be responsible for all applicable requirements of the regulations.

10.6 Before commencing any work at the Place of Work, attend a meeting in a location to be determined by Metrolinx and provide a proposal as to how hazardous materials will be stored and dispensed at the Place of Work. Also, present a proposal as to how hazardous and contaminated materials will be removed from the Place of Work. The disposal of hazardous materials shall comply with all legislative and municipal requirements.



**SCOPE OF WORK  
SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 8 of 9

---

10.7 Provide a list and proper handling procedures for all hazardous materials.

**11.0 Metrolinx Safety Guidelines**

11.1 Metrolinx will issue an appropriate number of copies of its "Safety Guidelines For Vendors, Consultants and Project Coordinators" to the Vendor in advance of commencement of the Work. This will also be made available electronically in PDF format, to the Vendor.

11.2 Vendors are responsible for familiarizing themselves and their employees with the contents of this manual.

11.3 Vendors shall distribute copies of this manual to their Subvendors and shall ensure that they, and their employees, are familiar with its content.

11.4 This manual shall form part of the orientation for new employees and acknowledged as being included.

11.5 The requirements of this manual shall apply to the Work and the Place of the Work.

**12.0 Safety Personnel at the Place of Work**

12.1 In the event Metrolinx deems it necessary, because of the Work and/or Safety Performance, the Vendor shall assign to the Place of Work a full time "Safety Officer" to assist the Vendor's representative in the discharging of safety responsibility at the Place of Work, at no additional costs to Metrolinx.

12.2 The Safety Officer shall have the training, experience and credentials to ensure compliance to the Occupational Health and Safety Act and regulations that pertain to the Work at the Place of Work.

**13.0 Security at the Place of Work**

13.1 The Vendor shall ensure all personnel employed at the Place of Work, whether its own employees or a Subvendor's, wear an identification badge. At Metrolinx's locations where access is restricted Metrolinx shall supply the identification badges. At all other locations it shall be the Vendor's responsibility to provide the identification badges. The "GO Safe" Railway Orientation badge with photo I.D. will meet this requirement.

13.2 A daily site log shall be maintained of all persons granted access to the "Place of Work" under the control and custody of the Vendor.

**SCOPE OF WORK  
SAFETY REQUIREMENTS**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 9 of 9

---

- 13.3 The Vendor shall ensure that all required documentation is available upon request by Metrolinx.
- 13.4 The Vendor shall not allow "Unauthorized" persons to access the "Place of Work".

END OF SECTION

**SCOPE OF WORK  
MATERIALS AND EQUIPMENT**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 3

---

**1.0 General**

- 1.1 Provide material and equipment of specified design and quality, performing to published ratings and for which replacement parts are readily available.
- 1.2 Use products of one manufacturer for equipment or material of same type or classification unless otherwise specified.

**2.0 Manufacturer's Instructions**

- 2.1 Unless otherwise specified, comply with manufacturer's latest printed instructions for materials and installation methods.
- 2.2 Notify Metrolinx in writing of any conflict between this Scope of Work and manufacturer's instructions. Metrolinx will designate which document is to be followed.

**3.0 Fastenings**

- 3.1 Provide metal fastenings and accessories in same texture, colour and finish as base metal in which they occur. Prevent electrolytic action between dissimilar metals. Use non-corrosive fasteners, anchors and spacers for securing exterior work.
- 3.2 Space anchors within limits of load bearing or shear capacity and ensure that they provide positive permanent anchorage. Wood plugs are not acceptable.
- 3.3 Keep exposed fastenings to minimum, space evenly and lay out neatly.
- 3.4 Fastenings which cause spalling or cracking of material to which anchorage is made are not acceptable.
- 3.5 Do not use explosive actuated fastening devices.

**4.0 Fastening Equipment**

- 4.1 Use fastenings of standard commercial sizes and patterns with material and finish suitable for service.
- 4.2 Use heavy hexagon heads, semi-finished unless otherwise specified.
- 4.3 Bolts may not project more than one diameter beyond nuts.
- 4.4 Use plain type washers on equipment, sheet metal and shaft gasket lock type washers where vibrations occur. Use resilient washers with stainless steel.

**SCOPE OF WORK  
MATERIALS AND EQUIPMENT**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 3

---

**5.0 Delivery and Storage**

- 5.1 Deliver, store and maintain packaged material and equipment with manufacturer's seals and labels intact.
- 5.2 Prevent damage, adulteration and soiling of material and equipment during delivery, handling and storage. Immediately remove rejected material and equipment from the Place of Work.
- 5.3 Store material and equipment in accordance with suppliers' instructions.
- 5.4 Touch-up damaged factory finished surfaces to the satisfaction of Metrolinx. Use primer or enamel to match original. Do not paint over name plates.

**6.0 Origin of Materials**

- 6.1 Materials, plant and equipment supplied for Work shall be as far as possible and unless otherwise specified, of Canadian manufacture.

**7.0 Ownership of Materials**

- 7.1 Unless otherwise specified, materials existing at the Place of Work at time of signing Contract shall remain the property of Metrolinx.
- 7.2 Equipment and materials delivered to the Place of Work to form part of Work shall be property of Metrolinx.
- 7.3 Vendor shall remove surplus or rejected materials from the Place of Work notified by Metrolinx as required by site conditions.

**8.0 Specified Material and Equipment**

- 8.1 Materials and equipment shall be as specified.

**9.0 Substitutions After Award of Contract**

- 9.1 Request for substitutions of specified materials and equipment other than alternatives accepted prior to Contract execution will not be considered unless request is accompanied by a written statement from Vendor giving reasons why specified item cannot or should not be used, evidence of quality of substitution and amount of change in Total Contract Price.
- 9.2 Written statement shall include full details, stating clearly name of manufacturer or supplier, together with a detailed description of substitutions, and stating

**SCOPE OF WORK  
MATERIALS AND EQUIPMENT**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 3

---

reduction from or addition to contract price, if any for the use of alternative material or equipment.

- 9.3 Metrolinx reserves right to accept or reject substitution(s) at its sole discretion and also to claim financial benefit of substitution if accepted. Rejection by Metrolinx of proposed alternative material or equipment is final and Metrolinx is not obligated to give any reason for rejection of a substitution(s).
- 9.4 Approved equipment substitutions must not exceed space requirements allocated on Drawings. Be responsible for additional cost resulting from acceptance of a substitute piece of equipment.
- 9.5 Substitutions shall not be considered accepted unless authorized in writing by Metrolinx.

END OF SECTION

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 33  
Addendum No. 2

**1.0 Scope of Work for Routine-Planned Maintenance**

1.1 Electrical & Mechanical-Weston Subdivision

- (a) Provision of maintenance and inspections for the five (5) power plants on the Weston Subdivision
  - (i) Maintenance requirements for the Weston Subdivision to include within demarcation point of the utility transformer up-to the power distribution connectors at the load end of the signal bungalows and other related loads attached. The assets contained within those demarcations are the Primary Substations, Secondary Substations, Generators, underground High Voltage cables and splice access sites if any.
  - (b) Provision of maintenance and inspections for the One (1) pumping station located at West Toronto Diamond tunnel along with the backup generator and high water detector systems and the Weston Tunnel high water detector system, Hazardous gas alarm system & Oil grit separator.
    - (i) Maintenance for the pumping station located at West Toronto Diamond (WTD) to include all assets including communication systems, power supply cables, backup generators, high water detectors, control systems, and additional alerting systems.
    - (ii) Conduct Inspections of storm water ponds, catch basins, oil grit separators, storm drains, sump pits to ensure there are no obstructions, sediment buildup, defects, leaks, pooling water within the pumping system.
  - (c) Lunar lights installed at Weston and WTD are excluded from the maintenance scope of requirements and will be the responsibility of the authorized signals maintenance provider.

1.2 Electrical & Mechanical– Pearson Subdivision

- (a) Provision of maintenance and inspections for the two (2) generators on the Pearson Subdivision.
  - (i) Maintenance requirements for the Pearson Subdivision to include within demarcation point of the utility transformer up-to the power distribution connectors at the load end of the signal bungalows and other related loads attached. The assets contained within those demarcations are the Primary Substations, Secondary Substations,

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 2 of 33  
Addendum No. 2

Generators, underground High Voltage cables and splice access sites if any.

**1.3 Additional Items**

- (a) The Vendor shall be responsible to provide locates as required for Metrolinx related capital and third party projects.
- (b) The Vendor shall co-ordinate work with local distribution companies (LDCs) and for permits with Electrical Safety Authority (ESA) in support of Metrolinx projects or initiatives.
- (c) The Vendor will be responsible to design, build and commission upgrades to or rehabilitate the on-going wear and tear of equipment.

**2.0 Scope of Emergency Restoration Serves for Unplanned Work**

**2.1 General**

- (a) The Vendor will be responsible for the emergency restoration to support power outages or power failures and ensure 24/7 availability for the equipment in all locations listed in the Scope of Work.
- (b) The Vendor shall be responsible to attend and repair all failures related to the Pumping station, HWDs, Gas sensors & Oil grit separator.
- (c) The Vendor shall attend to the emergency restoration of services within 1 hour of the reported failure.
- (d) The Vendor shall comply with the response times as noted above unless Maintainer is previously dutifully occupied or delayed due to traffic congestion, road construction, vehicle accident, restricted access to any location due to conditions not within Vendor's control.

**2.2 Emergency Work**

- (a) Response times for all emergency related call-outs shall be the following for all locations 24 hours a day, 7 days a week.
  - (i) Mechanical Serviceperson with Qualified Flagman - 60 minutes;
  - (ii) Electrical Serviceperson with Qualified Flagman - 180 minutes.

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 3 of 33  
Addendum No. 2

- (b) Emergency repairs to the underground power cable and other applicable sites to occur with appropriate safety measures in-order to protect personnel and equipment on the right of way.
- (c) Manage spares and warranty data, and deliver list of spare parts on standby to Metrolinx Rail Corridors on an ongoing basis specially accounting for all long lead items.
- (d) All routine and specialized equipment for services rendered to be maintained and managed by the Vendor.
- (e) Injection of temporary power to signal bungalows and snow clearing devices during extended disruptions to the power distribution system on a timely basis.
- (f) Provide a reporting and documentation plan for all emergency power grid maintenance and restoration services.
- (g) Fuel contracts shall ensure an uninterrupted supply of generator fuel for extended outages up to 7 days.
- (h) Vendor will troubleshoot interruptions related to Pumping Station equipment.

**3.0 Seasonal Weather Preparedness**

- 3.1 When severe rainstorms are forecasted with precipitation over 30mm expected within a 24 hour period, functional checks shall be performed within 1 hour on all pumps and related warning equipment.
- 3.2 The Vendor shall:
  - (a) Ensure all testing and routine work activities are immediately suspended for the duration of the weather event.
  - (b) Ensure that all generator equipment is fueled and functional prior to the weather event.
- 3.3 Adequate protections and precautions shall be made to perform work at times of inclement weather.
- 3.4 Inclement weather or extra work caused by such weather will not be accepted as reason for additional payment.



**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 4 of 33  
Addendum No. 2

- 3.5 The Vendor shall identify responsible personnel to attend severe weather events and report accordingly.
- 3.6 The Vendor shall arrange for re-fueling of generators during extended power outages greater than 8 hours caused by severe weather events or other factors.

**4.0 Protection of Metrolinx Assets**

**4.1 Equipment**

- (a) All electrical cords, plugs, switches, etc. must be free from defects and in satisfactory condition. The Vendor is responsible for compensating Metrolinx for any damages caused on Metrolinx property or to any of Metrolinx assets, due to facility equipment or due to negligence on the Vendors behalf. The Vendor will immediately notify Metrolinx of any damage incurred to Metrolinx property.
- (b) Refueling vehicles must carry all emergency spill kits and environmental equipment appropriate for refueling trucks. Operators must be trained on all emergency and spills response plans related to fueling operations.
- (c) Designated fuel truck turn-around spots must be used if straight through access is not available. Metrolinx will work with the Vendor to identify these locations. Flagging is required to allow fuel trucks on the right-of-way.

**4.2 Disposal**

- (a) The Vendor shall be responsible for removal and disposal of unwanted materials, which shall be taken to mean all materials not shown to be retained on drawings or in specifications.
- (b) Disposal and use of all materials shall be according to all applicable standards and guidelines as issued by jurisdictional authorities. The Vendor must meet Ministry of Environment and Energy regulations and all other applicable regulations.

**4.3 Maintain Flow of Traffic**

- (a) The Vendor shall be responsible for the maintenance of pedestrian and vehicular flow with the facility and the adjacent truck and car parking areas during Metrolinx's scheduled operating times.
- (b) Any activity which has potential for interference with pedestrian and vehicular flow shall first be approved by Metrolinx.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 5 of 33  
Addendum No. 2

- (c) The Vendor is to provide temporary barriers for safe and efficient control of pedestrian and vehicular flow.
- (d) Vendor vehicles, signage etc. shall never be placed in advance of railway crossing signals in a location that would obstruct the public view.
  - (i) Where possible, park vehicles off of public roadways in parking lots or other designated and approved areas.
  - (ii) If parking on the street, park 30 meters beyond the railway crossing. If unable to park beyond the railway crossing, park vehicles no closer than 80 meters in advance of railway crossing signals.
  - (iii) When parking on the right-of-way near railway crossings, park 8 meters away from the track and 80 meters away from the edge of the roadway.

4.4 Housekeeping

- (a) The Vendor shall ensure that all equipment, apparatus, cases, components and fixtures assigned to their responsibility shall be kept sealed, locked, secured and free of all foreign material such as; debris, snow, ice, brush, rodents, insects, rust and graffiti.

**5.0 Trade Qualifications and Safety Requirements**

5.1 Trade Qualifications

- (a) The Vendor shall to demonstrate to Metrolinx that all trades have the appropriate training and qualifications to carry out their work safely and in compliance with all regulations.

5.2 Electrical Safety

- (a) Vendor must comply with all relevant legislation and regulations (ESA, Ontario Electrical Code and the Electrical Utility Safety Rules). The services provided shall meet requirements listed in CSA Z462, CSA Z463, CSA Z1006, CSA Z460, Ontario Electrical Safety Code, Utility Work Protection Code and Metrolinx Workplace Electrical Safety Policy. See Electrical Safety Policy Attachment.
- (b) All electrical safety incidents must be reported in a timely manner to Metrolinx and to regional jurisdictions as per the Electrical Safety Authority guidelines.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 6 of 33  
Addendum No. 2

- (c) The Vendor shall use E-work Safe for recording of all Electrical maintenance and inspection activities. Metrolinx shall hold the software license and retain ownership of all information entered into the system.
- (d) The Vendor shall be responsible to pay the qualified worker licensing fees as required.
- (e) To thoroughly carry out the work, in compliance with all applicable federal, provincial, and municipal laws and regulations.
- (f) Vendor to arrange for disconnection of power by the Utilities Corporations and the required Permits by the Electrical Technical Standards Safety Authorities.
- (g) Signal bungalow access to be restricted for signal maintenance provider only, unless deemed to be necessary under other conditions. Vendor to arrange for co-ordination with signal maintenance provider at all locations were necessary.
- (h) The Vendor shall ensure that site specific fall protection & rescue or confined space entry & rescue plans are in place as required. All equipment shall be provided and workers shall be trained.

**6.0 Environmental Requirements**

- 6.1 The Vendor shall carry out all activities in compliance with the GO Transit environmental management system (Env. MS) and associated programs and procedures designed to ensure regulatory compliance, demonstrate due diligence and promote continual improvement.
- 6.2 The Vendor shall ensure that all workers are trained on the Env. MS as directed by Metrolinx.
- 6.3 The Vendor shall provide all specific procedures and reporting mechanisms in order to fulfill their obligations. See Policy Statements and Environmental Standard Performance Standard.

**7.0 Site Material Storage**

- 7.1 Due to the area of the work and the possibility of vandalism, all materials must be physically removed from the site or placed in secure bins or areas on a daily basis. No loose material will be allowed on site.
- 7.2 The Vendor shall be held accountable for all damages to Metrolinx operations or property, railway operations or property, and all persons or their property, that is

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 7 of 33  
Addendum No. 2

found to be a result of improper materials storage practices by the Vendor or their Subvendors.

**8.0 Inspection Details**

- 8.1 Vendor must pre-schedule all inspections at least twenty (20) Business Days in advance with a Signal Specialist, Rail Corridors Department, (unless a mutual agreement is established on a regular schedule).
- 8.2 Vendor shall provide a detail report outlining inspection results and deficiencies including oil gas analysis of all transformers. A breakdown for each deficiency by hours of labour and materials must be included in report, within two (2) weeks of inspection for all applicable assets such as SCDs, power systems, high water detectors, pumps and gas detectors.
- 8.3 Vendor shall hold Safety Meeting to familiarize their staff prior to start of work. Vendors' safety procedures and maintenance policies must be available upon request by Metrolinx.

**9.0 Record Keeping and Reporting**

- 9.1 The Vendor shall keep a record of all inspections, maintenance related activities, incidents and any other relevant material related to the Contract. These records are to be kept in a log, the format of which must have the approval of Metrolinx's Rail Corridors designated representative.
- 9.2 The Vendor and Metrolinx will mutually chair and minute a monthly operational meeting for the purpose of open discussion on the following main topics:
  - (a) details of safety meetings, employee certification and training, discuss the Vendor's safety record and safety program activities for the month;
  - (b) details of routine maintenance performed on the power distribution assets, pumping stations;
  - (c) details of emergency maintenance and overtime;
  - (d) details of work done for any capital project related work; and
  - (e) all recommendations.
- 9.3 The Vendor's work performance and procedures will be audited and monitored by Rail Corridors. The seven (7) critical areas that are to be covered are accident/incident reporting, radio communications, emergency response preparedness, training and certification, vendor/third party protection,

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 8 of 33  
Addendum No. 2

electrical/mechanical maintenance quality. Some of the audits and monitoring will involve a review of Vendor's quality control processes, testing procedures and results, inspection reports, and separate independent inspections of electrical and mechanical components and appliances.

- 9.4 For each call-out situation, for both regular and overtime, the Vendor shall submit an incident form that outlines the particulars including a description of the incident, events leading up to the incident, immediate/direct cause(s), basic/underlying cause(s), remedial actions, root cause, corrective action taken, Mean-time-to-repair, response time, failed components, and if applicable overtime expense. The next business day, the Vendor is to contact Metrolinx to discuss the overtime issue. The format of the call-out incident form must have the approval of Metrolinx's Rail Corridors designated representative. The form is to be stored in the form of an electronic database.
- 9.5 The Vendor can anticipate that Electrical Safety Authority (ESA) will also perform compliance audits on the electrical and mechanical infrastructure. The Vendor is to cooperate with ESA officials and, if required, in concert with Metrolinx, prepare a corrective action plan for any identified deficiencies.
- 9.6 The Vendor shall have in place or be ready to install within (6) months of Contract Award, a Computerized Maintenance Management System (CMMS) to track, organize and report information pertaining to all assets the Vendor is tasked with maintaining. The Vendor is expected to use a CMMS to perform tasks including but not limited to:
- (a) Tracking design changes, technical drawings, operation data, safety data, testing data and maintenance data for the assets,
  - (b) Maintain a list of all fixed assets the Vendor has been tasked to maintain
  - (c) Manage scheduled inspections as well as keeping records of previous inspections conducted by the Vendor,
  - (d) Keep material and inventory counts as well as be able to identify the location and fixed asset in which materials and spares have been used.
- 9.7 The CMMS will have an auditing function. This auditing function will ensure the content and timeliness of testing and inspection records, and will standardize, plan, and schedule routine testing and inspection activities on fixed infrastructure. This system will allow for the sharing of information to facilitate communication between the Vendor's internal departments and between the Vendor and Metrolinx. Therefore, simplifying overall communication and the sharing of real-time data.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 9 of 33  
Addendum No. 2

- 9.8 Designated Metrolinx employees will have access to the CMMS database through Internet and mobile devices.

**10.0 Tools, Power Tools and Other Movable Equipment**

- 10.1 The Vendor will provide all tools, power tools and other movable equipment required in connection with the provision of the Services. The Vendor shall be responsible for the maintenance, repair and replacement of the tools, power tools and other movable equipment.

**11.0 Materials Management**

11.1 Use and Title of Materials

- (a) All materials purchased by the Vendor in connection with shall be used solely for the purposes of performing the Services. The materials shall be available for inspection by Metrolinx at all times.
- (b) The Vendor shall not sell, loan, give away or use, for purposes other than the Services, materials purchased or obtained in connection with this Contract, without the express written consent of Metrolinx. The Vendor shall not pledge or otherwise encumber or do anything that would result in any lien, security interest, and charge or claim upon or against any of the materials purchased for this Contract.

**12.0 Materials for Remedial or Emergent Works**

- 12.1 The Vendor shall be responsible for and shall manage the planning, procuring and, purchasing, of all materials required to perform the Services.
- 12.2 In all cases where the Vendor is required to purchase materials for use in connection with the performance of the Services, the Vendor shall provide three (3) quotes to Metrolinx, for any materials to be purchased for use in connection with the Services.
- 12.3 The Vendor shall use were required original equipment manufacturer materials, parts or Metrolinx's approved equivalent.
- 12.4 The Vendor shall maintain a reasonable inventory of materials in strategic locations so as to ensure that repairs can be completed without delay. The Vendor shall develop and maintain a material spares inventory list, including the storage location, and submit an up to date electronic version on a monthly basis to Metrolinx for review. It is expected that the Vendor shall undertake regular stock counts of the spare material inventory. Vendor will advise Metrolinx of

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 10 of 33  
Addendum No. 2

any materials which are obsolete and for which there is no supplier in place to provide replacement components. The Vendor will provide recommendations on the controlled change-out of these obsolete materials or a procurement strategy on how to obtain suitable spare components.

- 12.5 Consumables (e.g. gasoline and diesel fuel for vehicles and equipment, oil, grease, administrative and office supplies), testing instruments or tools, safety apparel and other personal safety equipment are the responsibility of the Vendor.

**13.0 Storage and Handling**

- 13.1 The Vendor shall be responsible to store all material purchased and removed from the corridors in a safe storage location owned and operated by the Vendor.
- 13.2 If materials purchased by the Vendor in respect of this Agreement require storage pursuant to their manufacturer's instructions, then the Vendor shall accept the risk of damage or loss to such materials.
- 13.3 Metrolinx shall have the right to reject any materials not stored in compliance with this Agreement.

**14.0 Vehicles**

- 14.1 The Vendor shall have access to at least two (2) vehicles suitably equipped with hi-rail equipment, radios, fire extinguishers, first aid kits, material bins, shelving, spill kits, and with flashing roof mounted beacon warning lights capable of transporting personnel, materials, tools and equipment.
- 14.2 The vehicles provided must be in good condition, of sufficient size and capacity for their intended use and clearly identified with the name of the Vendor.
- 14.3 Maintenance of the vehicles, including the provision of fuel, supplies, and highway toll charges is the responsibility of the Vendor. Unless clearly stated, there will be no extra charge to Metrolinx for any other use of the vehicles throughout the period of the Contract.

**15.0 Reconciliation**

- 15.1 Any errors or deficiencies identified as a result of any audit conducted shall be corrected by the Vendor in consultation with Metrolinx. Without limiting the generality of the foregoing, any amount paid by Metrolinx in connection with this Agreement and subsequently found to be incorrect shall be adjusted and any adjusted balance due shall be paid within thirty (30) days of the date on which such error was identified and agreed to by the parties.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 11 of 33  
Addendum No. 2

---

**16.0 The Handling of Hazardous Waste**

- 16.1 Any regulated waste or hazardous materials located on Metrolinx property, produced or generated while delivering services of this Contract shall be disposed of in accordance with all applicable provincial and federal regulations.
- 16.2 Disposal of any regulated materials such as paint, railroad ties, drip pans, and batteries shall be through the services of a properly certified and licensed Hazardous Materials Disposal Vendor.
- 16.3 Disposal of defective or obsolete batteries shall begin within one (1) week of removal from service and completed within sixty (60) days. The Vendor shall be responsible for the disposal of batteries under the Hazardous Waste Cash Allowance. Temporary battery storage sites and disposal shall be in accordance with OHSA, provincial and municipal laws and regulations.

**17.0 Communications**

- 17.1 The Vendor must ensure a supply of communication devices and radios to the permanent work force to enable communications at all times.
- 17.2 The Vendor shall provide a communication device with instant e-mail capability for the shift supervisor and another designated employee who shall carry the devices and answer calls on a 7/24-hour basis. The Vendor shall also provide an answering service for emergency calls on 24 hours per day and 7 days per week.
- 17.3 The safekeeping of all communications devices, including all necessary repairs, maintenance and the recharging of them shall be the responsibility of the Vendor.
- 17.4 It is mandatory that during an incident, both on regular and on overtime call-outs, the Vendor is to contact Metrolinx's GO Transit Control Center, and advise them of the incident status, the timeline to correct and release trains, and provide periodic updates.
- 17.5 The Vendor shall develop an Emergency Response Communication Protocol which contains items noted above, both internal and external escalation procedure, emergency contact information, and any other items agreed with Metrolinx.

**18.0 Coordination of Work**

- 18.1 The Vendor shall consult and coordinate with Metrolinx concerning the scheduling of the Work. In the planning and performance of the Work, the



**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 12 of 33  
Addendum No. 2

Vendor shall minimize any and all adverse effects the Work may have upon all train operations so that the passenger commuter service may operate according to the current applicable timetables.

- 18.2 The Vendor and Metrolinx acknowledge that certain Routine Maintenance and Program Maintenance that has to be undertaken by the Vendor may impact commuter passenger train schedules. The Vendor and Metrolinx shall work together to minimize any such necessary impact and Metrolinx may adjust the operation and routing of its passenger trains accordingly.
- 18.3 The Vendor shall obey all instructions from the railway dispatcher with respect to the movement of trains.
- 18.4 Under some circumstances the Vendor will be required to assist in establishing first contact with various parties such as adjacent property owners, when dealing with issues such as encroachment, fencing, vegetation, graffiti and garbage.
- 18.5 Metrolinx staff and others may require the Vendor to provide HI-rail escorts from time to time for items such as track, signal and corridor audits. All effort will be made to coordinate these trips to suite the Vendor so as not to interfere with day to day maintenance inspections.
- 18.6 The Vendor shall provide a rough schedule to show maintainer and technician etc., working hours. This will be used to verify over time charges. Metrolinx shall require accounting for the positions paid for in the lump sum regular maintenance contract vs extra work. When changes to the schedule are made, Metrolinx requires twenty (20) day notice in advance of the changes being implemented.

**19.0 Generator Maintenance and Refueling**

- 19.1 The Vendor shall be responsible for ensuring that the backup power supply systems and generators are properly maintained in accordance with manufacturer's written recommendations.
- 19.2 The Vendor shall be responsible for ensuring that generators are properly fuelled such that they are available at all times with an allowable downtime of (0) zero seconds. Planned generator refueling will be performed outside of peak service and shall not impact passenger service.
- 19.3 The Vendor shall provide an approved tank and related equipment required to safely fuel the generators including:
  - (a) Fueling truck with operator;

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 13 of 33  
Addendum No. 2

- (b) Flagging Foreman without Vehicle;
- (c) Tank and Environmental Equipment (not including the Fuel).

**20.0 Performance Enhancement Group**

20.1 The Vendor shall participate in the deliberations of Metrolinx Rail Corridors Performance Enhancement Group (the “Rail Corridors PEG”) whose objectives are:

- (i) the continuous improvement of the safety, reliability and cleanliness of the Primary Service Area;
- (ii) the efficiency and effectiveness of the maintenance operations;
- (iii) to develop the Rail Corridor’s Standard Engineering Practices and Maintenance Procedures (the “Engineering Standards”); and
- (iv) the continuous review and revision, if necessary, of the Engineering Standards and the Vendor’s provision of the Services or Ancillary Services, as applicable, flowing from any such changes to the Engineering Standards.

20.2 The Vendor’s Project Manager shall attend meetings of the Rail Corridors PEG every second month, and will contribute materially to the development of recommendations by the Rail Corridors PEG. Other staff personnel including Engineers and Technicians, as may be reasonably required, shall attend the meetings of the Rail Corridors PEG as may be reasonably required from time to time.

20.3 The Vendor shall furnish reports and participate in special investigations as reasonably required to assist in the deliberations of the Rail Corridors PEG. Without limiting the generality of the foregoing, the Vendor shall present a status report at each meeting of the Rail Corridors PEG, highlighting mutually agreed key performance indicators.

**21.0 INSPECTION AND TESTING FOR GENERATORS**

21.1 Weekly Inspections

- (a) Inspect day tank fuel level and main tank fuel level, and refill if required.
- (b) Inspect lubricating oil level.
- (c) Inspect engine coolant level.

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 14 of 33  
Addendum No. 2

---

- (d) Inspect engine, generator, fuel tank(s), and cooling systems for leakage.
- (e) Inspect fuel filter.
- (f) Inspect electric starter for cleanliness, mounting, and terminal security.
- (g) Batteries and charging equipment:
  - (i) Inspect all battery cells for correct electrolyte fill level.
  - (ii) Test all battery cells for correct electrolyte specific gravity.
  - (iii) Inspect electrical connections for tightness and evidence of corrosion.
  - (iv) Inspect battery for cleanliness and dryness between terminals.
  - (v) Inspect charger electrical connections for cleanliness and tightness.
  - (vi) Test charger for proper operation of float and equalize modes.
- (h) Engine:
  - (i) Test lubricant and/or coolant heaters for proper operation.
  - (ii) Inspect governor control linkages and oil level.
- (i) Inspect fan belts for correct tension and wear.
- (j) Inspect control panel covers for security.
- (k) Test annunciator lamps to confirm that they are operational.
- (l) Inspect control panel settings.
- (m) Inspect air control louvre settings to ensure proper operation.
- (n) Correct all defects found during inspections and tests.
- (o) Record all inspections, tests, and corrective actions in the log.

**21.2 Monthly Inspections**

- (a) All items outlined under WEEKLY as well as testing and verifying the entire system as follows:
- (b) Simulate a failure of the normal electrical supply.

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 15 of 33  
Addendum No. 2

- (c) Operate the system under at least 30% of the rated load for 30 min continuous and replenish fuel tank upon completion of inspection.
- (d) Operate all automatic transfer switches under load.
- (e) Inspect brush operation for sparking.
- (f) Inspect for bearing seal leakage.
- (g) Inspect for correct operation of all auxiliary equipment, i.e. radiator shutter control.
- (h) Record the readings for all instruments in the log and verify that they are normal.
- (i) Drain the exhaust system condensate trap.
- (j) Inspect block heater hoses and wires.
- (k) Correct all defects found during inspections and tests.
- (l) Record all inspections, tests, and corrective actions in the log.

**21.3 Semi-annual Inspections**

- (a) All items outlined under WEEKLY and MONTHLY as well as:
  - (i) Inspect and clean engine crankcase breathers.
  - (ii) Inspect and clean all engine linkages.
  - (iii) Lubricate the engine governor and ventilation system.
  - (iv) Test protective devices for proper operation.
  - (v) Before start-up, perform two full cranking cycles. Near the end of each cycle (and while still cranking), measure and record the lowest indicated battery voltage. If the measured voltage is less than 80% of the battery's rated voltage, replace the battery. Alternatively, perform a battery load test using a suitable load tester.
  - (vi) Inspect ventilation system belts(s).
  - (vii) Correct all defects found during inspections and tests.
  - (viii) Record all inspections, test, and corrective actions in the log.

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 16 of 33  
Addendum No. 2

21.4 Annual Inspections

- (a) All items outlined under WEEKLY, MONTHLY and SEMI-ANNUALLY as well as:
  - (i) Control panel:
    - (A) Open all inspection covers and inspect all electrical connections.
    - (B) Test breakers for proper operation.
    - (C) Clean insulators and bushings.
    - (D) Test voltage regulator for proper operation.
    - (E) Operate all moving parts to ensure that they move freely.
    - (F) Clean and dress contacts as necessary.
    - (G) Remove all dust.
    - (H) Check gauge calibration.
    - (I) With the generator set operating at full load, conduct an infrared survey of all electrical connections to identify any high-resistance connections.
  - (ii) Engine:
    - (A) Change engine lubrication oil and filters.
    - (B) Test strength of coolant and chemical protection level of coolant inhibitors.
    - (C) Change fuel filters, clean strainer(s), and verify that the fuel supply is open.
    - (D) Inspect the exhaust system.
    - (E) Check and record the back pressure of the exhaust system to ensure that it complies with the engine manufacturer's requirements, and compare with previous readings.
    - (F) Clean and lubricate linkages.

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 17 of 33  
Addendum No. 2

---

- (G) Inspect air filters.
- (H) Inspect all mechanical connections.
- (I) Inspect all electrical connections.
- (J) For spark ignition engines, inspect all components of ignition system(s) and service or replace as appropriate.
- (K) Inspect all external surfaces of heat exchanger(s) and clean as necessary.
- (L) Inspect all belts and hoses and replace if necessary.
- (M) Test and inspect ignition system(s). Replace any defective components.
- (iii) Diesel fuel storage tank(s):
  - (A) Drain and refill with fresh fuel up to  $\frac{3}{4}$  of the tank level.
  - (B) Alternatively, full filter to remove water, scale, bacteria, and oxidized gums I resins in order to minimize filter clogging and ensure diesel start-up.
- (iv) Generator Set:
  - (A) Test surge suppressor and rotating rectifier on brushless machines.
  - (B) Grease bearings (replace old grease with new).
  - (C) Clean commutator and slip rings.
  - (D) Clean rotor and stator windings using clean compressed air.
  - (E) Inspect coupling bolts and alignment.
  - (F) Inspect conduits for tightness.
  - (G) Inspect windings at rotor and stator slots.
  - (H) Inspect all electrical connections.

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 18 of 33  
Addendum No. 2

- (I) With the generator set operating at full load, conduct an infrared survey of all electrical connections to identify high- resistance connections.
- (J) Verify grounding system resistance.
- (K) Perform a two (2) hour full load bank test as per CSA 282-09.
- (L) Re-tightening of nuts and bolts to be performed for all generator equipment.

**22.0 INSPECTION AND TESTING FOR TRANSFER SWITCHES**

**22.1 Weekly Inspections**

- (a) Isolate transfer switch, open all inspection covers, and inspect all electrical connections.
- (b) Operate all moving parts to ensure that they move freely.
- (c) Clean and dress contacts as required.
- (d) Remove all dust.
- (e) Clean and lubricate linkages.
- (f) Conduct an infrared survey of all electrical connections, contacts, and energized components while under load on both the normal and the emergency side.
- (g) Lubricate door locks and hinges (if necessary), especially those of outdoor enclosures.
- (h) Correct all the defects found during inspections and tests.
- (i) Record all inspections, tests, and corrective actions in the log.
- (j) Inspect power sources.
- (k) Inspect transfer equipment.
- (l) Inspect controls.
- (m) Inspect supervisory equipment.
- (n) Inspect accessory equipment.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 19 of 33  
Addendum No. 2

---

22.2 Monthly Inspections

- (a) Inspect connections.
- (b) Inspect or test for evidence of overheating.
- (c) Inspect or test for evidence of excessive contact erosion.
- (d) Remove dust and dirt.
- (e) Inspect for any required replacement of contacts.
- (f) Remove the arc chutes and pole covers.
- (g) Test and recalibrate all trip- sensing and time-delay functions.
- (h) Electrically operate the transfer switch.

22.3 Semi-annual Inspections

- (a) Vacuum the accumulated dust.
- (b) Inspect for moisture.
- (c) Inspect all insulating part cracks or discoloration.
- (d) Inspect all main arcing contacts for excessive erosion.
- (e) Inspect all main current- Carrying for pitting and discoloration due to excessive heat.
- (f) Inspect all control relay contacts for excessive erosion and discoloration to excessive heating.

22.4 Annual Inspections

- (a) Manually operate the main transfer movement.
- (b) Check all cable and control wire connections.
- (c) Conduct a 2-hour full-load test.
- (d) Re-tightening of nuts and bolts to be performed for all transfer switch equipment.



**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 20 of 33  
Addendum No. 2

---

**23.0 INSPECTION AND TESTING FOR TRANSFORMER**

23.1 Monthly Inspections

- (a) Thorough visual inspection.

23.2 Semi-annual Inspections

- (a) Inspect for dirt, especially accumulations on insulation surfaces.
- (b) Thorough cleaning of transformer and enclosure.
- (c) Inspect electrical connections.
- (d) Inspect mechanical tightness of the electrical connections.
- (e) Inspect terminal boards for signs of overheating and voltage creepage over insulating surfaces.
- (f) Annual Inspections
- (g) Verification of transformer controls.

23.3 Annual Inspections

- (a) Clean top and bottom ends of winding assemblies.
- (b) Insulation resistance test.
- (c) Transformer turn ratio test.
- (d) Re-tightening of nuts and bolts to be performed for all transformer equipment.

**24.0 INSPECTION AND TESTING FOR SF6 SWITCH**

24.1 Monthly Inspections

- (a) Inspect switch to ensure it is charged to the proper pressure level.
- (b) Inspect the condition of the tank finish.
- (c) Inspect the pressure gauge.
- (d) Inspect the fill valve.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 21 of 33  
Addendum No. 2

---

- (e) Inspect terminations and ground connections.

24.2 Semi-annual Inspections

- (a) Inspect gas level.
- (b) Inspect gas pressure.

**25.0 INSPECTION AND TESTING FOR PANEL BOARD BREAKERS**

25.1 Monthly Inspections

- (a) Thorough visual inspection.

25.2 Semi-annual Inspections

- (a) Verification of contacts.
- (b) Verification of mechanical operation
- (c) Cleaning of breaker and cell.

25.3 Annual Inspections

- (a) Insulation resistance test.
- (b) Contact resistance test.
- (c) Relay testing.

**26.0 INSPECTION AND TESTING FOR MEDIUM VOLTAGE CABLE**

26.1 Monthly Inspections

- (a) Thorough visual inspection.

26.2 Semi-annual Inspections

- (a) Cleaning of cable.

26.3 Annual Inspections

- (a) Insulation resistance test.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 22 of 33  
Addendum No. 2

<b>GENERATOR SPECIFICATIONS BREAKDOWN</b>					
<b>Name</b>	<b>Make</b>	<b>Model</b>	<b>Power Output</b>	<b>Voltage</b>	<b>Phase</b>
ARL 1 - Generator at Airport Rd.	Generac	SD130	138kW	346/600	3
ARL 2 - Generator at Northwest Drive	Generac	SD0060	60 kW	346/600	3
West Toronto Diamond Generator	MTU	DS180D6SNA	180kW	347/600	3
Parkdale Plant	Kohler	250REOZJ	350kW	347/600	3
Nickle Plant	Kohler	250REOZJ	350kW	347/600	3
Humberview Plant	Kohler	250REOZJ	350kW	347/600	3
Wice Plant	Kohler	250REOZJ	350kW	347/600	3
Airway Plant	Kohler	250REOZJ	350kW	347/600	3

**27.0 INSPECTION AND TESTING FOR PUMPING STATION**

27.1 Monthly Inspections

- (a) Thorough visual inspection.
- (b) Check motor & electrical connections
- (c) Check and replace cables if damaged
- (d) Check, lubricate and tighten screws and nuts.
- (e) Check clearance, clean and adjust the impeller, if necessary.
- (f) Insulation, verify the resistances using a megger.
- (g) Check the correct settings on the overload and other protections.

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 23 of 33  
Addendum No. 2

- (h) Check safety devices such as guard rails, covers and other protections.
- (i) Check and verify the direction of the impeller.
- (j) Check the temperature sensors for specific resistance values stated in the O&M manuals.
- (k) Clean, replace and lubricate O-rings, gaskets, seal washers
- (l) Inspect and verify safe operation of pumps and pump control equipment
- (m) Inspect and verify safe operation of power supply

27.2 Annual Inspections

- (a) Check and test high water detector sensors for float level activations.
- (b) Check the condition and functionality of level regulators.
- (c) Perform a ground verification test.
- (d) Inspect and verify and calibrate safe operation of hazardous gas Sensors.
- (e) Inspect, clean, empty Oil Grit Separator tank.
- (f) Ensure that tunnel lighting is maintained in "Good Working Condition".

**28.0 Engineer of Record - Remedial Scope of Work**

28.1 This work may include the redesign, calibration, configuration, testing & inspections, documentation and revision of drawings on an as required basis pertaining to Railway Corridors Electrical and Mechanical maintenance of assets.

28.2 The characteristics of emergent work, while not limited to, may be any one of the following in that they:

- (a) have not been specifically planned for;
- (b) are generally limited in scope;
- (c) may be safety related;
- (d) may be in response to an emergency;
- (e) may be in response to an urgent operational need;

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 24 of 33  
Addendum No. 2

- (f) may be a required task resulting from previous and/or ongoing assignments; and
  - (g) require an immediate engineering response on a time and disbursement basis.
- 28.3 The Contractor shall retain the services of an Engineer of Record as detailed in the Mandatory Personnel Requirements to perform the work under individual assignments. All assignments will be initiated by the Railway Corridors. Metrolinx makes no guarantee of assignments under this Agreement.
- 28.4 Design Guidelines
- (a) Design guidelines are prescribed in the Design Requirements Manual (DRM) see link below and incorporate GO guiding principles, Operational considerations, and customer needs.
    - (i) Web address: [http://www.gosite.ca/engineering\\_public](http://www.gosite.ca/engineering_public)  
Username: engineer  
Password: 2lz0cry
  - (b) The DRM has a combination of performance requirements, as well as detailed specifications and standard drawings, for specialty items.
  - (c) The Engineer of Record shall:
    - (i) Review and become familiar with the DRM.
    - (ii) Review specific site and work conditions to determine potential areas of incompatibility with the standards set out in the DRM and formally request variance approval from Metrolinx.
    - (iii) The Engineer's design shall be in accordance with the most current applicable sections of the Ontario Electrical Safety Code, Canadian Electrical Code, Canadian Standards Association-Underground Systems, Institute for Electrical and Electronics Engineers (IEEE) Standards, the AREMA Manual for Railway Engineering, all the most current applicable, Transport Canada RTD10, as well as all codes, standards and specifications of authorities having jurisdiction.
    - (iv) The Engineer shall also provide the following additional Handover Requirement, see Table 1.
    - (v) These additional deliverables are required to assist Metrolinx in providing oversight of Electrical/Mechanical maintenance

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 25 of 33  
Addendum No. 2

contractors. Items are to be delivered to a designated Metrolinx representative.

**Table 1 - Deliverables**

<b>Deliverable</b>	<b>Format</b>	<b>Description/Justification</b>
As-built plans	3 Hardcopies + 1 Softcopy (*.PDF) 1 Softcopy (*.DWG)	Railway Corridors will retain the latest as-built plans as a resource for Electrical/Mechanical contractors.
IOM Manuals	1 Hardcopy 1 Softcopy (*.PDF)	Railway Corridors will retain IOM manuals as a resource for Electrical/Mechanical contractors.
Factory Acceptance Tests (FAT)	1 Softcopy (*.PDF)	To be utilized during an Electrical incident investigation.
Site Acceptance Tests (SAT)	1 Softcopy (*.PDF)	To be utilized during an Electrical incident investigation.
Safety Certificate	1 Softcopy (*.PDF)	Railway Corridors reference material
Material and Spares List	1 Softcopy (*.xls)	Material and spares list will be transferred to the maintenance contractor for inventory tracking.
Supplier contact list	1 Softcopy (*.xls)	List will be issued to Electrical/Mechanical maintenance contractors for safety recall/bulletin tracking.
Contract and warranty documentation	1 Hardcopy + 1 Softcopy (*.PDF)	Railway Corridors reference material
Software	1 Softcopy	Latest software revision to be retained and controlled by Railway Corridors.

**28.5 System Safety Requirements**

(a) The Engineer of Record shall:

- (i) Utilize safe-by-design engineering principles for Public Passenger Transportation use and its integration with other systems.
- (ii) Take reasonable steps to ensure that the design minimizes any person's exposure to hazards during the life cycle of the work performed at commissioning, operation, future maintenance and decommissioning, thereafter.
- (iii) Identify specific work methodology that will require a written plan to be submitted by the contractor prior to commencing the work as per regulatory requirements.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 26 of 33  
Addendum No. 2

- (iv) Ensure applicable railway specific requirements are considered and implemented as required in the process.
- (v) Metrolinx reserves the right to classify a risk level to the assignment and will thereby require written plans to educate and mitigate those risks, as required.

28.6 Drawings, Diagrams and Document

- (a) The Engineer of Record shall provide:
  - (i) Metrolinx Requirements for Contract Drawings, as contained within the Design Requirement Manual (DRM).
  - (ii) 'Record' contract drawings both on hard copy and respective computer (CAD) files.
  - (iii) All drawings produced and submitted on a CAD (Computer-Aided Design) system.
  - (iv) Computer CAD files shall be encoded with the Engineer's Stamp and Signature (Storage Media: CD ROM).
  - (v) Hard copy of 'Record' contract drawings shall bear the Engineer's Stamp and Signature. 1 SET 11x17 on BOND PAPER.
  - (vi) Hard copy documents shall be forwarded in an appropriate size format and with black text on white background, such that they readily reproduce a clear, sharp and readable image on standard recycled photocopy stock using standard photocopy equipment.
    - (A) Operating System: WINDOWS XP
    - (B) Software Program: WORD for Windows
    - (C) Font: Times New Roman, 12pt.
    - (D) Storage Media: CD ROM

28.7 Scope of Services

- (a) The Contractor shall make its own determination of the actual scope and magnitude of the emergent work to be undertaken. The Services shall be complete in all respects, and shall ensure that, if applicable, any proposed work can be constructed in a safe, cost effective and efficient manner.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 27 of 33  
Addendum No. 2

- (b) The Contractor's scope of services for each assignment will vary in type, scope and responsibility. The scope of services for an assignment may include, but not necessarily be limited to:
  - (i) Detailed Design Work and Considerations
  - (ii) Testing and Commissioning
  - (iii) Handover and Post Work Report
  - (iv) Drawings, Diagrams and Documents
- (c) A majority of assignments may be undertaken in existing operating, maintenance and revenue locations. An assignment can include all of any of the following categories of engineering services:
  - (i) Electrical/Mechanical design including software design
  - (ii) Mechanical services of Pumping stations;
  - (iii) Electrical services for High power Substations, Generators, and Underground High Voltage Services.

**28.8 Design Calculations and Supporting Material**

- (a) Prepare and maintain a record of design calculations for all elements of the design for each engineering and specialized services discipline. Submit design calculations and supporting material to Metrolinx upon request.
- (b) Prepare all supporting material necessary for furtherance of the design and use for discussion purposes at design review meetings with Metrolinx and/or with external authorities.

**28.9 Estimate and Schedule**

- (a) Estimates are to include appropriate contingency depending on what phase of design the assignment is in.
- (b) Estimates should include all elements to deliver the intended design including, but not limited to:
  - (i) Working in the right of way;
  - (ii) Work Conducted in the winter, if required;



**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 28 of 33  
Addendum No. 2

- (iii) Existing site conditions, relocations and removals;
- (iv) Temporary / phasing requirements; and
- (v) Cost of all subcontracting work for approval by Metrolinx.

28.10 Detailed Design Work and Considerations

(a) General

- (i) Based on the final design accepted by Metrolinx, the Engineer of Record shall carry out the detailed design for the assignment.
- (ii) Prepare for review and approval by Metrolinx staff, an itemized list, which scopes and quantifies the assignment prior to the production of working drawings and specifications.
- (iii) Coordinate all related disciplines and specialty contractors.

(b) Electrical

- (i) The Engineer of Record shall review safety code requirements and design measures to adequately protect life and limb of personnel working within these environments. Safety Protection and egress requirements shall be incorporated into the design and be presented to Metrolinx for review.
- (ii) The Engineer of Record shall ensure coordination of the electrical design which shall include, but is not limited to:
  - (A) The high and low voltage assets and supply distribution and emergency power supply and distribution for the associated equipment.
  - (B) Assess existing power sources and relative impacts due to the planned scope of work (i.e. Primary/Secondary Substations, generators, **Pumping Stations, etc.**).
  - (C) Calculate power requirements for all electrical components associated with the assignment including all future expansion elements.
  - (D) Design shall include drawings, including an overall single line diagram, showing conduits, raceways, boxes and devices for all the power and communications systems.

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 29 of 33  
Addendum No. 2

- (E) Designs shall be prepared in accordance with the most current Metrolinx Engineering Design Manual, all applicable sections of the Ontario Electrical Safety Code (OESC), Canadian Electrical Code (CEC), Canadian Standards Association (CSA)-Underground Systems, Institute for Electrical and Electronics Engineers (IEEE) Standards, Electrical Safety Authority (ESA) and all applicable sections of the AREMA Manual of Railway Engineering, as well as codes, standards, best practices and specifications of authorities having jurisdiction.
- (F) Prepare panel diagrams detailing the power distribution related to the assignment.
- (G) Include a back-up power and distribution system to service the Rail Corridors assets where required. The back-up power system shall meet at minimum, the following requirements:
  - I) The back-up power system shall consist of both uninterrupted power supplies (UPS) and fuel powered generator supplies.
  - II) The fuel powered generator supply shall serve the balance and shall also maintain the UPS. The two systems shall be coordinated with each other.
  - III) The transfer between power supplies will not influence in any way or disrupt the train operations.
- (H) The Engineer of Record shall investigate the local hydro authorities' requirements and incorporate those into the design. Additionally, plans may be required to obtain approval of the hydro company for new site services.
- (I) The Engineer of Record shall conduct an electrical arc flash hazard analysis as prescribed under NFPA 70E and provide a written report to Metrolinx summarizing the findings and recommended control measures to be taken.
  - I) The report shall include any hazard labels required to be affixed to electrical equipment.
- (J) The electrical design shall address all aspects of low and high voltage equipment including related conduits and wiring.

**SCOPE OF WORK**  
**DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 30 of 33  
Addendum No. 2

- (K) Each main signal location shall have a panel designed to provide for the safe and expedited injection of auxiliary generator electricity.
- (c) Mechanical
- (i) The Engineer of Record shall review safety code requirements and design measures to adequately protect life and limb of personnel working within these environments. Safety protection and egress requirements shall be incorporated into the design and be presented to Metrolinx for review.
- (ii) The mechanical design shall include, but is not limited to:
- (A) Pumping station designs, which shall be prepared in accordance with the most current Metrolinx Engineering Design Manual, all applicable sections of the American Society of Mechanical Engineers (ASME), American National Standards Institute (ANSI) and applicable standards from Canadian Standards Association (CSA)..
- (d) Long Delivery Items
- (i) The Engineer of Record, prior to completing detailed design, shall identify long delivery items that might delay the work. A list of those items, including the quantities and detailed product information, shall be provided to Railway Corridors for review.
- (ii) Long delivery items may include but are not limited to substation and substation equipment, transformers, generator and generator systems, high voltage cables, pumping systems and other applicable electrical equipment.

28.11 Testing and Commissioning

- (a) The Contractor shall prepare and submit to Metrolinx:
- (i) A detailed work plan for the testing and commissioning of all equipment affected by the modified or new design. This plan shall include a detailed procedure for the suspension of testing and protection of the railway services and passengers in the event of an unsafe or emergency situation arising.
- (ii) This plan shall take into account:

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 31 of 33  
Addendum No. 2

- (A) All applicable AREMA, OESC, CSA, IEEE, ASME, ANSI, Metrolinx codes, standards, regulations and best practices applicable;
  - (B) Scheduling;
  - (C) All safety issues and risks assessments;
  - (D) All operational training;
  - (E) The minimum manufacturer requirements and recommendations; and
  - (F) Test and Commissioning reports and documentation.
- (iii) Include a timeline containing potential test train requirements and applicable movements
  - (iv) Incorporate Metrolinx comments before implementation.

28.12 Handover and Post Work Report

- (a) Prepare and submit three (3) copies of a post work report in accordance with Metrolinx Work Handover Protocol.
- (b) The Post Work Report shall include a brief summary of the following:
  - (i) Assignment Scope Description:
    - (A) Detailed description of Assignment scope and design features
  - (ii) Assignment Key Issues:
    - (A) Operational issues to be considered going forward
    - (B) Lessons Learned
    - (C) Future recommended action
  - (iii) Deficiencies:
    - (A) Outstanding deficiencies
    - (B) Timeline and associated cost for completion
    - (C) Anticipated Total Performance date

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 32 of 33  
Addendum No. 2

- (c) Submission elements include:
- (i) Work Handover Report:
    - (A) Location, civic address, telephone numbers
    - (B) Maintenance and other legal agreements
    - (C) List of mechanical equipment
    - (D) List of electrical equipment
    - (E) External agency contacts (i.e. railway, city works, hydro, and telecom)
  - (ii) Operating and Maintenance Manuals
  - (iii) Warranties
  - (iv) Commissioning Checklist and Manual
  - (v) Record Drawings
  - (vi) Contractor Performance Evaluation

<b>Deliverable</b>	<b>Format</b>	<b>Description/Justification</b>
As-built signal plans	3 Hardcopies + 1 Softcopy (*.PDF) 1 Softcopy (*.DWG)	Railway Corridors will retain the latest as-built plans as a resource for maintenance contractors.
IOM Manuals	1 Hardcopy 1 Softcopy (*.PDF)	Railway Corridors will retain IOM manuals as a resource for Electrical/Mechanical maintenance contractors.
Factory Acceptance Tests (FAT)	1 Softcopy (*.PDF)	To be utilized during an Electrical/Mechanical incident investigation.
Site Acceptance Tests (SAT)	1 Softcopy (*.PDF)	To be utilized during an Electrical/Mechanical incident investigation.
Safety Certificate	1 Softcopy (*.PDF)	Railway Corridors reference material
Material and Spares List	1 Softcopy (*.xls)	Material and spares list will be transferred to maintenance contractor for inventory tracking.
Supplier contact list	1 Softcopy (*.xls)	List will be issued to maintenance contractors for safety recall/bulletin tracking.

**SCOPE OF WORK  
DETAILED SCOPE OF WORK**

**PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE  
FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 33 of 33  
Addendum No. 2

<b>Deliverable</b>	<b>Format</b>	<b>Description/Justification</b>
Contract and warranty documentation	1 Hardcopy + 1 Softcopy (*.PDF)	Railway Corridors reference material
Software	1 Softcopy	Latest software revision to be retained and controlled by Railway Corridors.

END OF SECTION

## **ATTACHMENTS**

### **PROVISION OF ELECTRICAL/MECHANICAL MAINTENANCE FOR RAIL CORRIDORS**

**Contract No. PT-2016-SIG-091**

Page 1 of 1

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Attachments are comprised of those documents listed under "Attachments" of List of Contents.