

Delete Section 00 72 45 of the Standard Specifications for Municipal Services, as developed and published by the Nova Scotia Road Builders Association and the Consulting Engineers of Nova Scotia (CENS) Joint Committee on Contract Documents, in its entirety and replace with the following:

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**GC 1 DOCUMENTS**

- 1.1 The Contract Documents shall be signed in duplicate by the Owner and the Contractor.
- 1.2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 1.3 The intent of the Contract Documents is to include the labour, products and services necessary for the performance of the Work in accordance with these documents. It is not intended, however, that the Contractor shall supply products or perform Work not consistent with, covered by or properly inferable from the Contract Documents.
- 1.4 Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.5 References to the singular shall be considered to include the plural as the context requires.
- 1.6 If there is a conflict within the Contract Documents:
  - .1 The order of priority of documents, from highest to lowest, shall be
    - The Agreement between the Owner and the Contractor,
    - The Definitions,
    - Supplementary Conditions,
    - The General Conditions,
    - The Specifications,
    - Materials and finishing schedules,
    - The Drawings
  - .2 Drawings of larger scale shall govern over those of smaller scale of the same date.
  - .3 Dimensions shown on Drawings shall govern over dimensions scaled from Drawings.
  - .4 Later dated documents shall govern over earlier documents of the same type
- 1.7 The Contractor will be provided without charge, two (2) copies of the Contract Documents or parts thereof as are necessary for the performance of the Work.
- 1.8 The Contractor shall keep one copy of the current Contract Documents and shop drawings at the Place of the Work, in good order and available to the Engineer and the Engineer's representatives. This requirement shall not be considered to include the executed set of Contract Documents.
- 1.9 Drawings, specifications, models and copies thereof furnished by the Engineer are and shall remain the property of the Engineer with the exception of the signed contract sets belonging to each party to this Contract. Such documents and models are to be used only with respect to the Work and are not to be used on other work. Such documents and models are not to be copied or revised in any manner without the written authorization of the Engineer.

1.10 Models furnished by the Contractor at the Owner's expense are the property of the Owner.

## **GC 2 ADDITIONAL INSTRUCTIONS**

2.1 During the progress of the Work the Engineer will furnish to the Contractor such additional instructions to supplement the Contract Documents as may be necessary for the performance of the Work. Such instructions shall be consistent with the intent of the Contract Documents.

2.2 Additional instructions may be in the form of specifications, drawings, samples, models or other written instructions.

2.3 Additional instructions will be issued by the Engineer with reasonable promptness and in accordance with a schedule agreed upon for such instructions

## **GC 3 ENGINEER**

3.1 The Engineer will provide administration of this Contract as described in the Contract Documents.

3.2 The Engineer will be the Owner's representative during construction and until completion of any correction of defects under the provisions of GC 25 - WARRANTY, Subsection 25.2 or until all required Work is performed completely, whichever is later. The Owner's instructions to the Contractor shall be forwarded through the Engineer. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

3.3 The Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences (unless otherwise directed by the Engineer) or procedures. The Engineer will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or their agents, employees or other persons performing any of the Work.

3.4 The Engineer will visit the site at intervals appropriate to the progress of construction to become familiar with the progress and quality of the Work and to record the data necessary to establish the pay quantities under the Schedule of Quantities and Unit Prices.

3.5 Based on the Engineer's observations and evaluation of the Contractor's applications for payment, the Engineer will determine the amounts owing to the Contractor under the Contract and will issue certificates for payment in such amounts, as provided in the AGREEMENT and GC 15 - CERTIFICATES AND PAYMENTS.

3.6 The Engineer will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of the performance there under by both parties to the Contract. Interpretations and decisions of the Engineer shall be consistent with the intent of the Contract Documents.

3.7 Claims, disputes and other matters in question relating to the performance of the Work or the interpretation of the Contract Documents shall be referred initially to the Engineer in writing for decision which will be given in writing within a reasonable time.

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- 3.8 The Engineer will have authority to reject Work which does not conform to the requirements of the Contract Documents. Whenever it is necessary or advisable the Engineer will have authority to require special inspection or testing of Work whether or not such Work be then fabricated, installed or completed. However, neither the Engineer's authority to act nor any decision either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Engineer to the Contractor, Subcontractors, or their agents, employees or other persons performing any of the Work.
- 3.9 The Engineer will review and take appropriate action upon the Contractor's submittals, such as shop drawings, product data and samples, in accordance with the requirements of the Contract Documents.
- 3.10 The Engineer will prepare change orders in accordance with the requirements of GC 12 - CHANGES IN THE WORK AND EXTRA WORK.
- 3.11 The Engineer will conduct inspections to determine the date of Substantial Performance of the Work and the date when all required Work is performed completely in accordance with the requirements of GC 15 - CERTIFICATES AND PAYMENT and will receive equipment, system or material warranties and related documents required by the Contract and provided by the Contractor.
- 3.12 The Engineer may provide at the site one or more representatives. The Engineer's Representative shall be responsible to the Engineer and shall carry out such duties and exercise such authority as may be delegated by the Engineer under 3.13.
- 3.13 The Engineer may from time to time delegate to the Engineer's Representative any of the duties and authorities vested in the Engineer and may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Owner and the Contractor.
- 3.14 Any communication given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer, provided that:
- (a) any failure of the Engineer's Representative to disapprove any Work, materials or Plant shall not prejudice the authority of the Engineer to disapprove such Work, materials or Plant and to give instructions for the rectification thereof;
  - (b) if the Contractor questions any communication of the Engineer's Representative, the Contractor may refer the matter to the Engineer who shall confirm, reverse or vary the contents of such communication.
- 3.15 In the event of the termination of the employment of the Engineer, the Owner shall immediately appoint an Engineer whose status under the Contract shall be that of the former Engineer.

- 3.16 Nothing contained in the Contract Documents shall create any contractual relationship between the Engineer and the Contractor, Subcontractors, suppliers, or their agents, employees or other persons performing any of the Work.

#### **GC 4 DELAYS**

- 4.1 If the Contractor is delayed in the performance of the Work by an act or omission of the Owner, Engineer, Other Contractor, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the Contract Documents, then the Contract Time shall be extended for such reasonable time as the Engineer may decide in consultation with the Contractor. The Contractor shall not be reimbursed by the Owner for costs incurred as the result of such delay.
- 4.2 If the Contractor is delayed in the performance of the Work by a Stop Work Order issued by a court or other public authority, and providing that such order was not issued as the result of an act or fault of the Contractor or anyone employed or engaged directly or indirectly by the Contractor, then the Contract Time shall be extended for such reasonable time as the Engineer may decide in consultation with the Contractor. The Contractor shall not be reimbursed by the Owner for costs incurred as the result of such delay.
- 4.3 If the Contractor is delayed in the performance of the work by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the Contractor is a member or to which the Contractor is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties or, without limit to any of the foregoing, by a cause beyond the Contractor's control, then the Contract Time shall be extended for such reasonable time as the Engineer may decide in consultation with the Contractor, but in no case shall the extension of time be less than the time lost as the result of the event causing the delay, unless such shorter extension be agreed to by the Contractor. The Contractor shall not be entitled to payment for costs incurred as the result of such delays.
- 4.4 No extension shall be made for delay unless written notice of claim is given to the Engineer not later than seven (7) days after the commencement of delay, providing however, that in the case of a continuing cause of delay only one notice of claim shall be necessary.
- 4.5 If no additional instruction is made under GC 2 - ADDITIONAL INSTRUCTIONS, no claim by the Contractor for delay shall be allowed because of failure of the Engineer to furnish instructions until fourteen (14) days after a demand for such instructions has been made and not then unless such claim is reasonable.
- 4.6 The Engineer will not, except by written notice to the Contractor, stop or delay the Work pending instructions or proposed changes in the Work.

#### **GC 5 SUSPENSION OF WORK**

- 5.1 The Engineer may, by a written order, at any time suspend any part of the Work, or direct any portion to be commenced or completed in priority to any other part or portion.

- 5.2 The Contractor shall not be entitled by reason of the Engineer's suspension order to any additional payment, claim for loss or profit or anticipated profit, or damages.
- 5.3 When, for any reason, it is necessary to discontinue the Work, or any part thereof, the Contractor must, on notice from the Engineer, forthwith place the Work in proper and satisfactory condition for the accommodation of the public and for its effectual protection against damage from rain, snow, frost, ice, or other causes and must so maintain it.

#### **GC 6 OWNER'S RIGHT TO TERMINATE CONTRACT AND PERFORM WORK**

- 6.1 If the Contractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of insolvency or if a receiver is appointed because of insolvency, the Owner may, without prejudice to any other right or remedy, by giving the Contractor or receiver or trustee in bankruptcy written notice, terminate the Contract.
- 6.2 If the Contractor should neglect to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract to a substantial degree and if the Engineer has given a written statement to the Owner and Contractor that sufficient cause exists, the Owner may notify the Contractor in writing that the Contractor is in default of contractual obligations and issue instructions to correct the default in the five (5) working days immediately following the receipt of such notice.
- 6.3 If the correction of the default cannot be completed in the five (5) working days specified, the Contractor shall be in compliance with the Owner's instructions if the Contractor:
- (a) commences the correction of the default within the specified time, and
  - (b) provides the Owner with an acceptable schedule for such correction, and
  - (c) completes the correction in accordance with such schedule.
- 6.4 If the Contractor fails to correct the default in the time specified or subsequently agreed upon the Owner, without prejudice to any other right or remedy, may:
- (a) correct such default and deduct the cost thereof from any payment then or thereafter due the Contractor provided the Engineer has certified such cost to the Owner and the Contractor, or
  - (b) terminate the Contractor's right to continue with the Work in whole or in part or terminate the Contract.
- 6.5 If the Owner terminates the Contractor's right to continue with the Work under the conditions set out in this General Condition, the Owner shall:
- (a) be entitled to take possession of the premises and products, and utilize the construction machinery and equipment subject to the rights of third parties, and finish the Work expediently,

- (b) withhold further payments to the Contractor until the Work is finished, and
- (c) when all required Work is performed completely, charge the Contractor the amount by which the full cost of finishing the Work as certified by the Engineer, including compensation to the Engineer for additional services, exceeds the unpaid balance of the Contract Price; however, if such cost of finishing the Work is less than the unpaid balance of the Contract Price, the Owner shall pay the Contractor the difference.

6.6 If surety bonds have been provided by the Contractor the provisions of this General Condition shall be exercised in accordance with the conditions of such surety bonds.

6.7 The Contractor's obligation under the Contract as to quality, correction and warranty of the Work performed up to the time of termination shall continue in force after such termination.

#### **GC7 CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE THE CONTRACT**

7.1 If the Owner should be adjudged bankrupt or makes a general assignment for the benefit of creditors because of insolvency or if a receiver is appointed because of insolvency, the Contractor may, without prejudice to any other right or remedy available, by giving the owner or receiver or trustee in bankruptcy written notice, terminate the Contract.

7.2 If the Work should be stopped or otherwise delayed for a period of thirty (30) days or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or of anyone directly or indirectly employed or engaged by the Contractor, the Contractor may, without prejudice to any other right or remedy available, by giving the Owner written notice, terminate the Contract.

7.3 The Contractor may notify the Owner in writing, with a copy to the Engineer, that the Owner is in default of contractual obligations if:

- (a) the Engineer fails to issue a certificate in accordance with the provisions of GC 15 - CERTIFICATES AND PAYMENT, or
- (b) the Owner fails to pay the Contractor when due the amounts certified by the Engineer or awarded by arbitration or court, or
- (c) the owner violates the requirements of the Contract to a substantial degree.

The Contractor's written notice to the Owner shall advise that if the default is not corrected in the five (5) working days immediately following the receipt of the written notice the Contractor may, without prejudice to any other right or remedy, stop the Work or terminate the Contract.

7.4 If the Contractor terminates the Contract under the conditions set out above, the Contractor shall be entitled to be paid for all Work performed in accordance with the Schedule of Quantities and Unit Prices to be mutually agreed to by both parties or where agreement cannot be reached, then the matter shall be settled in accordance with the provisions of GC 8 - DISPUTES.

**GC 8 DISPUTES**

- 8.1 Differences between the parties to the Contract as to the interpretation, application or administration of this Contract, or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by decision of the Engineer pursuant to the provisions of GC 3 - ENGINEER, subsections 3.6 and 3.7, shall be settled in accordance with the requirements of this General Condition.
- 8.2 The claimant shall give written notice of such dispute to the other party no later than twenty (20) days after the receipt of the Engineer's decision given under GC 3 - ENGINEER, paragraph 3.7. Such notice shall set forth the particulars of the matters in dispute, the probable extent and value of the damage and the relevant provisions of the Contract Documents. The other party shall reply to such notice within twenty-one (21) days after receiving it, setting out in such reply the grounds and other, relevant provisions of the Contract Documents.
- 8.3 If the matter in dispute is not resolved promptly the Engineer will give such instructions as are necessary for the proper performance of the Work and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim he may have. If it is subsequently determined that such instructions were in error or at variance with the Contract Documents, the Owner shall pay the Contractor extra costs incurred by the Contractor in carrying out such instructions.
- 8.4 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights for recourse, provided the notices were given in accordance with subsection 8.2 and instructions were carried out as provided in subsection 8.3.
- 8.5 If the parties agree to submit disputes to arbitration, then the dispute shall be submitted to arbitration in accordance with the provisions of the Nova Scotia Arbitration Act.
- 8.6 If no provision or agreement is made for arbitration then either party may submit the dispute to Court of Justice as the circumstances may require.
- 8.7 In recognition of the obligation by the Contractor to perform the disputed Work as provided in paragraph 8.3, it is agreed that settlement of dispute proceedings may be commenced immediately following the dispute in accordance with the foregoing settlement of dispute procedures.

**GC 9 ASSIGNMENT**

- 9.1 Neither party to the Contract shall assign the Contract or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

**GC 10 OTHER CONTRACTORS**

- 10.1 The Owner reserves the right to let separate contracts in connection with the Project of which the Work is a part, or do certain Work by own forces.
- 10.2 When separate contracts are awarded for different parts of the Project, or Work is performed by the Owner's own forces, the Owner shall:
- (a) provide for the co-ordination of the Work of own forces and of each separate contract with the Work of this Contract, and
  - (b) ensure that insurance coverage is provided to the same requirements as are called for in GC 21 - INSURANCE. Such insurance shall be co-ordinated with the insurance coverage of the Contractor as it affects the work of this Contract.
- 10.3 The Contractor shall co-ordinate the work of this Contract with the Work of Other Contractors and Owner's forces and connect as specified or shown in the Contract Documents. If there is a change in the scope of the Work required for the planning and performance of this co-ordination and connection, the changes shall be authorized in accordance with GC 12 - CHANGES IN THE WORK AND EXTRA WORK, and the value of the changes shall be determined in accordance with GC 13 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK AND EXTRA WORK.
- 10.4 The Contractor shall report to the Engineer any apparent deficiencies in Work of Other Contractors' or Owner's forces which would affect the Work of this Contract immediately as they come to the Contractor's attention and shall confirm such report in writing. Failure by the Contractor to report shall invalidate any claims against the Owner by reason of the deficiencies of Work of Owner's forces or Other Contractors.
- 10.5 The Owner shall take all reasonable precautions to avoid disputes on the Project arising from the Work of Other Contractors or own forces.

**GC 11 SUBCONTRACTORS**

- 11.1 The Contractor agrees to preserve and protect the rights of the parties under the Contract with respect to Work to be performed under subcontract and to:
- (a) enter into contracts or written agreements with Subcontractors to require them to perform their Work in accordance with and subject to the terms and conditions of the Contract Documents, and
  - (b) be as fully responsible to the Owner for acts and omissions of Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor.

The Contractor therefore agrees to incorporate the terms and conditions of the Contract Documents into all sub-contract agreements entered into with Subcontractors.

- 11.2 The Contractor agrees to employ those Subcontractors proposed in writing at the time of the bid submission and accepted by the Owner at the signing of the Contract.
- 11.3 The Owner may, for reasonable cause, object to the use of a proposed Subcontractor and require the Contractor to employ another person or firm as Subcontractor.
- 11.4 In the event that the Owner requires a change from a proposed Subcontractor the Contract Price shall be adjusted by the difference in cost and mark-up occasioned by such required change.
- 11.5 The Contractor shall not be required to employ as a Subcontractor a person or firm to whom the Contractor may reasonably object.
- 11.6 The Engineer may, upon reasonable request, provide to a Subcontractor information as to the percentage of quantity of the Subcontractor's Work which has been certified for payment.
- 11.7 Nothing contained in the Contract Documents shall create a contractual relationship between a Subcontractor and the Owner.

## **GC 12 CHANGES IN THE WORK AND EXTRA WORK**

### **12.1 Changes In The Work:**

Except as provided in GC 13 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK AND EXTRA WORK paragraph 13.4:

- (a) the Owner, through the Engineer, without invalidating the Contract, may make Changes in the work with the Contract Price and Contract Time being adjusted accordingly by written order, and
- (b) no Changes in the Work shall proceed without a written order signed by the Owner and no claim for a change in the Contract Price or change in the Contract Time shall be valid unless so ordered, and at the same time valued or agreed to be valued as provided in GC 13 - VALUATION AN CERTIFICATION OF CHANGES IN THE WORK AND EXTRA WORK.

### **12.2 Extra Work:**

- (a) The Owner may offer the Contractor Extra Work. If the terms and conditions for the performance of the Extra Work are agreed upon, the Owner, through the Engineer, shall issue a written change order amending the Contract Price and Contract Time as appropriate, or a written order to proceed until a price and change in time are agreed upon by the parties and a change order can be issued.

**GC 13 VALUATION AND CERTIFICATION OF CHANGES IN THE WORK AND EXTRA WORK**

- 13.1 If the type of work involved in a Change in the Work is included in the items contained in the Schedule of Quantities and Unit Prices, it shall be performed on the same payment basis as the original Work except as described in paragraphs 13.7 and 13.8, and the Contract Time shall be extended for such time as the Engineer may decide in consultation with the Contractor.
- 13.2 If the type of work involved in a Change in the Work is not included in the items contained in the Schedule of Quantities and Unit Prices, or is such as to alter the nature or intent of the Work included in this Schedule the value of such change shall be determined in one or more of the following methods.
- (a) by estimate and acceptance in a lump sum;
  - (b) by unit prices agreed upon;
  - (c) by cost and a fixed or percentage fee;
  - (d) by variation of the Contract Unit Prices.
- 13.3 When a Change in the Work covered by paragraph 13.2 is proposed or required the Contractor shall present to the Engineer for approval the claim for a change in the Contract Price and change in Contract Time with appropriate documentation in a form acceptable to the Engineer. When the Engineer is satisfied as to the correctness of such claim and, when approved by the Owner, a change order shall be issued to the Contractor amending the Contract Price and Contract Time as appropriate. The value of Work performed in the change shall be included for payment with the regular certificates of payment.
- 13.4 In the case of Changes in the Work to be paid for under methods (b) of paragraph 13.2, the form of presentation of methods of measurement shall be agreed to by the Engineer and Contractor before proceeding with the change. The Contractor shall keep accurate records, as agreed upon, of quantities and present an account of the quantities for the Change in the Work.
- 13.5 In the case of changes in the Work to be paid for under method (c) of paragraph 13.2, the prices for any extra or additional Work shall be based on the sum of the following five items:
- (a) direct basic wages paid to labour excluding machine operators and office supervisory staff, required to perform the Work in accordance with direction and when devoting exclusive attention to this Work;
  - (b) twenty-five (25) percent of item 13.5 (a) to cover cost of small tools, payroll burden and employee benefit costs;
  - (c) The cost of material delivered to the site;

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- (d) fifteen (15) percent of the sum of items 13.5 (a), (b), and (c), which shall cover overhead expense, profit, head office and site office overhead, including salaries of time-keeping, clerical, accounting, warehousing and other administrative personnel and all costs associated therewith;
- (e) rental of Construction Equipment (including operators). The equipment rental rates shall be in accordance with equipment rental rates indicated in the latest edition of Road Builders Equipment Rates. In the absence of Road Builders Equipment Rates, Department of Transportation and Communication rates shall apply.
- (f) Standby time shall be the time when equipment is required on site but not operated to execute the required works. Approved standby time shall be paid for at 65% of the hourly rates.
- 13.6 If the method of valuation, measurement, change in Contract Price and/or change in Contract Time cannot be promptly agreed upon, and the change is required to be proceeded with then the Engineer in the first instance will determine the method of valuation, measurement, change in Contract Price and/or Contract Time subject to final determination in the manner set out in GC 8 - DISPUTES. In this case the Engineer will, with the consent of the Owner, issue a written authorization for the change, setting out the method of valuation and if by lump sum valuation of the change in Contract Price and/or Contract Time.
- 13.7 In the case of a dispute in the valuation of a change authorized in the Work and pending final determination of such value, the Engineer will make an evaluation and certify the value of Work performed and include the amount with the regular certificates for payment. The Contractor shall keep accurate records of quantities and cost of such Work.
- 13.8 Should the actual quantity of an item in the Schedule of Contract Unit Prices, vary by more than 25% of the estimated quantity, either the Owner or the Contractor may request a revision to the Contract Unit Price contained in the Schedule of Quantities and Unit Prices. Such a request for a revision in a Contract Unit Price shall be given as soon as reasonably possible after the party concerned becomes aware of the circumstances.
- 13.9 If a revision to a Contract Unit Price is negotiated, then:
- (a) the revised unit price in the case of a decrease of more than 25% of the estimated quantity will apply to the actual Work performed for that item, and
- (b) the revised unit price in the case of an increase of more than 25% of the estimated quantity will apply to the excess quantity of Work for that item only.
- 13.10 If either party request renegotiations of a Contract Unit Price, both parties shall act promptly in order to arrive at an equitable revision of the Contract Unit Price prior to proceeding with the Work so affected. If agreement of such renegotiation cannot be reached, the Contractor shall proceed with the Work and the matter shall be subject to final determination in the manner set out in GC 8 - DISPUTES. Pending such settlement, payment for the Work performed shall be made on the regular certificates for payment on the basis of the Contract Unit Prices.

13.11 In all matters referred to above both the Engineer and the Contractor shall act promptly.

#### **GC 14 APPLICATIONS FOR PAYMENT**

- 14.1 Applications for payment on account may be made monthly as the Work progresses.
- 14.2 Applications for payment shall be dated the last day of the agreed monthly payment period and the amount claimed shall be for the value of Work performed at that date.
- 14.3 Applications for release of holdback monies following Substantial Performance of the Work and the application for final payment shall be made at the time and in the manner set forth in GC 15 - CERTIFICATES AND PAYMENTS.

#### **GC 15 CERTIFICATES AND PAYMENTS**

- 15.1 The Engineer will, no later than ten (10) days after the receipt of an application for payment from the Contractor submitted in accordance with GC 14 - APPLICATION FOR PAYMENT, issue a progress payment certificate in the amount applied for or in such other amount deemed to be properly due. If the Engineer amends the application, the Engineer will promptly notify the Contractor in writing giving reasons for the amendment. Notwithstanding that the Contractor has not made application for payment, the Engineer may measure and value the Work performed during a payment period, prepare and issue a progress payment certificate.
- 15.2 The Owner shall make payment to the Contractor on account no later than twenty (20) days after the issuance of a certificate for payment by the Engineer.
- 15.3 The Engineer will, no later than ten (10) days after the receipt of an application from the Contractor for a Certificate of Substantial Performance of the Work, make an inspection and assessment of the Work to verify the validity of the application. The Engineer, in consultation with the Contractor, will make a measurement of the Work completed to the date of the application and no later than seven (7) days after inspection, notify the Contractor of approval or the reasons for disapproval of the application. When the Engineer finds that Substantial Performance of the Work has been reached the Engineer will issue such a certificate. The date of Substantial Performance of the Work shall be as stated in this certificate. Immediately following the issuance of the Certificate of Substantial Performance of the Work, the Engineer, in consultation with the Contractor, will establish a reasonable date for the Work to be performed completely.
- 15.4 Immediately following the issuance of the certificate of Substantial Performance of the Work, the Engineer will issue a progress payment certificate for Work performed up to the date of Substantial Performance and a certificate for payment of holdback monies. Payment of seventy-five percent (75%) of the accumulated holdback monies as authorized by this certificate shall become due and payable 10 days after the following conditions have been satisfied:
- (a) sixty days have elapsed from the date of Substantial Performance of the Work, and

- (b) the Contractor has submitted to the Engineer, in one complete package, the following:
- (i) statutory declaration that all accounts for labour, subcontracts, products, construction machinery and equipment have been paid and the Owner is released from any and all further claims relating to the Contract;
  - (ii) a certificate from a barrister stating that there are no Builders' Liens filed relating to the Contract for Work performed up to the date of Substantial Performance;
  - (iii) a clearance certificate from the Workers' Compensation Board;
  - (iv) security for the warranty period in accordance with GC 24 - SECURITY;
  - (v) written release from each property owner whose lands were used by the Contractor in the execution of this Contract stating that such property has been restored; and
  - (vi) written verification that all claims by third parties have been acknowledged and either resolved or under investigation by the Contractor's insurer.
- (c) the Contractor has agreed to, signed, and returned the Substantial Performance measurement certificate.

If however, the Contractor has failed to sign the measurement certificate within 60 days of Substantial Performance of the Work and provided required documents as listed above, then the Owner shall release seventy-five percent (75%) of the holdback within fourteen (14) days following the date on which the Contractor meets all these requirements.

- 15.5 No later than ten (10) days after the receipt of an application from the Contractor for final payment, the Engineer, in consultation with the Contractor, will complete the final measurement and inspection of the Work and, no later than seven (7) days after measurement and inspection, notify the Contractor of approval or the reasons for disapproval of the application.
- 15.6 When the Engineer finds the Work acceptable under the Contract Documents and the required Work is performed completely, the Engineer will promptly issue a final measure progress payment certificate. The certificate shall state that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's observations and reviews, the Work has been completed in general accordance with the terms and conditions of the Contract Documents. The certificate shall state the balance due the Contractor and noted in said final measure certificate is due and payable.
- 15.7 Seventy (70) days after the date of Total Performance of the Work as certified by the Engineer, the Owner will release to the Contractor the balance of monies owing, provided that the following conditions have been satisfied:

- (a) there are no Builders' Liens filed relating to the Work performed between Substantial Performance and the date when the required Work is performed completely;
- (b) the Contractor has submitted to the Engineer a clearance certificate from the Workers' Compensation Board;
- (c) the Contractor has agreed to, signed, and returned to the Engineer a copy of the final measure.

If, however, the Contractor has failed to sign the measurement certificate within 60 days of when the required Work is performed completely and to provide required documents as listed above, then the Owner shall release final payment fourteen (14) days following the date on which the Contractor meets all these requirements.

- 15.8 No payment made by the Owner under this Contract or partial or entire use or occupancy of the Work by the Owner shall constitute an acceptance of Work or products which are not in accordance with the requirements of the Contract Documents.
- 15.9 All certificates issued by the Engineer shall be to the best of the Engineer's knowledge, information and belief.

#### **GC 16 TAXES AND DUTIES**

- 16.1 The Contractor shall pay all government sales taxes, customs duties and excise taxes with respect to the Contract.
- 16.2 Where a recovery of taxes is applicable to the Contract, the amount recovered shall be the property of the Owner.
- 16.3 The Harmonized Sales Tax is not to be included in unit and lump sum prices.
- 16.4 The Contractor shall indicate on each application for payment as a separate amount the Harmonized Sales Tax applicable to the claim. The amount paid to the Contractor will be based on the amount of the application for payment certified by the Engineer.
- 16.5 Any increase or decrease in costs to the Contractor due to changes in such taxes and duties after the date of the tender shall increase or decrease the Contract Price accordingly.

#### **GC 17 LAWS, NOTICES, PERMITS AND FEES**

- 17.1 The laws of the Place of the work shall govern the Work.
- 17.2 The Contractor shall obtain the permits, licenses and certificates and pay the fees required for the performance of the Work which are in force at the date of tender closing, but this shall not include the obtaining of permanent easements or rights of servitude. A street excavation permit is required for all projects, although there will be no charge for the HRM permit. For projects on Nova Scotia Department of Transportation and Infrastructure Renewal (NSDTIR) roads, pay all fees and deposits required for NSDTIR permits.

- 17.3 The Contractor shall give the required notices and comply with the laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction, which are or become in force during the performance of the Work, and which relate to the Work, to public health, to environment, to fisheries, and to construction safety.
- 17.4 The Contractor shall not be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations and codes relating to the Work. If the Contract Documents are at a variance therewith, or changes which require modification to the Contract Documents are made to the laws, ordinances, rules, regulations or codes by the authorities having jurisdiction subsequent to the date of the tender closing, the Contractor shall notify the Engineer in writing requesting direction immediately such variance or change becomes known. The Engineer will make the changes required to the Contract Documents in accordance with GC 12 - CHANGES IN THE WORK AND EXTRA WORK, and the value of the changes shall be determined in accordance with GC 13 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK AND EXTRA WORK.
- 17.5 If the Contractor fails to notify the Engineer in writing and obtain direction as required in paragraph 17.4 and performs Work knowing it to be contrary to any laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction, the Contractor shall be responsible for and shall correct the violations thereof and shall bear the costs, expenses and damages attributable to failure to comply with the provisions of such laws, ordinances, rules, regulations, codes and orders

#### **GC 18 PATENT RIGHTS AND ROYALTIES**

- 18.1 The Contractor shall pay all royalties and patent licence fees required for the performance of the Contract. The Contractor shall hold the Owner harmless from and against claims, demands, losses, costs, damages, actions suits or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention by the Contractor or anyone for whose acts the Contractor may be liable.
- 18.2 The Owner shall hold the Contractor harmless against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the Contract, the model, plan or design which was supplied to the Contractor as part of the Contract Documents.

#### **GC 19 WORKERS' COMPENSATION INSURANCE**

- 19.1 Prior to commencing the Work, the Contractor shall provide a current clearance letter from the Workmen's Compensation Board and **must** maintain this coverage during the whole term of the contract. HRM will only enter contracts with firms that provide WCB coverage.

- 19.2 WCB Clearance Letters provide clarity as to who is covered and who is not covered for individual firms (e.g. Directors not taking a T4 from the company are excluded from coverage, owners of sole proprietorships and partnerships are excluded from coverage, family members living in the household of a director or partner are excluded from coverage). It will be the responsibility of the Principal Contractor to ensure coverage is in place for their employees and employees of any of their sub-contractors. Individuals not covered by WCB are not permitted on Halifax Regional Municipal property.

## **GC 20 INDEMNIFICATION**

- 20.1 The Contractor shall indemnify and hold harmless the Halifax Regional Municipality, their agents, representatives and employees from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of or resulting from the performance of the Work (hereinafter called "Claims"), provided that any such claim is caused in whole or in part by the negligent act or omission of the Contractor, any Subcontractor, supplier, licensee, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them is liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

## **GC 21 INSURANCE**

- 21.1 Without restricting the generality of Indemnification (20.1) the Contractor will provide and maintain insurance in accordance with the following minimum criteria:
- (a) General Conditions All Insurance
    - (1) The policies will be in the joint names of the Contractor (Named Insured), and the Sub-Contractor(s) having a direct contract with the Contractor as unnamed insured or, if any specifically request, as Named Insureds. The Halifax Regional Municipality (HRM) will be added as an additional insured under this agreement.
    - (2) The policies will be primary to any other coverage with the same terms and conditions held by the named, additional and unnamed insureds.
    - (3) All insurance shall be maintained continuously while this contract is in force.
    - (4) If any Contractor or Subcontractor fails to furnish HRM a certified copy of each policy required to be obtained hereunder or if after furnishing such certified copy of the policy it lapses, is cancelled, or is materially altered, then in every such case HRM, without the obligation to do so, shall obtain and maintain such insurance in the name of such Contractor or Subcontractor. The cost thereof shall be payable by the Contractor or Subcontractor to HRM on demand, and HRM may at its election deduct the cost thereof from any monies which are due or may become due to such Contractor or Subcontractor. All such policies be furnished under this agreement shall be provided to HRM before commencement of work by the party required to provide same, in a form and with an insurer(s) satisfactory to the Owner. Any review of such insurance by the Owner shall not be an acknowledgment that the terms of this agreement have been fulfilled.

- (5) The Contractor and Subcontractors, as applicable, shall be responsible for any deductible amounts under any policies purchased with respect to this Contract.
- (6) Each policy required to be placed by the Contractor or Subcontractor shall state that it cannot be cancelled, lapsed or materially altered without at least 30 days' written notice to the HRM's Risk Manager or designated person.
- (7) All insurance policies required by this Contract shall be in a form and with an insurer satisfactory to HRM. The review by HRM of any insurance policy required by this contract shall in no way relieve the Contractor or Subcontractor of its obligations to provide the insurance referred to in this Contract, nor shall it imply that HRM agrees that the Contractor or Subcontractor has fulfilled its obligations under this Contract.

(b) Commercial General Liability Insurance

This insurance will be subject to limits of not less than Two Million Dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and damages to property including loss of use thereof, and including but not limited to coverage for:

- (1) where a guarantee period is required by the Owner under this Contract, the Contractor shall ensure that Completed Operations coverage, as applicable, shall be in force for the duration of the guarantee period or twelve (12) months, whichever is greater;
- (2) premises and operations liability, including all activities arising out of work performed;
- (3) owner's and contractor's contingent liability with respect to the operations of persons, firms or corporations having a contract for the execution of a part or parts of the Work included in the Contract;
- (4) products and completed operations liability;
- (5) blanket contractual liability;
- (6) cross liability;
- (7) elevator and hoist liability;
- (8) contingent employer's liability;
- (9) personal injury liability;
- (10) liability with respect to non-owned licensed vehicles;

- (11) the Contractor or Subcontractor working with the Contractor shall maintain coverage as noted in this paragraph to cover exposures or risks with respect to liability to owned and non-owned water craft;
- (12) if any part of the Work includes blasting, shoring, excavating, underground work, underpinning, demolition, pile driving or caisson work (none of which will be covered by the owner's insurance) it shall be the obligation of the Contractor to ensure that the trade doing such part of the Work has liability insurance similar to that required by this Contract, but including coverage for risks arising out of such part of the Work. It shall also be the duty and responsibility of the respective Contractor or Subcontractor to provide a Certified Copy of the insurance policy required under this subsection prior to the commencing of such Work. The Owner agrees that any additional cost of such insurance shall be considered as an extra under this Contract.
- (13) at the Owner's option, the following insurance coverage may be purchased and, if the Contractor or Subcontractor knows that exposures or risks involving water or air will be involved in the Work, the Contractor or Subcontractor shall be obligated to notify the Owner of such exposures or risks in sufficient time for the Owner to determine whether such insurance coverage should be purchased:
- (i) liability with respect to owned and non-owned water craft, and non-owned aircraft;
  - (ii) liability with respect to owned aircraft.
- (c) Automobile Liability Insurance

The Contractor and all Subcontractors shall provide automobile liability insurance in respect to owned licensed vehicles subject to limits of not less than Two Million Dollars (\$2,000,000) inclusive.

## **GC 22 PROTECTION OF WORK AND PROPERTY**

- 22.1 The Contractor shall protect the Work and the Owner's property and property adjacent to the place of the Work from damage, and shall be responsible for damage which may arise as the result of operations under the Contract.
- 22.2 Should the Contractor in the performance of this Contract damage the Work, the Owner's property or property adjacent to the Place of the Work, the Contractor shall be responsible for the making good of such damage at the Contractor's expense.

**GC 23 DAMAGES AND MUTUAL RESPONSIBILITY**

- 23.1 If either party to this Contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone for whom the party is responsible by law, then the party suffering damage shall be reimbursed by the other party for such damage. The party reimbursing the other party shall be subrogated to the rights of the other party in respect of such wrongful act or neglect if it be that of a third party.
- 23.2 Claims under this General Condition shall be made in writing to the party liable within reasonable time after the first observance of such damage and may be adjusted by agreement or in the manner set out in GC 8 - DISPUTES.
- 23.3 If the Contractor has caused damage to an Other Contractor on the Work, the Contractor agrees upon due notice to settle with such Other Contractor by agreement or arbitration, if the Other Contractor will so settle. If such Other Contractor sues the Owner on account of damage alleged to have been so sustained, the Owner shall notify the Contractor and may require the Contractor to defend the action at the Contractor's expense. If a final order or judgement against the Owner arises therefrom, the Contractor shall pay or satisfy it and pay the costs incurred by the Owner.
- 23.4 If the Contractor becomes liable to pay or satisfy a final order, judgement or award against the Owner then the Contractor, upon undertaking to indemnify the Owner against any and all liability for costs, shall have the right to appeal in the name of the Owner such final order or judgement to any and all courts of competent jurisdiction.

**GC 24 SECURITY**

- 24.1 The Contractor shall provide to the Owner contract security within 14 days of written notice of contract award.
- 24.2 Such security may be in the form of a certified cheque, an irrevocable letter of credit or a bond as outlined in Section 24.3. If security is in the form of a bond, such shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Nova Scotia and shall be maintained in good standing until the fulfilment of the Contract. The bonds shall be in a form acceptable to the Owner.
- 24.3 For contracts with a value less than \$100,000, bid and contract security is not required. For contracts with a value of \$100,000 to \$250,000, contract security may be in the form of either a bond in the amount of 50% of the total tender price or alternatively, a certified cheque or irrevocable letter of credit in the amount of 15% of the tender price. For contracts with a value greater than \$250,000 but less than \$500,000, contract security may be in the form of a bond in the amount of 50% of the total tender price or alternatively, a certified cheque or letter of credit in the amount of 20% of the tender price. For contracts with a value greater than \$500,000, security will only be accepted in the form of the 50% performance and labour and material bond.
- 24.4 Should it become apparent that the final cost of the project will exceed the total tender price, the Contractor shall arrange to have contract security increased based on the projected Final Contract Price at no additional cost to the Owner.

- 24.5 Upon completion of the work according to these specifications and to the satisfaction of the Engineer, the contract security shall be returned to the tenderer upon deposition of security for the Warranty Period in an amount of 10% of the final contract price for all work under legal guarantee. Such security shall be in a form suitable to the Owner and as specified in Section 24.2 above.

**GC 25 WARRANTY**

- 25.1 The Contractor shall correct promptly, at own expense, defects or deficiencies in the Work which appear prior to and during the period of two years from the date of Substantial Performance of the Work, as set out in the Certificate of Substantial Performance of the Work, or such longer period as may be specified for certain products or Work.
- 25.2 During the period provided in GC 3- ENGINEER paragraph 3.2, the Engineer shall promptly give the Contractor written notice of observed defects and deficiencies. For traffic signal systems, the Engineer shall include a priority rating as per the requirements of 25.2.1.1.

The contractor shall be required to perform to the satisfaction of the Engineer all necessary warranty repairs to such traffic signal system components (traffic control signals and other signals, electrical and electronic equipment and traffic signs) which become defective or damaged due to work completed by the contractor.

For traffic signal systems, the contractor shall be required to provide such warranty emergency service 24 hours per day, each day of the year. Warranty emergency service shall begin immediately upon notification of a defect in any device. The contractor shall be held responsible for any damages to equipment or to the public which may result from or be attributed to any defect in, failure or damage to, any such traffic control device covered by this contract.

Electricians with a minimum International Municipal Signal Association (IMSA) Traffic Signals Level 1 Certification shall be on call for emergency call out. The Service crew must consist of two people, the second of which shall be an apprentice or helper.

25.2.1 Scheduling and Coordination of Traffic Signal System Defects and Deficiencies

25.2.1.1 Schedule, coordinate, and perform the work to the following priorities:

<b>Priority</b>	<b>Response Time</b>	<b>Temporary Repairs Completed</b>	<b>Permanent Repairs Completed</b>
High*	Within 1 hour	Within 1 hour of site arrival	Within 24 hours
Normal**	End of Next Business Day	Within 1 hour of site arrival	Within 48 hours
Low	To be scheduled with the Traffic and Right of Way by the end of next business day	N/A	As scheduled

\* (generally consists of twisted heads, red signal failures and malfunctioning signal equipment)

\*\* (generally consists of RA5 failures, signal failures other than red)

25.2.1.2 HRM is the sole judge and will establish the priority level for all warranty work.

25.2.1.3 The contractor shall notify the Engineer when they arrive on site for any given work.

25.2.1.4 Failure to meet the priority response time shall result in HRM having the work completed by another Contractor. All costs for the repairs will be the responsibility of the Warranty Contractor.

25.2.1.5 Contractor is to provide a single telephone number and fax number, typically a pager/cell phone, where the on-call person can be reached 24 hours per day.

25.3 The Contractor agrees to correct or pay for damage resulting from corrections made under the requirements of paragraph 25.2.

**GC 26 CONTRACTOR'S RESPONSIBILITY AND CONTROL OF WORK**

- 26.1 The Contractor shall have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformance with the Contract Documents. The Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures and for co-ordinating the various parts of the Work under the Contract.
- 26.2 The Contractor shall be responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices as set out in the Occupational Health and Safety Act of the Province of Nova Scotia. Before being permitted access to the site to commence construction, the contractor shall provide the Owner with a written site safety plan. The site safety plan provided shall be a written course of action that, through a pre-job evaluation, identifies and sets out specific actions to be taken to eliminate or control, hazards associated with the work to be performed and to also deal with concerns or hazards that may develop during the course of the project. This plan shall include but not be limited to identification of safety hazards anticipated during the project, solutions to those hazards, safety procedures, identification of designated safety officers and provisions for safe access to the site for HRM staff and consultants. Receipt and review of the safety plan shall be mandatory prior to commencement of work.
- 26.3 The Contractor shall:
- a. comply with all health and safety and environmental legislation in the performance of this contract and to practice the principles of proactive Due Diligence.
  - b. maintain a safe and healthy work environment during the performance of this contract.
  - c. ensure compliance with the provisions of HRM Contractor Safety Management Policy as found on HRM's web site at [www.halifax.ca/procurement](http://www.halifax.ca/procurement) .
- 26.4 The Contractor shall:
- a. comply with all health and safety and environmental legislation and any HRM policy or procedure applied to or applicable to this contract is a condition of the contract.
  - b. permit HRM to audit or inspect my/our health and safety and environmental records during the term of the contract and upon its conclusion and to co-operate fully with any such audit or inspection.
- 26.5 The Contractor shall agree:
- a. that HRM may address contractor safety deficiencies in the following progressive steps:
    - i. The problem will be identified to the Contractor, (site supervisor).
    - ii. The Contractor's head office will be contacted about the problem, orally and followed up in writing.
    - iii. The Contract may, at the discretion of HRM, be suspended or terminated and/or payment withheld by HRM.
    - iv. If required to do so by legislation, HRM will immediately report the problem to the appropriate regulatory authority
  - b. that depending upon the nature and/or seriousness of the deficiency HRM reserves the right to bypass any or all of the steps described in subsection GC 26.3(a)

- 26.6 The Contractor shall acknowledge receipt of a copy of HRM Contractor Safety Management Policy as found on HRM's web site at [www.halifax.ca/procurement](http://www.halifax.ca/procurement) and that the contractor understands and shall undertake to adhere to the terms of this Policy and to co-operate with HRM in its efforts to ensure compliance thereunder.
- 26.7 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and the design and execution of construction methods required in their use. The Contractor shall engage and pay for registered professional engineering personnel, skilled in the appropriate disciplines to perform these functions where required by law or by the Contract Documents and in all cases where such temporary facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 26.8 Notwithstanding the provisions of paragraphs 26.1 and 26.3, or provisions to the contrary elsewhere in the Contract Documents, where such Contract Documents include designs for temporary structural and other temporary facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the Work and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner that the Contractor is responsible for the execution of the Work.
- 26.9 The Contractor shall review the Contract Documents and shall promptly report to the Engineer any error, inconsistency or omission of the Contract Documents. Such review shall be to the best knowledge, information and belief and in making such review the Contractor does not assume any responsibility to the Owner or the Engineer for the accuracy of the review. The Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies or omissions in the Contract Documents which were not discovered. If the Contractor does discover any error, inconsistency or omission in the Contract Documents, Work affected shall not proceed until corrected or missing information is received from the Engineer.
- 26.10 The Contractor shall prepare and update as required a construction schedule indicating the timing of the major activities of the Work. The schedule shall be designed to ensure conformance with the required Contract Time. The schedule shall be submitted to the Engineer for information within a reasonable time from the date of Contract award. The Contractor shall monitor the progress of the Work relative to the schedule and advise the Engineer of any revisions required as the result of delays as provided in GC 4 - DELAYS, indicating the results expected from the resultant change in schedule."

**GC 27 SUPERINTENDENCE**

- 27.1 The Contractor shall employ a competent supervisor and necessary assistants who shall be in attendance at the Place of the Work while Work is being performed.

27.2 The supervisor shall be satisfactory to the Engineer and shall not be changed except for good reason and only then after consultation with the Engineer.

27.3 The supervisor shall represent the Contractor at the Place of the Work and be fully empowered to act for and on behalf of and to bind the Contractor in all matters at the site that pertain to the Contract. Instructions given to the supervisor by the Engineer shall be held to have been given to the Contractor.

Important instructions shall be confirmed to the Contractor in writing; other instructions shall be so confirmed if requested.

27.4 The supervisor shall, if required by the Engineer, be solely employed upon work directly connected with the Contract.

#### **GC 28 LABOUR AND PRODUCTS**

28.1 Unless otherwise stipulated elsewhere in the Contract Documents, the Contractor shall provide and pay for labour, products, tools, construction equipment and machinery, water, heat, lights, power, transportation and other facilities and services necessary for the performance of the Work in accordance with the Contract.

28.2 Products provided shall be new unless otherwise specified in the Contract Documents. Products which are not specified shall be of a quality best suited to the purpose required and their use subject to the approval of the Engineer.

28.3 The Contractor shall maintain good order and discipline among employees engaged on the Work and shall not employ on the Work anyone not skilled in the assigned task.

#### **GC 29 SUBSURFACE CONDITIONS**

29.1 The Contractor shall promptly notify the Engineer in writing if subsurface conditions at the Place of the Work differ significantly from those indicated in the Contract Documents, or a reasonable assumption of probable conditions based thereon.

29.2 After prompt investigation, should the Engineer determine that conditions do differ significantly, the Engineer will issue appropriate instructions for changes in the Work in accordance with GC 12 - CHANGES IN THE WORK AND EXTRA WORK, and the value of the changes shall be determined in accordance with GC 13 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK AND EXTRA WORK.

29.3 The location of existing utilities is approximate only and the best known to the Engineer at the time of Tender call. It shall be the responsibility of the Contractor to check the exact location of all utilities from various owners before starting of the Work. The Contractor is deemed to have included all the costs which may be necessary to protect utilities as required by various owners. No additional cost shall be considered by the Owner which the Contractor may have to bear to protect existing utilities. Notwithstanding the provisions of 29.1 and 29.2 the Owner will not consider payment of extra cost which the Contractor may incur to protect existing utilities.

**GC 30 USE OF THE WORK**

- 30.1 The Contractor shall confine apparatus, storage of products, and operations of employees to limits indicated by laws, ordinances, permits or the Contract Documents and shall not unreasonably encumber the premises with products.
- 30.2 The Contractor shall not load or permit to be loaded any part of the Work with a mass or force that will endanger the safety of the Work.

**GC 31 INSPECTION OF THE WORK**

- 31.1 The Owner and the Engineer or their authorized agents or representatives shall at all times have access to the Work. If parts of the Work are in preparation at locations other than the Place of the Work, the Owner and the Engineer or their authorized agents or representatives shall be given access to such Work whenever it is in progress.
- 31.2 If Work is designated for special tests, inspections or approvals in the Contract Documents, or by the Engineer's instructions, or the laws or ordinances of the Place of the Work, the Contractor shall give the Engineer timely notice requesting inspection. Inspection by the Engineer shall be made promptly. The Contractor shall arrange for inspections by other authorities and shall give the Engineer timely notice of the date and time. Minimum 12 hours notice, by fax, shall be provided to HRM's designated materials, testing and inspection contractor. HRM shall also be copied on any such notices.
- 31.3 If the Contractor covers or permit to be covered any Work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the Contractor shall, if so directed, uncover such Work, have the inspections or tests satisfactorily completed and make good such Work at own expense.
- 31.4 The Engineer may order any part or parts of the Work to be specially examined should the Engineer believe that such Work is not in accordance with the requirements of the Contract Documents. If, upon examination, such Work be found not in accordance with the requirements of the Contract documents, the Contractor shall correct such Work and pay the cost of examination and correction. If such Work be found in accordance with the requirements of the Contract documents, the Owner shall pay the cost of examination and replacement.
- 31.5 The Contractor shall furnish promptly the Engineer two (2) copies of certificates and inspection reports relating to the Work.

**GC 32 REJECTED WORK**

- 32.1 Defective work, whether the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the Contractor and whether incorporated in the Work or not, which has been rejected by the Engineer as failing to conform to the Contract Documents shall be removed promptly from the Place of the Work by the Contractor and replaced or re-executed promptly in accordance with the Contract Documents at the Contractor's expense.

- 32.2 Other Contractors' Work destroyed or damaged by such removals or replacements shall be made good promptly at the Contractor's expense.
- 32.3 If in the opinion of the Engineer it is not expedient to correct defective work or work not performed in accordance with the Contract Documents, the Owner may deduct from the monies otherwise due to the Contractor the difference in value between the work as performed and that called for by the Contract Documents, the amount of which will be determined in the first instance by the Engineer.

### **GC 33 PRODUCTS SUPPLIED BY OWNER**

- 33.1 If the Contract provides that products are to be supplied by the Owner, the point of delivery shall be as designated by the Engineer.
- 33.2 The Contractor shall take full responsibility for the care and protection of all products supplied by the Owner from the time of arrival at the designated delivery point until the Work is fully performed.
- 33.3 As soon as the Contractor has been notified that products supplied by the Owner have arrived at the designated delivery point, the Contractor shall inspect, accept, unload and store the products.
- 33.4 The Contractor shall note on the freight or delivery slip any defects or shortages noted at the time of delivery and the Owner shall be notified of shortage or defect promptly.
- 33.5 The Contractor shall, at Substantial Performance of the Work, collect all unused products which were supplied by the Owner and deliver to a place designated by the Engineer. If such products are not collected and returned in good order, their cost shall be deducted from payments otherwise due to the Contractor.

### **GC 34 LIQUIDATED DAMAGES**

- 34.1 Time shall be construed as being of the essence of the Contract.
- 34.2 The date of expiring of the time allowed in accordance with the Contract for Completion Time shall be termed the Date for Total Performance of the Work.
- 34.3 Should the Contractor fail to complete the Works by the date of Total Performance of the Work, the period of time from the Date for Total Performance of the Work to the date when the required Work is performed completely, as determined by the Engineer, shall be termed the Period of Delay.
- 34.4 In the event of there being a Period of Delay, the Contractor shall be liable for and shall pay to the Owner, fees, disbursements and costs incurred by the Owner by reason of there being such Period of Delay. In view of the difficulty of ascertaining the losses which the Owner may suffer by reason of delay in the performance of said Works, it is hereby agreed upon, fixed and determined by the Owner and Contractor that the liquidated damages the Owner will suffer by reason of said delay is the amount included in the Tender Form and not by way of penalty. The Owner may deduct the amount of such liquidated damages from any monies payable to the

Contractor under the Contract or recover from the Contractor. If no sum is specified in the Tender Form by way of liquidated damages, the general rule as to damages shall apply.

### **GC 35 HOURS AND DAYS OF WORK**

- 35.1 Normal working days shall be all days other than Saturdays, Sundays, and Holidays observed at the place of work. Working hours shall be governed by applicable noise bylaws and regulations. Normal HRM staff working hours shall consist of eight (8) hours between 8:00 a.m. and 5:00 p.m., including a one hour lunch break.
- 35.2 If the Contractor wishes to work outside normal staff working hours and days of work, permission shall be obtained from the Engineer. Further, the Contractor shall be responsible for compensating the Owner for all costs associated with working outside the normal hours and days of work.
- 35.3 The Engineer may require the Contractor to perform Work outside the normal hours and days of work at no additional cost to the Contract.
- 35.4 Notwithstanding the above, all contractors are advised that no work under this contract shall be performed on Remembrance Day, November 11.
- 35.5 Notwithstanding the above, all contractors are advised that work under this contract shall be limited on the first day of school on those streets abutting school properties and on election days on those streets abutting polling stations.

### **GC 36 LAND**

- 36.1 The Owner shall provide the lands upon which the Work is to be constructed, rights-of-way for access, easements, and such other lands which are designated for the use of the Contractor.
- 36.2 If the Contractor deems it advisable to acquire the right or rights to use, enjoy or occupy additional land or lands in order to facilitate the execution of the Works, the Contractor shall obtain such right or rights at own expense and without liability to the Owner

### **GC 37 ORDER TO START WORK**

- 37.1 No Work shall be started nor materials or equipment moved to the Place of the Work until after receipt by the Contractor of the order to start Work. The Work shall commence within the time indicated on the order to start Work unless otherwise agreed in writing. Failure of the Contractor to start the Work within the time indicated shall give the Owner the right to cancel the Contract.

### **GC 38 SETTING OUT THE WORK**

- 38.1 Unless otherwise specified, the Contractor is responsible to develop and make all detail surveys required for the laying out of the various work components with the assistance of available information as supplied by the Owner.

- 38.2 The Contractor shall carefully preserve bench mark reference points and stakes and in case of willful or careless destruction, the Contractor shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

#### **GC 39 LOCAL OFFICE AND TELEPHONE NUMBERS**

- 39.1 For designated projects the successful Bidder shall be required to maintain a site office which shall be staffed during normal working hours.
- 39.2 The Contractor shall provide the Engineer with the names and telephone numbers of two (2) representatives in the Halifax Metro Area of which at least one (1) will be available after hours, including weekends and holidays. This person shall be responsible to take remedial action identified by the Owner.

#### **GC 40 TIME FOR COMPLETION**

- 40.1 The required Work shall be performed completely within the time stated in the Form of Agreement.
- 40.2 If the Contractor requests any extensions of time for completion of the Works to do extra Work, strikes, lockouts, fires, insurrection, Acts of God, or delay in delivery of equipment, or by any act of the Owner, or from such other cause for which the Contractor cannot reasonably be held responsible, the Contractor shall give notice in writing to the Engineer within five (5) days after any such delay has first arisen, stating the reason and requesting a stated extension of time, and in such event the Engineer shall determine what extension of time, if any, shall be allowed the Contractor.
- 40.3 The Contractor will not have, or make any claim or demand or bring any action, suit or petition, against the Owner for any damage sustained by reason of any delay or delays from whatever cause arising in the progress of the Works. This provision shall in no wise be affected in the event of the Engineer's exercising discretion to allow an extension or extensions of time.

#### **GC 41 VENDOR PERFORMANCE EVALUATION**

41. The Contractor will be evaluated in its performance during the Contract. During construction, if performance concerns arise, a meeting or meetings may take place to discuss and resolve issues.

A Vendor Performance Evaluation form will be completed by the Project Manager at the completion of the Contract. A copy of the complete form will be provided to the Contractor by HRM.

Should the Contractor be at variance with the evaluation of its performance, the Contractor, within 14 days of receipt of the Vendor Performance Evaluation form, shall give notice in writing to the Manager of Procurement and set out the terms of the variance.

If, in the opinion of HRM, performance ratings indicated a meeting between the Contractor and HRM are warranted, HRM will invite the Contractor to meet and discuss the performance concerns. These discussions shall focus on specific issues and the outcomes will be summarized

in a confirming letter. The Contractor may be invited to respond by letter, as to the measures it proposes to make, to correct or mitigate the concerns. Information in the evaluation may be used in future tender evaluations as an award recommendation.

\*\*\*\* End 00 72 45 \*\*\*\*