

810-2006 ADDENDUM 3

NEWPCC – SUPPLY AND DELIVERY OF CIRCULAR PRIMARY CLARIFIER EQUIPMENT

URGENT

PLEASE FORWARD THIS DOCUMENT TO WHOEVER IS IN POSSESSION OF THE BID OPPORTUNITY

ISSUED: January 30, 2007
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THIS ADDENDUM SHALL BE INCORPORATED INTO THE BID OPPORTUNITY AND SHALL FORM A PART OF THE CONTRACT DOCUMENTS

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Please note the following and attached changes, corrections, additions, deletions, information and/or instructions in connection with the Bid Opportunity, and be governed accordingly. Failure to acknowledge receipt of this Addendum in Paragraph 10 of Form A: Bid may render your Bid non-responsive.

PART B – BIDDING PROCEDURES

Revise: B2.1 to read: The Submission deadline is 4:00p.m. Winnipeg time, February 6, 2007.

PART C – GENERAL CONDITIONS

Revise: GC 4.02 (2) to read: All materials and equipment to be incorporated in the work shall be new and shall meet or exceed the kind, quality and quantity of same specified in the Contract Documents. If required, the Contractor shall provide at his own expense evidence satisfactory to the Contract Administrator that the foregoing requirements have been met.

Delete: GC 4.03 (5)

Add: GC 5.04 (5) The above is subject to ARTICLE X-WARRANTY.

Revise: GC 6.01 (4) to read: The Contractor is liable to the City for any loss or damage of material, equipment or Plant that is supplied or placed in the care, custody and control of the Contractor by the City for use in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control.

Revise: GC 7.01 (1) to read: The Contractor shall, at his own expense, procure permits, licences and certificates required by law, any ordinances, rules, regulations, codes and orders of the authorities having jurisdiction for the execution of the Work. 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 and to the preservation of the public health. The City will bear any costs or delays or modified performance associated with changes in law, decisions made by public authorities and/or court decisions, or engineering standards (i.e. written industry codes and standards, if mandatory) after the date of contract signature. Where there are two or more laws, ordinances, rules, regulations or codes applicable to the Work, the most restrictive shall apply.

Add: GC 7.02 (5) Contractor will defend and hold City harmless from suits to the extent based on a claim that the manufacturing methods used by Contractor, or the equipment, process or services provided by Contractor hereunder, constitute infringement of any Canadian patent that is in force at the effective date of this Agreement, except as set forth in the following sentence. This indemnification obligation shall not apply to (1) any claim caused by City's unauthorized use or modification, and (2) any claim based on (a) a combination

of Contractor's products and/or services with those supplied by City or a third party, or (b) operation, maintenance or service by, or license or re-sale to, a third party, and (3) damages relating to City's wilful infringement. In addition to Contractor's obligation to defend City, Contractor's obligations, and City's remedies, under this indemnification provision are limited to any one of the following, at the City's election: (i) Contractor shall procure for City the right to use the subject equipment at no additional cost to City, (ii) Contractor shall modify the subject equipment, method or process so that it no longer infringes, (iii) Contractor shall replace the subject equipment, method or process with non-infringing alternatives, or (iv) Contractor shall refund to the City the purchase price paid for the infringing product or service. This indemnification is conditioned on City promptly giving Contractor written notice of any claimed infringement and providing such information and assistance as Contractor requests in the defence of any such suit and shall be subject article to "Limitation of Liability of this agreement.

- Revise: GC 7.04 (1) to read: Except as expressly provided otherwise in these contract documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available to the City thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies available to the City by law.
- Revise: GC 8.02 (7) to read: In case the cost to the City, as certified by the Commissioner, of completing the Work or portion thereof as aforesaid, be less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the City, but if such certified cost of the Work performed by the City is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, then the City shall have a claim against the Contractor for all additional costs of the Work which have been incurred by the City, in addition to the amount of any liquidated damages that the City is entitled to hereunder from the date fixed for the Total Performance of the Work in Contract documents, and the Contractor shall pay the amount of such additional cost of the Work to the City upon Notice from the Commissioner setting out the amount so due. When any particular part of the work is being carried on be the City, by contract of otherwise, under the provisions of the Clause, the Contractor shall continue the remainder of the Work in conformity with the terms and conditions of the Contract, and in such manner as in no way to hinder or interfere with the persons, Other Contractor, Contractors, or workers employed by the City. If the Contractor shall fail or neglect to timely perform any material provision of this agreement, and such failure or neglect continues for a period of ten (10) working days after Contractor's receipt of notice thereof, the City may at its option, without prejudice to any other available remedy, secure the same and deduct the reasonable additional cost thereof from the payments then or thereafter due to the Contractor; provided that if such failure or neglect is not capable of cure within such ten-day period, the cure period shall be extended as necessary to complete such cure, on the condition that Contractor commences a cure within such ten-day period and pursues such cure diligently to completion.
- Add: GC 8.02 (8) If City cancels or suspends its order for any reason other than Contractor's breach, City shall promptly pay Contractor for work performed prior to cancellation or suspension and any other direct costs incurred by Contractor as a result of such cancellation or suspension
- Revise: GC 8.04 (1) to read: Time shall be deemed to be of the essence for this contract. Therefore the parties have agreed to Liquidated Damages for late delivery as stated in The Supplementary Conditions D16.
- Revise: GC 10.01 (1) to read: The Contractor, unless specifically stated otherwise in the Contract Documents, shall, at his sole cost and expense, maintain the Work against any and all defects or deficiencies or otherwise which may arise for a period of one (1) year from the date of the Certificate of Total Performance or 24 months from delivery whichever occurs sooner.
- Revise: GC 10.01 (5) (b) to read: all costs resulting from the need to undertake remedial work during the warranty period as aforesaid, whether by the Contractor, his Sub-contractor or by the City,

as provided herein, shall be borne by the Contractor. In addition, the Contractor shall be liable to the City for all expenses, losses or damages incurred by the City as a result of such defects, deficiencies or otherwise referred to herein or as a result of the Contractor's failure to meet the warranty requirements specified herein, including, but without limiting the generality hereof, all costs of engineering, inspection and testing.

Add: GC 10.01 (9) Contractor's warranty is conditioned on City's (a) operating and maintaining the Equipment in accordance with Contractor's instructions and (b) not being in default of any payment obligation to Contractor. **THE WARRANTIES SET FORTH HEREIN ARE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO ARTICLE SC D 18 OF PART D. SUPPLEMENTARY CONDITIONS. CONTRACTOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.**

PART D – SUPPLEMENTAL CONDITIONS

Revise: D16.2 to read: The amounts specified for liquidated damages in **D16.1** are based on a genuine pre-estimate of the City's losses in the event that the Contractor does not achieve the objectives listed in D16.1, critical stages or Substantial Performance and are the sole and exclusive remedy for late delivery [but not as a penalty].

Add: D17.2 All payments are due within 30 days from the date of invoice approved by the Contract Administrator. Contractor shall charge interest at the rate of 1½% per month on all amounts not paid by the due date.

Add: D19.1 Ownership of Materials. All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Contractor, and all related intellectual property rights, shall remain Contractor's property. Contractor grants City a non-exclusive, non-transferable license to use any such material solely for City's use of the Equipment. City shall not disclose any such material to third parties without Contractor's prior written consent, except as may be required for the City's operation of the NEWPCC.

Add: D19.2 City acknowledges that Contractor is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Equipment and Services provided under the Contract, including any export license requirements. City agrees that such Equipment and Services shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Contractor of its obligations hereunder that compliance with such export laws and regulations be maintained at all time. CITY AGREES TO INDEMNIFY AND HOLD CONTRACTOR HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO THE CITY'S NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.