

ONTARIO ENERGY BOARD

Request for Proposals

For

Economic Regulation of Gas Storage

Request for Proposal No.: RFPOEBRPD2006-0118

Issued: January 4th, 2006

Proposal Submission Deadline: **January 18, 2006 @ 3:00 PM**

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SECTION 1 – INTRODUCTION

1.1 Invitation to Proponents

This Request for Proposal ("RFP") is an invitation from qualified proponents to submit proposals to the Ontario Energy Board (the "Board" or "OEB") to provide expert advice to Board staff on competition issues related to the economic regulation of gas storage in Ontario. The proponents must have previous experience acting as an expert witness on competition issues before regulatory tribunals, preferably on gas storage related matters. The proponent is expected to develop and apply market tests, conduct a jurisdictional review, assist with the type of evidence the Board would require in a hearing, assist in answering interrogatories, testify at the hearing as an expert witness, and write and file a paper on the state of competition in Ontario's gas storage market, as further described in section 2 of this RFP - The Deliverables.

1.2 Type of Contract For Deliverables

The selected proponent will be required to enter into an Agreement with the Board for the provision of the Deliverables in the form attached as Appendix A of this RFP. The term of the Agreement is to be for a five (5) month term commencing upon the execution of the Agreement with an option in favour of the Board to extend the Agreement on the same terms and conditions for an additional term of five (5) months. It is anticipated that the Agreement will be executed on or around February 1, 2006.

1.3 No Guarantee of Volume of Work or Exclusivity of Contract

The Board makes no guarantee of the value or volume of work to be assigned to the successful proponent. The Agreement executed with the successful proponent will not be an exclusive contract for the provision of the described Deliverables. The Board may contract with others for the same or similar Deliverables to those described in this RFP or may obtain the same or similar Deliverables internally.

1.4 Agreement on Internal Trade

Suppliers should note that procurements falling within the scope of Chapter 5 of the Agreement on Internal Trade are subject to that chapter but that the rights and obligations of the parties shall be governed by the specific terms of each particular tender call. For further reference please see the Internal Trade Secretariat website at www.intrasec.mb.ca/.

1.5 Definitions

Unless otherwise specified in this RFP, capitalized words and phrases have the meaning set out in the Form of Agreement.

"Conflict of Interest" has the same meaning as defined in the RFP Appendix A – form of Agreement;

"Days" means calendar days and **"days"** has the same meaning;

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Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

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SECTION 2 - THE DELIVERABLES

2.1 Description of Deliverables

2.1.1 Background

The Ontario Energy Board ("OEB" or "Board") is the regulator of Ontario's natural gas and electricity sectors. The Board also provides advice on energy matters referred to it by the Minister of Energy and the Minister of Natural Resources. On August 1, 2003, with the passage of the *Ontario Energy Board Consumer Protection and Governance Act, 2003*, the Board became a self-financing Crown corporation without share capital. The Board's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes.

The OEB carries out its regulatory functions through oral or written public hearings and other more informal processes such as public consultations as part of these other processes. These provide a forum for individuals, or groups of individuals, who may be affected by the Board's decisions to express their comments and opinions to the Board and to participate meaningfully in the Board's decision-making process.

The natural gas market is changing. On the supply side, conventional supply sources are expected to experience flat to declining production. The anticipated increased reliance on non-conventional supply sources has raised questions about the need for infrastructure within Ontario to meet changing flow patterns as well as the adequacy of the current regulatory treatment of utilities' acquisition of upstream gas supply and their transportation arrangements. On the demand side, the anticipated expansion of gas-fired power generation will affect the extent and type of investment required in gas infrastructure in Ontario and will drive the convergence (financial and operational) of the gas and electricity markets.

In light of these developments, the Board believed that it was time for a deliberate analysis and review of the policy underlying the key structural components of the natural gas regulatory system: rate regulation; storage and transportation; and regulated gas supply. The Board initiated the Natural Gas Forum (the "NGF") as a means of investigating these issues, to get the input of stakeholders and to help the Board develop its policies in these areas. In the Board's view, important incremental changes can and must be made to the structure of natural gas regulation in Ontario. These changes are needed to address the emerging trends in the industry and to fulfil the Board's legislative objectives.

On March 30, 2005, the Board released its NGF report (the "Report"). The Report outlines a regulatory framework for the province's natural gas sector. The Report provides the Board's analysis of current issues and its conclusions to support the long-term evolution of a more efficient natural gas sector.

The Report's conclusions focus on three areas, namely rate regulation, storage and transportation, and the regulated gas supply (or system gas). The relevant conclusion in the Report for this RFP is that the Board decided that it would hold a generic hearing to determine whether it should refrain, in whole or on part, from regulating the rates charged for natural gas storage in Ontario. In conducting this proceeding, the Board will be guided by the objectives set out for it in the *Ontario Energy Board Act* and by the requirements of section 29 of the Act. That is, it will not simply make a determination of whether the market for storage services is

competitive, but a determination of whether storage services (or some part thereof) are subject to competition sufficient to protect the public interest.

In addition, the Board initiated another review, the Natural Gas Electricity Interface Review ("NGEIR") to examine the regulatory treatment of the natural gas infrastructure and services in light of the possibility that Ontario may rely more heavily on gas-fired power generation in the future. Board staff's NGEIR report was released for stakeholder comment on November 21, 2005. The NGEIR report recommends that the Board should consider a generic proceeding to determine whether new services should be offered as a rate to gas-fired power generators (and other qualifying customers).

- In a notice of proceeding (EB-2005-0551), the Board agreed with the recommendations outlined in the NGEIR report, and as a result, will hold a generic hearing to determine whether it should order new rates for the provision of natural gas, transmission, distribution and storage services to gas-fired generators (and other eligible customers) that contain the following: Firm higher deliverability from storage.
- More frequent nominations windows for distribution, storage and transportation.
- Greater operational flexibility in the provision of distribution services.
- Gas storage and distribution as discrete new services.

Furthermore, the Board will determine in this generic hearing whether to refrain, in whole or in part, from exercising its power to regulate the rates charged for the storage of gas in Ontario by considering whether, as a question of fact, the storage of gas in Ontario is subject to competition sufficient to protect the public interest.

2.1.2 Objectives and Deliverables

At the end of April 2006, the Board is expected to hold a generic hearing to determine whether it should refrain, in whole or in part, from regulating the rates charged for the storage of gas in Ontario.

To prepare for this hearing, Board staff need expert advice on whether the gas storage market is competitive sufficient to protect the public interest. This will involve:

- Evaluating the state of competition in Ontario in relation to gas storage by using methodologies generally accepted by Canadian and American competition policy authorities such as the determination of market power, market share and concentration, barriers to entry, and market transparency;
- Filing of a report with a detailed discussion on the market tests used, how these tests were applied, conclusions and a summary of other relevant findings in other jurisdictions. Staff has tentatively scheduled receipt of a complete draft report by March 1, 2006 and a final report due by March 15, 2006;

- Providing responses to information requests from intervenors;
- Testifying at the generic hearing as an expert witness; and
- Providing advice on the type of evidence the Board will need in order to make its decision.

DELIVERABLES:

Methodology

Board staff will need to assess a number of factors to determine whether the market for storage of gas is competitive. These factors (i.e., market tests) will need to be developed and applied to evaluate the state of competition in the Ontario gas storage market.

The methodology could include the following assessment:

1. Market concentration (i.e., market power)
 - a. Products/services that are close substitutes for storage services
 - i. Functionally interchangeable and currently exist in marketplace (e.g., line packing, LNG imports)
 - ii. Price elasticity
 - b. Geographic Market
 - i. Can Michigan storage services be viewed as a substitute for in-Ontario storage services?
 1. Are cross-border sales limited by the lack of available pipeline capacity? Crucial entry points to in-Ontario gas system?
 2. Price comparison?
 3. Are cross-border sales limited by complex transportation and operational arrangements, and currency risk?
 - c. Structural characteristics of the storage market (i.e., market shares of storage providers)
 - i. Do gas utilities dominate (individually and/or collectively) the province's storage assets?
 - ii. Do gas utilities (individually and/or collectively) largely control storage services in the marketplace?
 - iii. Do gas utilities (individually and/or collectively) control the access (i.e., transmission – Dawn-to-Parkway) to gas storage assets and services?
 - iv. Does excess capacity exist in the gas storage market (e.g., do gas utilities have the potential to expand storage space in existing pools)?
 - d. Barriers to entry (such as large capital costs, access to transportation)
 - e. Vertical integration

- i. Do gas utilities have significant vertical integration between storage space (asset), storage services, transmission pipeline capacity, distribution pipeline capacity and bundled retail services?
- ii. If so, is there equal access to transmission and storage assets/services for customers and marketers? Equal access to transmission for non-utility storage providers? Does a robust secondary market exist in transportation capacity?
- iii. Does access to upstream pipeline capacity impact access to storage assets and services? Do gas utilities (individually and/or collectively) hold the majority of long-term upstream contracts (e.g., does “crowding out” access of long-term upstream contracts for new entrants occur)?

f. Market Transparency

- i. Is information made available at the right frequency (e.g., system limitations re deliverability)?
- ii. Is information made available on operational storage data (e.g., transparent operation of the storage market)?
- iii. Do gas utilities (and non-utility storage providers) have clearly defined procedures so customers can access the available storage services (e.g., open season, criteria for evaluating bids, the amount of new and/or existing available space, methods for allocating space among competing bids and re-allocating space should a successful bidder withdraw)? What about transmission to and from storage facilities?
- iv. Do certain contract terms impede competition?
- v. Does price transparency exist on regulated services?

Staff will require advice on the reasonableness and completeness of these factors. In addition, staff will also require advice on how these tests can be practically applied to the Ontario gas storage market, and a detailed report outlining the proponent's findings on each aspect of the methodology described above.

Research

The successful proponent will need to review other jurisdictions that have conducted market tests to assess market power in relevant geographic markets and the structural characteristics of the storage market (i.e., market shares of storage providers) along with the associated rationales for using those market tests. In particular, information on how the Federal Energy Regulatory Commission conducts and evaluates the state of competition in gas storage markets in the United States will be required.

In addition, information on hybrid markets (i.e., where some services within the gas storage market are deemed to be competitive while others are not competitive) and their implementation will also be required.

Furthermore, advice on how other jurisdictions developed a transition plan when their storage market was deemed competitive will be required. For example:

1. Did the regulator ensure that all customers received standard (or base) storage services?; and

2. Did the regulator develop transitional rates to go from cost of service rates to market-base rates? If yes, what was the length of time, etc.?

Regulatory Process

The successful proponent will be required to file a report that will contain detailed discussions on the market tests used, how these tests were applied, the conclusions regarding the competitiveness of storage in Ontario, and a summary of relevant findings in other jurisdictions.

The successful proponent will be responsible to provide responses to information requests from intervenors in this proceeding. The successful candidate will also assist staff in drafting information requests to parties that have led evidence on the competitiveness of storage in Ontario, and will provide advice on the type of evidence the Board will need in order to render its decision.

The successful proponent will be required to testify as an expert witness to the report, and will be subject to cross-examination from all parties participating in the proceeding.

It is anticipated that the report will be due on or before March 15, 2006 and that the hearing will be conducted in late March or April 2006.

[End of Part 2]

SECTION 3 - EVALUATION OF PROPOSALS

3.1 Submission Requirements

To show evidence of the rated criteria, please discuss in your submission the following topics:

1. A proposed approach, work plan, and schedule for this assignment. The plan and schedule are to state the estimated work effort by proposed consultant by task, with sub-totals by consultant and task, and provide start and completion dates for each task. The work plan should also include the provision of, and timing for, a draft report to the Board before the final report is submitted;
2. Current resumes for the proposed consultant(s), including at least three references (with full contact information) for each proposed consultant;
3. Highlights of experience and qualifications of the proponent's firm and proposed consultant(s) that are directly relevant to this assignment;
4. A brief summary of the other resources and capabilities of the proponent's firm that are directly relevant to, and available for, this assignment;
5. Per diem rates (based on a 7.5 hour work day) or hourly rates for the proposed consultant(s); and
6. Total maximum price for the completion of the assignment, excluding GST.

The Board will conduct the evaluation of proposals in the following four (4) stages:

3.1.1 Stage I

A review to determine if the submitted proposal complies with all the Mandatory requirements will be conducted. Proposals that do not comply with the Mandatory requirements may, subject to the reserved rights of the Board, be disqualified and not evaluated further.

3.1.2 Stage II

This stage will consist of a scoring by the Board of each qualified proposal on the basis of the rated criteria as defined in section 3.3 of this RFP.

Certain proponents may be invited to an oral interview process (to be done by teleconference).

3.1.3 Stage III

If oral interviews are conducted for certain proponents, this stage will consist of the oral interview process (to be conducted by teleconference). Proponents should be prepared to discuss their approach to the assignment (as described in their written proposal) as well as present the proposed individuals for the assignment.

3.1.4 Stage IV

This stage will consist of a scoring of the pricing submitted. The evaluation of price/cost shall be undertaken after the evaluation of mandatory requirements and any rated requirements has been completed.

3.1.5 At the Conclusion of Stage IV

There will be a selected proponent chosen based on the rated criteria and price. The selected proponent will be the proponent with the highest score. Subject to satisfactory reference checks

and the express and implied reserved rights of the Board, the selected proponent may be invited to enter into an Agreement in accordance with section 4 of this RFP.

3.2 Stage I - Mandatory Requirements

3.2.1 Form of Offer (Appendix B)

Each proposal must include a Form of Offer (Appendix B) completed and signed by the proponent.

(a) Conflict of Interest

In addition to the other information and representations made by each proponent in the Form of Offer, each proponent must declare whether it has an actual or potential Conflict of Interest.

If, at the sole and absolute discretion of the Board, the proponent is found to be in a Conflict of Interest, the Board may, in addition to any other remedies available at law or in equity, disqualify the proposal submitted by the proponent.

The proponent, by submitting the proposal, warrants that to its best knowledge and belief no actual or potential Conflict of Interest exists with respect to the submission of the proposal or performance of the contemplated contract other than those disclosed in the Form of Offer. Where the Board discovers a proponent's failure to disclose all actual or potential Conflicts of Interest, the Board may disqualify the proponent or terminate any contract awarded to that proponent pursuant to this procurement process.

(b) General

The Board, in addition to any other remedies it may have in law or in equity, shall have the right to rescind any Contract awarded to a proponent in the event that the Board, in its sole discretion, determines that the proponent made a misrepresentation or submitted any inaccurate or incomplete information in the Form of Offer.

Other than inserting the information requested and signing the Form of Offer, a proponent may not make any changes to the Form of Offer or qualify in its proposal the acknowledgements contained in the Form of Offer. Proposals containing any such qualifications, whether on the face of the Form of Offer or elsewhere in a proposal, may be disqualified. In instances where the proposal is not disqualified notwithstanding a discrepancy or inconsistency between the Form of Offer and a proponent's proposal, the Form of Offer will prevail.

3.2.2 Rate Bid Form (Appendix C)

Each proponent must include this form completed according to the instructions contained in the form as well as those instructions set out below:

- (a) rates shall be provided in Canadian Funds, inclusive of all applicable duties and taxes (with PST itemized separately) and excluding Goods and Services Tax;
- (b) rates quoted by the proponent shall be all inclusive and shall include all labour and materials, travel and carriage costs, insurance costs and all other overhead including but not limited to any fees or other charges required by law.;

3.2.3 Tax Compliance Declaration Form (Appendix D)

The Board expects all suppliers to pay their provincial taxes on a timely basis. In this regard, proponents are advised that any contract with the Ontario Energy Board will require a declaration from the successful proponent that the proponent's provincial taxes are in good standing.

Each proponent must include a Tax Compliance Declaration Form, completed by the proponent according to the instructions contained in that form.

The Board will forward to the Ministry of Finance a copy of the selected proponent's signed Tax Compliance Declaration Form for verification. By signing this form, the proponent is consenting to the release of such information from the Board to the Ministry of Finance and from the Ministry of Finance to the Board for this purpose.

Proponents may direct enquiries regarding the Tax Compliance Declaration Form to the Board's Contact.

3.2.4 Reference Form (Appendix F)

Each proposal must include a Reference Form completed by the proponent according to the instructions contained in that form. The references should be from persons for whom the proponent has successfully provided similar goods and services to those described under Deliverables within the past three (3) years. The name and telephone number of a contact person for each reference and a brief outline of the nature of the goods and services provided should be included.

The Board, in its sole discretion, may confirm the proponent's experience and/or ability to provide the Deliverables required and described in its proposal by checking the proponent's references.

3.3 Stage II – Evaluation of Rated Criteria

3.3.1 Rated Criteria

The following is an overview of the categories and weighting for the Rated Criteria of the RFP:

I	Highlights of experience and qualifications of the respondent's firm and proposed members of the team working on this assignment Current biographies/resumes for the members of the team working on this assignment Demonstrated credentials, track record, credibility and success in providing services of this type Demonstrated experience in providing services in matters of this type References	65 POINTS
II	A brief summary of the other resources and capabilities of the respondent's firm that are directly relevant to, and available for, this assignment The likelihood of conflicts of interest	10 POINTS
III	Pricing--hourly rates and/or per diem rates (based on a 7.5 hour work day) for each member of the team working on this assignment and overall cost	25 POINTS
	TOTAL	100 POINTS

3.4 Stage IV - Evaluation of Pricing

3.4.1 Pricing

Total Points

25 points

Pricing will be scored based on a relative pricing formula.

Each proponent will receive a percentage of the total possible points allocated to price for the particular category it has bid on by dividing that proponent's price for that category into the lowest bid price in that category. For example, if the lowest bid price for a particular category is \$120.00, that proponent receives 100% of the possible points for that category ($120/120 = 100\%$), a proponent who bids \$150.00 receives 80% of the possible points for that category ($120/150 = 80\%$) and a proponent who bids \$240.00 receives 50% of the possible points for that category ($120/240 = 50\%$).

Lowest rate

----- x
2nd lowest rates

Total available points = Score for proposal with 2nd lowest rate

Lowest rate

----- x

Total available points = Score for proposal with 3rd lowest rate

3rd lowest rates

etc...for each proposal

3.5 Cumulative Score and Selection of Preferred Proponent

There will be a proponent chosen based on the rated criteria and price for that assignment. The selected vendor will be the proponent with the highest score for the assignment. Subject to satisfactory reference checks and the express and implied reserved rights of the Board, the selected proponent may be invited to enter into an Agreement in accordance with section 4 of this RFP.

[End of Part 3]

SECTION 4 - TERMS AND CONDITIONS OF THE RFP PROCESS

4.1 General Information and Instructions

4.1.1 Timetable

The following is the schedule for this RFP:

- Issue Date of RFP January 4th, 2006
- Proponent's Deadline for Questions January 11th, 2006 @ 2:00 PM
- OEB response to Questions from Vendors January 12th, 2006
- Deadline for Issuing Addenda January 13th, 2006
- Proposal Submission Deadline January 18th, 2006 @ 3:00PM
- Vendor Interviews (optional) TBA

Period for which proposals are irrevocable after proposal submission deadline is 120 days.

At any time prior to the proposal submission deadline, the RFP timetable is tentative only and may be changed by the Board in its sole discretion.

4.1.2 Proponents to Follow Instructions

Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of the RFP where that request was made.

4.1.3 Proposals in English

All submissions are to be in English only.

4.1.4 Proponents Shall Bear Their Own Costs

The proponent shall bear all costs associated with or incurred in the preparation and presentation of its proposal including, if applicable, costs incurred for interviews or demonstrations.

4.2 COMMUNICATION AFTER ISSUANCE OF RFP

4.2.1 Proponents to Review RFP

Proponents shall promptly examine all of the documents comprising this RFP and

- (a) shall report any errors, omissions or ambiguities; and
- (b) may direct questions or seek additional information

in writing, by email on or before the Deadline for Questions by Proponents, to the OEB Contact listed in Section 4.2.2 of this RFP. No such communications are to be directed to anyone other than OEB Contact. OEB is under no obligation to provide additional information but may do so at its sole discretion.

It is the responsibility of the Proponent to seek clarification from the OEB Contact on any matter it considers to be unclear. OEB shall not be responsible for any misunderstanding on the part of the Proponent concerning the RFP or its process.

4.2.2 Submission of Questions

Proponents shall direct all submission questions pertaining to this RFP, in writing, by email only, on or before the Deadline for Questions by Proponents set out at Section 4.1.1 of this RFP, to the OEB Contact:

Tom Kelly
Procurement Specialist
Email: tom.kelly@oeb.gov.on.ca

4.2.3 All New Information to Proponents by way of Addenda

This RFP may only be amended by an addendum, in accordance with this section.

If OEB, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all Proponents by addenda. Each addendum shall form an integral part of this RFP.

Such addenda may contain important information including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by OEB. In the space provided in the Form of Offer, Proponents shall confirm their receipt of all addenda by setting out the number of each addendum in the space provided in the Form of Offer. **(i.e., if three (3) addenda were issued by OEB, the Proponent should insert “Addenda 1, 2, 3” in the space provided in the Form of Offer).**

4.2.4 Post-Deadline Addenda and Extension of Proposal Submission Deadline

If any addendum is issued after the Deadline for Issuing Addenda, OEB may at its discretion extend the Proposal Submission Deadline for a reasonable amount of time.

4.3 Submission of Proposals

4.3.1 Proposals Submitted Only in Prescribed Manner

Proposals must be submitted by the following method:

- (a) a proponent must submit one (1) original copy (prominently marked “Original Copy”) and **five (5)** copies of its proposal in a sealed package. On the outside of the sealed package, using the Proposal Return Label attached at Appendix E, proposals are to be prominently marked with the RFP title and number (see RFP cover), with the full legal name and return address of the proponent, and with the Proposal Submission Deadline date and time;

- (b) Proposals must be submitted to the following address and to the attention of the following person:

**Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4**

Attention: Tom Kelly - Procurement

4.3.2 Proposals Must Be Submitted On Time at Prescribed Location

Proposals must be submitted at the location set out above on or before the Proposal Submission Deadline. Proposals submitted after this point in time will be deemed late, disqualified and returned to the proponent. For the purpose of calculating time, the Board clock at the prescribed location for submission shall govern.

4.3.3 Proposal Irrevocable after Proposal Submission Deadline

Proposals shall remain irrevocable in the form submitted by the proponent for a period of one hundred and twenty (120) days running from the moment that the Proposal Submission Deadline has lapsed.

4.3.4 Board May Seek Clarification and Incorporate Response into Proposal

The Board reserves the right to seek clarification and supplementary information relating to the clarification from proponents after the Proposal Submission Deadline. The response received by the Board from a proponent shall, if accepted by the Board, form an integral part of that proponent's proposal. The Board reserves the right to interview any or all proponents to obtain information about or clarification of their proposals. In the event that the Board receives information at any stage of the evaluation process which results in earlier information provided by the proponent being deemed by the Board to be inaccurate, incomplete or misleading, the Board reserves the right to revisit the proponents compliance with the Mandatory Requirements and/or adjust the scoring of Rated Criteria.

4.3.5 RFP Incorporated into Proposal

All of the provisions of this RFP are deemed to be accepted by each proponent and incorporated into each proponent's proposal.

4.3.6 No Incorporation by Reference by Proponent

The entire content of the proponent's proposal should be submitted in a fixed form and the content of web sites or other external documents referred to in the proponent's proposal will not be considered to form part of its proposal.

4.3.7 Proposal Property of the Board

Except where expressly set out to the contrary in this RFP or in the proponent's proposal, the proposal and any accompanying documentation submitted by a proponent shall become the property of the Board and shall not be returned.

4.4 Execution Of Agreement, Notification And Debriefing

4.4.1 Selection of Proponent

The Board anticipates that the Board will select a proponent within sixty (60) days of the Proposal Submission Deadline. Notice of selection by the Board to the selected proponent will be in writing. The selected proponent shall execute the Agreement in the form attached as Appendix A and satisfy any other applicable conditions of this RFP within five (5) days of notice of selection. This provision is solely to the benefit of the Board and may be waived by the Board at its sole discretion.

4.4.2 Failure to Enter Into Agreement

In addition to all of the Board's other remedies, if a selected proponent(s) fails to execute the Agreement or satisfy any other applicable conditions within five (5) days of notice of selection, the Board may, in its sole and absolute discretion and without incurring any liability, rescind the selection of that proponent and proceed with the selection of another proponent.

4.4.3 Notification to Other Proponents of Outcome of Procurement Process

Once the successful proponent and the Board execute an Agreement, the other proponents will be notified by the Board in writing of the outcome of the procurement process and the award of the Contract to the successful proponent.

4.4.4 Debriefing

Proponents may request a debriefing after receipt of a notification of award. All requests must be in writing to the Board Contact and must be made within thirty (30) days of notification of award. The intent of the debriefing information session is to aid the proponent in presenting a better proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

4.5 Prohibited Communications, Confidential Information and FIPPA

4.5.1 Prohibited Proponent Communications

The proponent shall not engage in any Conflict of Interest communications and should take note of the Conflict of Interest declaration requirements in the RFP.

4.5.2 Proponent Not to Communicate With Media

A proponent may not at any time directly or indirectly communicate with the media in relation to this RFP or any contract awarded pursuant to this RFP without first obtaining the written permission of the Board Contact.

4.5.3 Confidential Information of Board

All information provided by or obtained from the Board in any form in connection with this RFP either before and after the issuance of this RFP

- (a) is the sole property of the Board and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent Contract;
- (c) must not be disclosed without prior written authorization from the Board; and

- (d) shall be returned by the proponents to the Board immediately upon the request of the Board.

4.5.4 Freedom of Information and Protection of Privacy Act

Information provided by a proponent may be released in accordance with the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, as amended. A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Board. The confidentiality of such information will be maintained by the Board, except where an order by the Information and Privacy Commission or a court requires the Board to do otherwise. Proponents are advised that their proposals will, as necessary, be disclosed on a confidential basis, to the Board's advisers retained for the purpose of evaluating or participating in the evaluation of this proposal.

4.6 Reserved Rights and Governing Law

4.6.1 Reserved Rights of the Board

The Board reserves the right to:

- (a) make public the names of any or all proponents;
- (b) request written clarification or the submission of supplementary written information in relation to the clarification request from any proponent and incorporate a proponent's response to that request for clarification into the proponent's proposal;
- (c) adjust a proponent's scoring or reject a proponent's proposal on the basis of
 - i. a financial analysis determining the actual cost of the proposal when considering factors including quality, service, price and transition costs arising from the replacement of existing goods, services, practices, methodologies and infrastructure (howsoever originally established);
 - ii. information provided by references;
 - iii. the proponent's past performance on previous contracts awarded by the Government of Ontario ;
 - iv. the information provided by a proponent pursuant to the Board exercising its clarification rights under this RFP process ; or
 - v. other relevant information that arises during this RFP process;
- (d) waive formalities and accept proposals which substantially comply with the requirements of this RFP;
- (e) verify with any proponent or with a third party any information set out in a proposal;
- (f) check references other than those provided by any proponent;
- (g) disqualify any proponent whose proposal contains misrepresentations or any other inaccurate or misleading information;
- (h) disqualify any proponent or the proposal of any proponent who has engaged in conduct prohibited by this RFP;

- (i) make changes, including substantial changes, to this RFP provided that those changes are issued by way of addenda in the manner set out in this RFP;
- (j) select any proponent other than the proponent whose proposal reflects the lowest cost to the Board or the highest overall score;
- (k) cancel this RFP process at any stage;
- (l) cancel this RFP process at any stage and issue a new RFP for the same or similar deliverables;
- (m) accept any proposal in whole or in part;
- (n) discuss with any proponent different or additional terms to those contemplated in this RFP or in any proponent's proposal;
- (o) if a single proposal is received, reject the proposal of the sole proponent and cancel this RFP process or enter into direct negotiations with the sole proponent; or,
- (p) reject any or all proposals in its absolute discretion;

and these reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances and the Board shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any proponent or any third party resulting from the Board exercising any of its express or implied rights under this RFP.

By submitting its proposal, the proponent authorizes the collection by the Board of the information set out under (e) and (f) in the manner contemplated in those subparagraphs.

4.6.2 Governing Law of RFP Process

This RFP process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

[End of Part 4]

APPENDIX A – Form of Agreement

**Ontario Energy
Board**

P.O. Box 2319
2300 Yonge Street
27th. Floor
Toronto ON M4P 1E4
Telephone: (416) 481-1967
Facsimile: (416) 440-7656

**Commission de l'Énergie
de l'Ontario**

C.P. 2319
2300, rue Yonge
27e étage
Toronto ON M4P 1E4
Téléphone: (416) 481-1967
Télécopieur: (416) 440-7656



Contract No. •

THIS AGREEMENT made as of the • day of •, 2006.

BETWEEN:

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario M4P 1E4

(the “Board”)

- and -

[•]

(the “Contractor”)

(each a “Party” and collectively the “Parties”)

WHEREAS the Board wants to have certain Deliverables performed and provided, as set out in this Agreement;

AND WHEREAS the Contractor is engaged in the business of performing and providing the types of Deliverables that are wanted by the Board;

AND WHEREAS the Contractor represents that the Contractor has the skill and experience to perform and provide those Deliverables;

AND WHEREAS the Board wishes to retain the Contractor to perform and provide the Deliverables as set out in this Agreement;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual promises and covenants contained in it, the Board and the Contractor agree as follows:

1.0 Definitions and Interpretation

1.1 When used in this Agreement, the following words or expressions have the meaning ascribed to them below unless there is something in the context inconsistent therewith:

“Agreement” means (a) this agreement and all of the Schedules, (b) the RFP, including any addenda, and (c) any amendments executed in accordance with the terms of this agreement;

“Agreement Costs” means the price to be charged for the Deliverables as set out in Schedule B, representing the full amount chargeable by the Contractor for the performance and provision of the Deliverables, including (a) applicable duties and taxes, excluding Goods and Services Tax, (b) all labour and material costs, (c) all travel and carriage costs, (d) all insurance costs, and (e) all other overhead including any fees or other charges required by law;

“Background Intellectual Property” means Intellectual Property owned by the Contractor prior to its performance under this Agreement or created by the Contractor during the Term independently of the performance of its obligations under this Agreement;

“Board Confidential Information” means all information of the Board, Her Majesty the Queen in right of Ontario and her Ministers and appointees, or the Ontario Public Service that is of a confidential nature, including all confidential information in the custody or control of the Board, regardless of whether it is identified as confidential or not, and whether recorded or not, however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Contractor in connection with this Agreement. For greater certainty, Board Confidential Information (a) includes (i) all new information derived at any time from any such information whether created by the Board, the Contractor or a third party and (ii) all information that the Board is obliged, or has the discretion, not to disclose under provincial or federal legislation; but (b) excludes information that (i) is or becomes generally available to the public without fault or breach on the part of the Contractor of any duty of confidentiality owed by the Contractor to the Board or any third party, (ii) the Contractor can demonstrate to have been rightfully obtained by the Contractor, without any obligation of confidence, from a third party who had the right to transfer or disclose it to the Contractor free of any obligation of confidence, (iii) the Contractor can demonstrate to have been rightfully known to or in the possession of the Contractor at the time of disclosure, free of any obligation of confidence when disclosed, or (iv) independently developed by the Contractor;

“Board Representative” means: [●], or such other person as may be substituted by the Board as its representative upon notice to the Contractor;

“Conflict of Interest” includes any situation or circumstance where, in relation to the performance of its obligations under this Agreement, the Contractor’s other commitments, relationships or financial interests (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its

independent judgement, or (b) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under this Agreement;

“Contractor Representative” means [●];

“Deliverables” means everything performed, developed for or provided to the Board in the course of performing under this Agreement or agreed to be provided to the Board under this Agreement, by the Contractor as further described but not limited by Schedule A, and all tasks and services relating thereto including any and all Intellectual Property and any and all concepts, techniques, ideas, information, documentation and other materials, however recorded, developed or provided;

“Derivative Work” means a work based on the Background Intellectual Property, including an adaptation, modification, translation, expansion, condensation or transformation, that if prepared without authorization, would constitute copyright infringement or infringement of any other Intellectual Property right;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended;

“Indemnified Parties” means the Board, Her Majesty the Queen in right of Ontario and her Ministers and appointees, and their respective employees;

“Intellectual Property” means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, of any foreign country or of any political subdivision of any country, whether by legislation, by common law or at equity;

“New Intellectual Property” means any Intellectual Property created by the Contractor in the course of the performance of its obligations under this Agreement;

“Proposal” means the proposal dated [●] submitted by the Contractor in response to the RFP;

“RFP” means the Request for Proposals dated [●] for [● *name of project*], reference number [●];

“Schedules” means the Schedules to this Agreement as listed in section 1.4;

“Term” has the meaning given to it in section 7.1 and, where applicable, has the extended meaning referred to in section 7.3; and

“Third Party Intellectual Property” means any Intellectual Property owned by a party other than the Board, Her Majesty the Queen in right of Ontario or the Contractor.

- 1.2 The division of this Agreement into Articles, sections, paragraphs or other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

- 1.3 The words “herein”, “hereof”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular article, section, paragraph or other subdivision of this Agreement.
- 1.4 The Schedules to this Agreement are:
- (a) Schedule A: Deliverables;
 - (b) Schedule B: Agreement Costs;
 - (c) Schedule C: Board’s Assistance; and
 - (d) Schedule D: Proposal.**
- 1.5 Where any conflict or inconsistency appears between a provision of any of the documents listed below which form part of this Agreement and a provision in another of the documents, the provision in the first listed document shall govern:
- (a) this Agreement;
 - (b) Schedule A;
 - (c) Schedule B;
 - (d) the RFP;
 - (e) Schedule C; and
 - (f) Schedule D.
- 1.6 If any provision of this Agreement or portion thereof or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, (a) the remainder of this Agreement or the application of such provisions or portion thereof to any other person or circumstances shall not be affected thereby, and (b) the parties hereto will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 1.7 All dollar amounts are expressed in Canadian dollars.
- 1.8 In this Agreement, unless the context otherwise requires, (a) words importing the singular include the plural and vice versa; (b) words importing a gender include any gender; (c) a reference to a person includes any natural person, firm, partnership, corporation, association, joint venture, other private or public body corporate, government, government agency or body, regulatory agency or body or other body politic or collegiate; (d) the expression “including” means including without limitation, and the expressions “include”, “includes” and “included” shall be interpreted accordingly; and (e) a reference to the Board includes a reference to the employees of the Board.
- 1.9 Notwithstanding anything else in this Agreement, any express or implied reference to the Board providing an indemnity or any other form of indebtedness or contingent liability (other than the obligation to make payment as set out in Article 4) that would directly or indirectly increase the indebtedness or contingent liabilities of the Board or the Province of Ontario, whether at the time of execution of this Agreement or at any time during the Term, shall be void and of no legal effect.

2.0 Appointment of Contractor and Project Description

- 2.1 The Board hereby appoints and retains the Contractor to perform and provide the Deliverables, subject to the terms and conditions contained in this Agreement.
- 2.2 The Contractor covenants and agrees to perform and provide the Deliverables in accordance with the terms and conditions contained in this Agreement.
- 2.3 The appointment and retainer of the Contractor are not exclusive. The Board makes no representation regarding the volume of goods and services required under this Agreement. The Board reserves the right to contract or arrange for the performance and provision of deliverables that are identical or similar to the Deliverables by any person (including persons internal to the Board) other than the Contractor without limitation or restriction.
- 2.4 The Contractor shall not have any authority or power to bind the Board or the Crown or to assume or create any obligation or responsibility, express or implied, on behalf of the Board or the Crown. The Contractor shall not hold itself out as an agent, partner, joint venturer or employee of the Board or the Crown.
- 2.5 Nothing in this Agreement shall constitute or be deemed to create an employment, partnership, joint venture or agency relationship between the Contractor and either the Board or the Crown.
- 2.6 The Contractor agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. The Contractor shall advise these persons of the Contractor's obligations under this Agreement to the extent required in order to ensure that the Contractor complies with its obligations under this Agreement. This section is in addition to any and all of the Contractor's liabilities under this Agreement and under the general application of law.
- 2.7 The Board may from time to time give the Contractor reasonable instructions (in writing or otherwise) as to the performance of the services and the performance or provision of the Deliverables. The Contractor shall comply with those instructions but may, unless the instructions specify otherwise, determine the manner in which the instructions are carried out.
- 2.8 The Board may, in writing, request changes to this Agreement, which may include altering, adding to or deleting any of the Deliverables. The Contractor shall comply with all reasonable Board change requests and the performance of such request shall be in accordance with the terms and conditions of this Agreement. If the Contractor is unable to comply with a change request, the Contractor shall promptly notify the Board and provide reasons for such non-compliance. In any event, any such change request shall not be effective until a written amendment reflecting the change has been executed by the Parties.
- 2.9 Where a Board requested change includes an increase in the scope of the previously contemplated Deliverables, the Board shall indicate in its change request the proposed

prices for the change. Where the Agreement Costs in effect at the time of the change request:

- (a) include pricing for the particular types of goods or services contemplated in the change request, the Contractor shall not unreasonably refuse to provide those goods or services at prices consistent with those Agreement Costs; or
- (b) are silent in relation to the applicable price for the particular goods or services contemplated in the change request, the price shall be negotiated by the Parties within a reasonable period of time.

3.0 Contractor's Representations, Warranties and Covenants

3.1 The Contractor represents, warrants and covenants as follows to and in favour of the Board and acknowledges and confirms that the Board is relying on such representations, warranties and covenants without independent inquiry for the purpose of entering into this Agreement:

- (a) it is a corporation validly existing and in good standing under the laws of the Province of Ontario and duly registered and qualified to do business in Ontario, and it has all the necessary corporate power to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement by it have been duly and validly authorized by the necessary corporate actions and when executed and delivered by the Contractor this Agreement constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms;
- (c) the information supplied to the Board in and in support of the Proposal is true and accurate;
- (d) the Contractor is and will, throughout the Term, remain in substantial compliance with all applicable laws, regulations and orders, and the Contractor shall duly observe all requirements of governmental authorities and of all statutes and regulations which could affect the Contractor or the Deliverables;
- (e) without limiting the obligations and liabilities of the Contractor under this Agreement, at law or in equity, (i) the Contractor shall perform its obligations under this Agreement diligently, expeditiously and in good faith; (ii) all of the Deliverables shall be performed or provided to a high standard of professional competence; (iii) the Deliverables shall be suitable for the purposes for which they were performed or provided; and (iv) to the extent that a Deliverable is intended or expected to be used by or with, or integrated into, the computer or other systems of the Board, the Deliverable shall be free from viruses and all other defects that could adversely affect the use of the Deliverable for its intended purpose or adversely affect the computer or other systems of the Board;
- (f) there is no suit, action, dispute, civil or criminal litigation, claim, arbitration or legal, administrative or other proceedings or governmental investigation,

including appeals and applications for review (collectively "Suits") pending, or to the best of the Contractor's knowledge, threatened against the Contractor that are related to or would materially or adversely affect the performance or provision of the Deliverables;

- (g) there are no facts known to the Contractor which are likely to give rise to any Suits;
 - (h) there is not presently outstanding against the Contractor any judgment, execution, order, injunction, decree or rule of any court, administrative agency, governmental authority or arbitrator which may affect the Contractor's performance or provision of the Deliverables;
 - (i) the Contractor has no Conflicts of Interest in relation to the execution of this Agreement and there is no agreement with any other person which would in any way interfere with the rights of the Board under this Agreement;
 - (j) the Deliverables shall not infringe upon or violate any Third Party Intellectual Property and shall not be libellous or otherwise unlawful; and
 - (k) prior to the performance or provision of a Deliverable, the Contractor will obtain assurances with respect to any Third Party Intellectual Property that any rights of integrity or moral rights associated therewith have been waived.
- 3.2 The Contractor shall not subcontract or assign, transfer or otherwise dispose of the whole or any part of its interest in or obligations under this Agreement without the prior written consent of the Board, which consent shall be in the sole discretion of the Board and subject to the terms and conditions that may be imposed by the Board. No assignment or subcontract shall relieve the Contractor from the obligations under this Agreement or impose any liability upon the Board to any assignee or subcontractor.
- 3.3 Only those individuals named in Schedule B shall perform and provide the Deliverables. Those individuals shall be involved in performing or providing the Deliverables substantially to the extent indicated in Schedule B. The Contractor shall not (a) replace or substitute any of the individuals named in Schedule B or (b) substantially change the extent to which such individuals are involved in performing or providing the Deliverables relative to the extent indicated in Schedule B without the prior written approval of the Board, which approval may not arbitrarily or unreasonably be withheld. Should the Contractor require the substitution or replacement of any of the individuals named in Schedule B, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in Schedule B. The Contractor may not claim fees for any replacement individual greater than the applicable Agreement Costs identified in Schedule B.
- 3.4 Where the Board considers that the Deliverables have been inadequately performed or provided or require corrections, the Contractor shall forthwith make the necessary corrections or re-perform or re-provide the Deliverables at its own expense as specified by the Board.

3.5 For seven years after the expiration or termination of this Agreement, the Contractor shall maintain all necessary records to substantiate (a) all charges and payments under this Agreement and (b) that the Deliverables were performed or provided in accordance with this Agreement and all applicable law. During the Term, and for a period of seven years thereafter, the Contractor shall permit and assist the Board in conducting audits of the Contractor's operations to verify (a) and (b) above. The Board shall provide the Contractor with at least ten business days' prior notice of its requirement for such an audit. The Contractor's obligations under this section shall survive any expiration or termination of this Agreement.

4.0 Board's Obligations

4.1 Subject to the other provisions of this Agreement, the Board shall make payments to the Contractor for fees, expenses and disbursements as provided for in Schedule B, provided that the total payments for fees, expenses and disbursements (including, where applicable, disbursements for any person that is a subcontractor of the Contractor) under this Agreement shall not exceed [●] (inclusive of P.S.T., when applicable).

4.2 The Board may hold back payment or set off against payment if, in the opinion of the Board acting reasonably, the Contractor has failed to comply with any requirement of this Agreement, including performing or providing any of the Deliverables in a manner that fails to meet the standard referred to in section 3.1(e).

4.3 The Board shall provide to the Contractor the assistance referred to in Schedule C.

5.0 Agreement Costs and Taxes

5.1 There shall be no charges payable by the Board under this Agreement other than the Agreement Costs, and any other charges shall be at the Contractor's cost.

5.2 The Board certifies that the Deliverables performed and provided under this Agreement are required for the use of the Board and are therefore not subject to the federal Goods and Services Tax.

5.3 The Board shall withhold any applicable withholding tax from amounts due and owing to the Contractor under this Agreement and shall remit it to the appropriate government in accordance with applicable tax laws.

5.4 Except as otherwise stated in this Agreement, the Contractor shall pay all applicable taxes incurred by or on the Contractor's behalf with respect to this Agreement.

6.0 Invoicing

6.1 Except to the extent that alternate invoicing requirements are identified in Schedule B, the Contractor shall invoice the Board on a time and materials basis subject to the following conditions:

(a) the Contractor shall provide the Board with a monthly invoice no later than ten business days after the end of each month, and that invoice shall include (i) the reference number assigned to this Agreement by the Board, (ii) a brief description of the

Deliverables performed or provided for the relevant month, (iii) the identity of the persons performing or providing those Deliverables and the time expended by each such person during the relevant month, (iv) an itemized breakdown of the charges being included on the invoice, (v) the time period that is being included on the invoice, and (vi) taxes, if payable by the Board, identified as separate items;

(b) the billing rate used in relation to each person that performed or provided Deliverables during the relevant month shall be no greater than that specified in Schedule B in relation to that person;

(c) upon request of the Board, the Contractor shall have a responsible officer of the Contractor certify that the invoice submitted to the Board is true, complete and correct; and

(d) in no event shall the aggregate value of the invoices submitted by the Contractor in relation to this Agreement exceed the amount set out in section 4.1.

6.2 The Board shall approve or reject an invoice within fifteen business days. In the event that the Board rejects an invoice, it shall promptly so notify the Contractor and the Contractor shall provide additional information as required by the Board to substantiate the invoice. Each invoice must be approved by the Board before any payment is released to the Contractor.

6.3 In the event an overpayment is discovered by audit or otherwise, the amount of the overpayment shall be immediately repaid to the Board. This provision shall survive for a period of three (3) years after the expiry or termination of this Agreement.

7.0 Duration of the Project and Expiry or Extension of the Term

7.1 This Agreement shall come into force on the date first written above and shall, unless earlier terminated in accordance with the terms hereof, expire on [•] (the "Term") or the expiry date of any extension to this Agreement effected by the Board under section 7.3.

7.2 The Contractor shall perform and provide all of the Deliverables by [•] and in accordance with the timelines specified in Schedule A.

7.3 The Board shall have the option of extending this Agreement for one further term of a duration of up to the duration of the original Term, such extension to be upon the same terms (including as to Agreement Costs), conditions and covenants contained in this Agreement. This option shall be exercisable by the Board upon thirty calendar days' prior written notice to the Contractor, setting forth the precise duration of the extension. Where this Agreement is so extended, the Term shall be deemed to include such extension.

8.0 Early Termination

8.1 The Board may at any time terminate this Agreement without cause and without penalty by giving a minimum of thirty calendar days' written notice to the Contractor. Where the Board terminates this Agreement under this section, the Board shall be responsible only for the payment of the fees, expenses and disbursements incurred by the Contractor in

connection with this Agreement up to and including the date of such termination. Sections 8.3(c) to 8.3(e) apply to termination under this section.

8.2 The Board may immediately terminate this Agreement upon giving notice to the Contractor where any of the following events of default occur:

- (a) the Contractor fails to observe or perform a term, condition, obligation or covenant in this Agreement and such failure continues for a period of twenty calendar days after receipt by the Contractor of written notice of such failure from Board;
- (b) the Contractor breaches section 3.4 or any provision of Article 9;
- (c) the Contractor ceases actively to cause the Deliverables to be performed or provided in an expeditious manner;
- (d) the Contractor subcontracts, assigns, transfers or otherwise disposes in whole or in part of its interest in or obligations under this Agreement to a third party without the prior written consent of Board;
- (e) the Contractor, prior to or after execution of this Agreement, makes a material misrepresentation or omission in or in relation to this Agreement or the Proposal, or provides materially inaccurate information to the Board;
- (f) the Contractor becomes insolvent or bankrupt, a receiver or manager (court appointed or otherwise) is appointed on account of the Contractor's insolvency or the Contractor makes a general assignment for the benefit of its creditors;
- (g) an order is made, a resolution is passed or proceedings are commenced for the winding-up, liquidation or dissolution of the Contractor or the Contractor is otherwise dissolved or ceases to carry on business;
- (h) the Contractor fails to disclose an actual or potential Conflict of Interest;
- (i) the Contractor fails to comply with any requirements prescribed by the Board under section 11.5(c) to resolve a Conflict of Interest; or
- (j) a Conflict of Interest in relation to the Contractor cannot be resolved.

8.3 Upon termination of this Agreement by the Board under section 8.2:

- (a) all obligations of the Board to make any further payments to the Contractor on account of the Deliverables shall cease immediately;
- (b) the Board may, at its option, require the Contractor to reimburse the Board for any sums advanced to it by the Board on account of the Deliverables;
- (c) the Contractor shall provide the Board with a report detailing (i) the current state of the performance or provision of the Deliverables by the Contractor at the date

of termination, and (ii) any other information requested by the Board pertaining to the provision or performance of the Deliverables;

- (d) the Contractor shall execute such documentation as may be required by the Board to give effect to the termination of this Agreement; and
- (e) the Contractor shall comply with any other instructions provided by the Board, including instructions for facilitating the transfer of the Contractor's obligations under this Agreement to another person.

8.4 Termination of this Agreement for any reason shall not relieve the Contractor of its warranties and other responsibilities relating to any Deliverables provided or performed or to any money paid prior to the date of termination. In addition to its other rights of hold back or set off, the Board may hold back payment or set off against payment owed if the Contractor fails to comply with its obligations on termination as set out in this Article.

8.5 The rights of termination under this section are in addition to all other rights of termination available at law or events of termination by operation of law, and are in addition to and shall in no way limit any rights or remedies of the Board under this Agreement, at law or in equity.

8.6 Sections 8.3 to 8.5 and this section 8.6 shall survive the termination of this Agreement.

9.0 Confidentiality and FIPPA

9.1 During and following the Term, the Contractor shall (a) keep all Board Confidential Information confidential and secure; (b) limit the disclosure of Board Confidential Information to only those employees who have a need to know it and who have been specifically authorized to have such disclosure; (c) not directly or indirectly disclose, destroy, exploit or use any Board Confidential Information (except for the purpose of performing or providing the Deliverables, or except if required by order of a court or tribunal) without first obtaining (i) the written consent of the Board and (ii) in respect of any Board Confidential Information about any third party, the written consent of such third party; (d) provide Board Confidential Information to the Board on demand; and (e) return all Board Confidential Information to the Board before the termination or expiry of this Agreement, with no copy or portion kept by the Contractor.

9.2 The Contractor shall not copy any Board Confidential Information, in whole or in part, unless copying is essential for the performance or provision of the Deliverables.

9.3 If the Contractor or any of its directors, officers, employees, agents, partners, subcontractors, volunteers, representatives or advisors become legally compelled to disclose any Board Confidential Information, the Contractor shall provide the Board with prompt notice to that effect in order to allow the Board to seek a protective order or other appropriate remedy to prevent or limit such disclosure, and the Contractor shall cooperate with the Board and its legal counsel to the fullest extent. In the absence of such protective order or other remedy, the Contractor will disclose only that portion of the Board Confidential Information that the Contractor is legally compelled to disclose and only to such person to which the Contractor is legally compelled to disclose. In

addition, the Contractor shall provide notice to each such person (in cooperation with legal counsel for the Board) that such Board Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each such person's written agreement to receive and use such Board Confidential Information subject to those terms and conditions.

9.4 The Parties acknowledge and agree that FIPPA applies to all records (a) provided by one Party to the other under or for the purposes of this Agreement; or (b) created by the Contractor in the performance of this Agreement ("Records"). The Parties further acknowledge and agree that FIPPA may require the disclosure of such Records to third parties.

9.5 The Contractor agrees:

- (a) to keep Records secure;
- (b) to provide Records to the Board within seven calendar days of being directed to do so by the Board for any reason including an access request or privacy issue;
- (c) not to access personal information unless the Board determines that access is permitted under FIPPA and is necessary in order to perform or provide the Deliverables;
- (d) not to directly or indirectly use, collect or destroy any personal information for any purposes that are not authorized by the Board;
- (e) to ensure the security and integrity of personal information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so;
- (f) to restrict access to personal information to those of its employees who have a need to know it and who have been specifically authorized to have such access for the purpose of performing or providing the Deliverables;
- (g) to implement other specific security measures that in the reasonable opinion of the Board would improve the adequacy and effectiveness of the Contractor's measures to ensure the security and integrity of personal information and Records generally; and
- (h) that any confidential information supplied to the Board may be disclosed by the Board where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding.

When used in this section, "personal information" has the meaning given to it under FIPPA. In the event of an inconsistency between this section and any other provision of this Agreement, this section shall prevail.

9.6 The Contractor acknowledges that breach of any of the provisions of this Article may cause irreparable harm to the Board or to any person to whom the Board owes a duty of confidence, and that such harm may be difficult to calculate and may be inadequately compensable in damages. The Contractor agrees that the Board is entitled to obtain

injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article.

9.7 The provisions of this Article shall survive any termination or expiry of this Agreement.

10.0 Intellectual Property

10.1 The Contractor agrees that all Intellectual Property and every other right, title and interest in and to all concepts, techniques, ideas, information, models, methodologies, documents and other materials, however recorded, provided by the Board to the Contractor shall, as between the Parties, remain the sole property of the Board.

10.2 The Board shall be the sole owner of any New Intellectual Property. The Contractor irrevocably assigns to and in favour of the Board and the Board accepts every right, title and interest in and to all New Intellectual Property in the Deliverables.

10.3 The presumption governing this Agreement is that the Board shall be the sole owner of any Intellectual Property in any form contained in any of the Deliverables. To the extent that any of the Deliverables include, in whole or in Part, Background Intellectual Property, the Contractor shall so notify the Board prior to the delivery of any such Deliverable. In the absence of such notice, the presumption shall remain that the Board is the sole owner of any Intellectual Property contained in the Deliverables.

10.4 For those parts of the Deliverables that are Background Intellectual Property, the Contractor grants to the Board and the Crown a perpetual, world-wide, irrevocable, transferable, royalty-free, fully paid-up right and licence (a) to use, execute, display, distribute (internally and to others), perform and reproduce, in any form, copies of those Deliverables and to practise and have practised any process and/or method associated with such Deliverables; and (b) to use, execute, display, distribute (internally and to others), perform, reproduce and prepare, in any form, Derivative Work based on those Deliverables and to practise and have practised any process and/or method associated with such Derivative Work; and (c) authorize other persons to do any of the foregoing on behalf of the Board or the Crown.

10.5 The Contractor shall not incorporate into any Deliverables anything that would restrict the right of the Board or the Crown to modify, further develop or otherwise use the Deliverables in any way that the Board or the Crown deems necessary, or that would prevent the Board or the Crown from entering into any contract or arrangement with any person (including persons internal to the Board) other than the Contractor for the modification, further development of or other use of the Deliverables.

10.6 The Contractor shall obtain waivers of all rights of integrity and any other moral rights in relation to the Deliverables from any person in the position to assert such rights, which waivers may be invoked without restriction by any person authorized by the Board to use the Deliverables.

10.7 From time to time at the request of the Board, the Contractor shall (a) execute and agrees to cause to be executed by any applicable person a written assignment of copyright and waiver of all moral rights in a Deliverable to the Board; (b) execute any other document reasonably required by the Board to protect the Intellectual Property of

the Board; and (c) assist the Board in preparing any Canadian Intellectual Property registration that the Board considers appropriate.

10.8 The provisions of this Article shall survive the termination or expiry of this Agreement.

11.0 General

11.1 Applicable Law

This Agreement is to be governed by and interpreted in all respects in accordance with the laws of the Province of Ontario and of Canada applicable therein.

11.2 Entire Agreement

This Agreement embodies the entire agreement between the Parties with respect to the performance and provision of the Deliverables and it supersedes all prior agreements, obligations, statements, representations, understandings, warranties, communications and negotiations, whether collateral, oral or written, with respect to the subject-matter of this Agreement, unless otherwise provided for herein.

11.3 Amendments

This Agreement may be amended, altered or modified only by a written document signed by both Parties.

11.4 Waiver

No provision of this Agreement will be deemed to be waived, and no breach excused, unless such waiver or consent excusing the breach is in writing and signed by the Party to be bound by such waiver or consent. A waiver of any provision of this Agreement, or of any breach of thereof, is not to be deemed or construed to be a waiver of any other provision of this Agreement, or of any other breach, whether the same or of any other provision, nor shall any delay or omission on the part of any Party to exercise or avail itself of any right it has or may have under this Agreement operate as a waiver of any such breach or right, nor will any waiver or failure to enforce any of the provisions of this Agreement in any way affect the validity of this Agreement or any part of it.

11.5 Conflict of Interest

- (a) The Contractor and the Contractor's subcontractors, directors, officers, employees, agents and volunteers shall avoid any Conflict of Interest in the performance of their contractual obligations.
- (b) The Contractor shall disclose to the Board without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations.
- (c) The Contractor shall comply with any requirements prescribed by the Board to resolve any Conflict of Interest.

11.6 Materiality and Merger

All representations, warranties and covenants of the Contractor made in this Agreement, or in any other document, certificate, expenditure statement, or writing delivered by or on behalf of the Contractor pursuant to the provisions of this Agreement, or otherwise with respect to this Agreement and the transactions contemplated in this Agreement, are material, are deemed to have been relied upon by the Board and survive the execution of this Agreement.

11.7 Representations and Warranties

All representations, warranties, covenants and limitations of liability in this Agreement to the favour or benefit of the Board shall continue in force after the expiry or termination of this Agreement.

11.8 Enurement

This Agreement shall enure to the benefit of and be binding upon the heirs, successors and permitted assignees of the Parties.

11.9 Indemnity and Insurance

- (a) The Contractor hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively, "Claims"), by whomever made, sustained, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Contractor, its subcontractors or their respective directors, officers, agents, employees or independent contractors in the course of performance of the Contractor's obligations under, or otherwise in connection with, this Agreement. The Contractor further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including, without limitation, the Board, claimed or resulting from such Claims. The obligations contained in this paragraph shall survive the termination or expiry of this Agreement.
- (b) The Contractor hereby agrees to put in effect and maintain throughout the Term, at its own cost and expense, with insurers acceptable to the Board, all the necessary and appropriate insurance that a prudent person in the business of the Contractor would maintain including, but not limited to, the following:
 - (i) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$2,000,000 per occurrence, \$2,000,000 products and completed operations aggregate. The policy is to include the following:

- the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Contractor's obligations under, or otherwise in connection with, the Contract;
 - contractual liability coverage;
 - cross-liability clause;
 - employers liability coverage (or compliance with the paragraph below regarding the *Workplace Safety and Insurance Act* is required);
 - 30 day written notice of cancellation, termination or material change;
 - tenants legal liability coverage (if applicable and with applicable sub-limits); and
 - non-owned automobile coverage with blanket contractual coverage for hired automobiles; and
- (ii) errors and omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in this Agreement, in the amount not less than \$2,000,000 per claim and in the annual aggregate.
- (c) The Contractor shall provide the Board with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, on or before the commencement of this Agreement, and renewal replacements on or before the expiry of any such insurance. Upon the request of the Board, a copy of each insurance policy shall be made available to it. The Contractor shall ensure that each of its subcontractors complies with the insurance requirements set out in this Agreement by obtaining similar types of insurance and providing the Contractor with proof of the acquisition and maintenance of such insurance.
- (d) If the Contractor is subject to the *Workplace Safety and Insurance Act* ("WSIA"), it shall submit a valid clearance certificate of WSIA coverage to the Board prior to the commencement date of the Agreement. In addition, the Contractor shall, from time to time at the request of the Board, provide additional WSIA clearance certificates. The Contractor covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it/its subcontractors, from time to time during the Term of the Contract, under the WSIA, failing which the Board shall have the right, in addition to and not in substitution for any other right it may have pursuant to the Contract or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by the Contractor or its subcontractors and to deduct such amount from

any amount due and owing from time to time to the Contractor pursuant to the Contract together with all costs incurred by the Board in connection therewith.

- (e) The Contractor shall, at its expense, to the extent requested by the Board, participate in or conduct the defence of any proceeding against any Indemnified Parties referred to in this Article and any negotiations for their settlement. The Board may elect to participate in or conduct the defence of any such proceeding by notifying the Contractor in writing of such election without prejudice to any other rights or remedies of the Board under the Agreement, at law or in equity. Each Party participating in the defence shall do so by actively participating with the other's counsel. No settlement shall be entered into by the Contractor unless it has obtained the prior written approval of the Board. If the Contractor is requested by the Board to participate in or conduct the defence of any such Proceeding, the Board agrees to co-operate with and assist the Contractor to the fullest extent possible in the proceedings and any related settlement negotiations. If the Board conducts the defence of any such proceedings, the Contractor agrees to co-operate with and assist the Board to the fullest extent possible in the proceedings and any related settlement negotiations.

11.10 Publicity

Any publicity or publications relating to this Agreement or the Deliverables to be performed or provided shall be arranged by the Board and shall reflect the participation of each Party. Without limiting the generality of the foregoing, the Contractor shall not refer to the Board in any public announcement (including by means of posting on the Contractor's website) or in any announcement to or correspondence with any of the Contractor's clients or prospective clients without the prior written consent of the Board and the prior written approval of any statements made in relation to the reference to the Board. Such consent and approval shall not be unreasonably withheld or delayed.

11.11 Time of the Essence

Time is of the essence of this Agreement.

11.12 Further Assurances

The Contractor agrees at any time and from time to time after the execution and delivery of this Agreement to execute and deliver such further acts and things as the Board may reasonably request in order to give full effect to this Agreement.

11.13 Force Majeure

Neither Party shall be liable for damages caused by delay or failure to perform its obligations under this Agreement where such delay or failure is caused by an event beyond its reasonable control. 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 those contained in this Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the Parties agree that force majeure events include natural disasters and acts of war, insurrection and terrorism. A Party claiming force majeure shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. If the anticipated or actual delay or non-performance exceeds fifteen business days, the other Party may immediately terminate this Agreement by giving notice of termination. Such termination shall be in addition to the other rights and remedies of the terminating Party under this Agreement, at law or in equity.

11.14 Notices

All reports, communications and notices to be made or given pursuant to this Agreement shall be validly and effectively made or given if made or given in writing and delivered by first class mail, postage prepaid, by facsimile transmission or by personal delivery, and addressed to the Party to whom it is intended at its address as set out below:

To the Board, addressed to the attention of the Board Representative at:

Ontario Energy Board
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON M4P 1E4

Facsimile No.: 416.440.7656

To the Contractor, addressed to the attention of the Contractor Representative at:

[•]

Facsimile No.: [•]

Notice shall be deemed to have been received on the date on which the notice was delivered in the case of personal delivery or, in the case of mailing, on the fourth business day after the date of mailing or, in the case of facsimile transmission, on the day on which confirmation of the transmission is provided to the sender. The Parties may designate a different address to one another at any time, and this shall not constitute an amendment to this Agreement for purposes of section 11.3.

11.15 Counterparts

This Agreement may be executed in one or more counterparts which, together, shall constitute one and the same Agreement. This Agreement shall not be binding until it has been executed by each of the Parties and delivered to each of the Parties.

11.16 Signing Authority

Each Party represents and warrants to the other that the person signing this Agreement on its behalf has been duly authorized to do so.

IN WITNESS WHEREOF the Parties have by their duly authorized representatives executed this Agreement on the dates indicated below.

<p>Ontario Energy Board</p> <p>Per:</p> <p>_____</p> <p>Executed in the City of Toronto, Province of Ontario, this ____ day of _____, 2006.</p>	<p>[•]</p> <p>Per:</p> <p>_____</p> <p>Executed in the City of _____, Province / State of _____, this ____ day of _____, 2006.</p>
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Schedule A

Deliverables

Attached to and forming part of the Agreement between [•] and the Board dated [•], 2006.

Deliverables

Reporting

As requested by the Board Representative.

Schedule B
Agreement Costs

Attached to and forming part of the Agreement between [•] and the Board dated [•], 2006.

Total Contract Value

In no event may the total contract value (including all fees, expenses / disbursements, and P.S.T. when applicable) exceed \$•.

Fees

Reasonable disbursements will be reimbursed at Contractor's cost against original receipts and/or any relevant supporting documentation.

Invoicing and Payment

The Contractor shall invoice the Board as stipulated in section 6.1.

Payment will be made no more than thirty days following the date on which the Contractor has demonstrated to the Board Representative that the Deliverables performed or provided for the relevant month, referred to in the invoice, have been satisfactorily performed.

The Contractor shall invoice the Board monthly on a progress-billing basis for any portion of the work performed during the month, and all invoices shall be sent to the attention of Finance Unit, Business Services & Planning.

Every invoice shall indicate:

1. the name of the Contractor;
2. the amount for which the invoice is rendered;
3. the name of the person(s) performing services for which payment is requested in the invoice;
4. the number of hours or days worked, the per hour or per diem fee, a description of the work performed; and
5. the Board contract number.

Failure to provide the appropriate information as part of the invoice may result in delays in payment or rejection of the invoice.

Schedule C

Board's Assistance

Attached to and forming part of the Agreement between [•] and the Board dated [•], 2006.

The Board will provide such ongoing direction and guidance to the Contractor as the Board considers appropriate to facilitate the thorough and timely performance or provision of the Deliverables.

Schedule D

Proposal

Attached to and forming part of the Agreement between [•] and the Board dated _____, 2006.

This Schedule consists of the Proposal.

APPENDIX B – FORM OF OFFER

To **Ontario Energy Board**

1. Proponent Information

(a) Proponent's registered legal business name and any other name under which it carries on business:

(b) Proponent's address, telephone and facsimile numbers:

(c) Name, address, telephone and facsimile numbers of the contact person(s) for the Proponent:

(d) Name of the person who is primarily responsible for the Proposal:

(e) Name of the person who will be managing the operation of the proposed deliverables:

(f) Whether the proponent is an individual, a sole proprietorship, a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

(g) Name(s) of the proprietor, where the proponent is a sole proprietor; each of the directors and officers where the proponent is a corporation; each of the partners where the proponent is a partnership and applicable combinations of these when the proponent is a joint venture or consortium, whichever applies:

(h) Whether the proponent intends at any time during the term of an agreement arising out of this RFP, to use the services of another Person, in connection with the management of the deliverables to be provided pursuant to this agreement. If so, attach full details:

(i) Whether the proponent is a partner, director, officer, shareholder of, or a contributor of capital to another individual, sole proprietorship, corporation, partnership, joint venture, or a consortium that has as its principal business the provision of deliverables similar to the deliverables required pursuant to this RFP. If so, provide full details by way of attachment.

2. Offer

I/We have carefully examined the RFP documents and have a clear and comprehensive knowledge of the Deliverables required under the RFP. By submitting the proposal, we agree and consent to the terms, conditions and provisions of the RFP.

3. Mandatory Requirements

I/We enclose herewith as part of the proposal, responses to all mandatory submission requirements, as set out below:

MANDATORY REQUIREMENT FORMS:	Yes	Page
Form of Offer (Appendix B)		
Rate Bid Form (Appendix C)		
Tax Compliance Form (Appendix D)		
Reference Form (Appendix F)		
Notice to proponents: There may be Mandatory Requirements in this RFP other than those set out above. See the Mandatory Requirements section of this RFP for a complete listing of Mandatory Requirements.		

4. Rates

I/We have submitted our Rates in accordance with the instructions in the RFP.

5. Tax Compliance

I/We hereby certify that

(Registered Legal Business name of Proponent)

in submitting this proposal with accompanying Tax Compliance Form (Appendix D), is in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been paid or satisfactory arrangements for their payment have been made and maintained.

6. References

I/We have included the number and type of references require by the RFP (Appendix F) and consent to the Board performing checks with those references and with any other relevant references.

7. Addenda

We have received and allowed for Addenda number _____ in preparing my/our proposal.
(Insert #'s or "NONE")

8. Bid Irrevocable

I/We understand that my/our submitted proposal is based upon the acceptance of the proposal, in whole or in part, within 120 days of the Proposal Submission Deadline and is irrevocable during that period.

9. Conflict of Interest

Proponents while completing this portion of the Form of Offer should refer to the definition section of the RFP.

I/ We hereby confirm that there is not nor was there any actual or potential Conflict of Interest relating to the preparation of our submission nor do we foresee any actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

[or if applicable, strike out the above and include the following:]

The following is a list of actual or potential Conflicts of Interest relating to the preparation of our submission or the performance of the contractual obligations contemplated in the RFP:

In submitting the proposal, I/we have/have no **[strike out the inapplicable portion]** knowledge of or ability to avail ourselves of confidential information of the Crown (other than confidential information which may have been disclosed by the Board to the proponents in the normal course of the RFP) which is relevant to the contemplated contract, its pricing or the RFP evaluation process.

The following individuals, as employees, advisors, or in any other capacity (a) participated in the preparation of our proposal; **AND** (b) were employees of the Ontario Public Service ("OPS") or the OEB and have ceased that employment since January 1st, 2003:

Name of Individual:
Job Classification (of last position with OPS or OEB):
Ministry/Agency (where last employed with OPS or OEB):
Last Date of Employment with OPS or OEB:
Name of Last Supervisor with OPS or OEB:
Brief Description of Individual's Job Functions (at last position with OPS or OEB):
Brief Description of Nature of Individual's Participation in Preparation of Proposal:

(Repeat above for each identified individual)

I/we agree that, upon request, I/we shall provide the Board a Conflict of Interest Declaration from each individual identified above in the form prescribed by the Board.

10. Disclosure of Information to Advisers

I/We hereby consent, pursuant to subsection 17 (3) of the *Freedom of Information and Protection of Privacy Act*, to the disclosure, on a confidential basis, of this proposal by the Board to the Board's advisers retained for the purpose of evaluating or participating in the evaluation of this proposal.

11. Proof of Insurance

By signing the Form of Offer, each proponent acknowledges its willingness, if selected, to provide proof of insurance coverage as required in the Agreement. If selected, the selected proponent must provide proof of insurance coverage in the form of a valid certificate of insurance prior to the execution of the Agreement by the Board.

12. Execution of Agreement

I/We understand that in the event my/our proposal is selected by the Board, in whole or in part, I/we agree to finalize and execute the Agreement in accordance with the RFP.

Signature of Witness

Signature of proponent representative:

Name of Witness:

Name and Title:

Date:

I have authority to bind the proponent.

APPENDIX C - RATE BID FORM

To: Ontario Energy Board

With respect to:

Submitted by: _____

Instructions

Please refer to section 3.4 - Stage IV Evaluation of Pricing

Proponents are to provide the following cost breakdowns:

Total Project Cost \$ _____

Proposed Resource(s)
Resource(s) Per Diem
Hourly Rates

SIGNATURE: _____

DATE: _____

Name/Title
I have authority to bind the proponent

Date

APPENDIX D - TAX COMPLIANCE DECLARATION FORM

The Ontario Energy Board expects all suppliers to pay their provincial taxes on a timely basis. In this regard, proponents are advised that any contract with the Ontario Energy Board will require a declaration from the successful proponent that the proponent's provincial taxes are in good standing.

In order to be considered for a contract award, the proponent must submit the following tax compliance status statement and the following consent to disclosure:

Declaration

I/WE hereby certify that _____ at the time of submitting its proposal,
(legal name of proponent)
is in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been filed and all taxes due and payable under those statutes have been paid or satisfactory arrangements for their payment have been made and maintained.

Consent to Disclosure

I/We consent to the Ministry of Finance releasing the taxpayer information described in this Declaration to the Board issuing the RFP as necessary for the purpose of verifying that I/we am/are in full compliance with all statutes administered by the Ministry of Finance.

Dated at _____ this _____ day of _____ 20_____

(An authorized signing officer)

(Print Name)

(Title)

(Phone Number)

(Fax Number)

APPENDIX E - PROPOSAL RETURN LABEL
AFFIX THIS LABEL TO YOUR SUBMISSION PACKAGE ENVELOPE

Proponent to complete the following:
(Full Legal Name and Address)

NAME _____ **RFP# RFPOEBRPD2006-0118**

ADDRESS _____

PROPOSAL SUBMISSION DEADLINE:

Date: January 18, 2006

Time: 3:00 pm (EST)

CONTACT _____

PHONE NO. _____

TO: Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4
Attn: Tom Kelly

The Postal Code is to aid in identifying the building only. The onus remains solely with Proponents to instruct courier/ delivery personnel to deliver Proposal submissions to the exact floor location specified above by the Proposal Submission Deadline. Proponents assume sole responsibility for late deliveries if these instructions are not strictly adhered to.

Important Instructions

Proposals must be submitted in a sealed package(s) to the address indicated on the Proposal Return Label between the hours of 8:30 a.m. and 5:00 p.m. (Toronto Time), Monday through Friday (excluding Statutory Holidays), AND NO LATER THAN THE PROPOSAL SUBMISSION DEADLINE NOTED ABOVE.

The Ontario Energy Board does not accept responsibility for Proposal submissions directed to any location other than the Ontario Energy Board address indicated on the label above. The Postal Code is to aid in identifying the building only. **The onus remains solely with Proponents to instruct courier/ delivery personnel to deliver Proposal submissions to the EXACT FLOOR location specified above.**

Proponents assume sole responsibility for late deliveries if these instructions are not strictly adhered to.

Failure to affix this Label to your submission envelope/ package may also result in submissions not being recognized as Proposals. This could result in your Proposal arriving late at the Tenders Office and will be deemed late, disqualified and returned to the Proponent.

Proposals received by Fax or any other kind of electronic transmission will be rejected.

APPENDIX F – Reference Form

Each proponent shall provide at least three (3) references (with full contact information) for each proposed consultant as requested in the RFP at **section 3.2.4**.

Reference #1

Company Name:	
Company Address:	
Contact Name:	
Contact Telephone Number:	
Date Work Undertaken:	
Nature of Assignment:	

Reference #2

Company Name:	
Company Address:	
Contact Name:	
Contact Telephone Number:	
Date Work Undertaken:	
Nature of Assignment:	

Reference #3

Company Name:	
Company Address:	
Contact Name:	
Contact Telephone Number:	
Date Work Undertaken:	
Nature of Assignment:	