



**NOTICE OF AMENDMENT TO A CODE
AMENDMENTS TO THE DISTRIBUTION SYSTEM CODE**

BOARD FILE NO: EB-2010-0038

BY E-MAIL AND WEB POSTING

**To: All Licensed Electricity Distributors
All Participants in Consultation Process EB-2010-0038
All Other Interested Parties**

Date: July 28, 2010

The Ontario Energy Board (the "Board") has today issued amendments to the Distribution System Code (the "DSC") as indicated below, pursuant to section 70.2 of the *Ontario Energy Board Act, 1998* (the "Act").

I. Background

On March 10, 2010, the Board issued a Notice of Proposal to Amend a Code (the "March Notice") in which it proposed a number of amendments to the DSC (the "Proposed Amendments") that were designed to provide greater clarity regarding the application of the DSC's alternative bid provisions.

The Board received written comments on the Proposed Amendments from 11 interested parties including representatives of electricity distributors, generators, ratepayers, electrical contractors and electrical workers. These comments are available for viewing on the Board's website at www.oeb.gov.on.ca on the "Distribution System Code Alternative Bid Option" webpage on the "Policy Initiatives and Consultation" portion of the "Regulatory Proceedings" section of the website.

II. Adoption of Proposed Amendments with Revisions

The Board has considered the comments received in response to the March Notice and has determined that no material changes are needed to the Proposed Amendments. The Board has therefore adopted the Proposed Amendments with certain revisions as described in section III below which the Board believes will provide greater clarity.

The amendments to the DSC as adopted by the Board (the "Final Amendments") are set out in Attachment A to this Notice. Attachment B to this Notice sets out, for information purposes only, a comparison version of the Final Amendments relative to the Proposed Amendments.

III. Summary of Comments in Response to the March Notice and Identification of the Revisions Adopted by the Board

1. Nomenclature

Some stakeholders commented that the phrase "subject to alternative bid", which the Board proposed as a replacement for the term "contestability", could be interpreted to mean that the work at issue *must* be tendered for alternative bid rather than *may* be tendered for alternative bid. The Board's intention was that "subject to alternative bid" meant that the work may be tendered for alternative bid but was not required to be tendered for alternative bid, as has always been the case. The Board has revised the Proposed Amendments to replace the phrase "subject to alternative bid" with the phrase "eligible for alternative bid" to avoid any potential for confusion.

2. Definition of Distribution System

Representatives of ratepayers, generators and electrical contractors suggested that there should be greater clarity in the definition of "distribution system" for the purposes of determining when "physical contact" occurs under section 3.2.15A of the Proposed Amendments. These stakeholders proposed that an appropriate definition for this purpose is one that covers poles, wires and structures used to convey electricity, but not road allowances, utility rights of way, easements, or fee-owned property. One of these stakeholders suggested that the existing definition is clear, but that some confirmation should be included in the Notice. The Board confirms that, for the purposes of the alternative bid provisions of the DSC, the references to a distribution system do not cover road allowances, utility rights of way, easements, or other real property rights.

3. *Scope of Alternative Bid Option: "Greenfield" Projects, Asset Replacement and Asset Modification*

Some distributor representatives and representatives of electrical workers proposed that the alternative bid option should only apply for "greenfield" expansions where there are no pre-existing distributor-owned assets. According to these stakeholders, a distributor must have accountability for asset replacement or modification work as this type of work can affect existing customers, and may also affect third parties with whom the distributor has existing arrangements.

The Board believes that the requirement for distributor review of an alternative bid contractor's work execution plans, as well as the distributor's control over any necessary temporary energizations and de-energizations, adequately safeguard the interests of the distributor's other customers and third parties. The Board therefore remains of the view that the alternative bid option should be available for projects beyond greenfield expansions, including asset replacements. However, the Board notes that work associated with asset modification (as opposed to asset replacement) will in most instances require physical contact with the distributor's existing distribution system. If physical contact with the distributor's existing distribution system is required, the work will be ineligible for alternative bid under section 3.2.15A of the Final Amendments unless the distributor decides to allow the work to be eligible for alternative bid.

4. *Scope of Alternative Bid Option: Planning and Specifications*

One distributor's comment suggested that while section 3.2.15 of the Proposed Amendments dealing with planning and the development of specifications for the design, engineering and layout of an expansion achieves brevity, it may not achieve the desired level of clarity. This distributor commented that the phrase "planning and the development of specifications for the design, engineering and layout of an expansion" is itself susceptible of more than one meaning, depending on which words are taken to modify others. The comments of a stakeholder representing electrical workers regarding its interpretation of section 3.2.15 of the Proposed Amendments also point to the need for further clarity regarding the phrase in question. The Board confirms that this phrase is intended to be read as meaning: (a) planning (which as noted below is intended to capture distribution system planning); and (b) the development of specifications for each of (i) the design of an expansion; (ii) the engineering of an expansion; and (iii) the layout of an expansion. The Board has revised sections 3.2.15 and 3.2.16(d) of the Proposed Amendments to provide greater clarity in that regard.

The same distributor also suggested that the one area that is perhaps most contentious in the pre-construction phase is "Field Layout and Design", which, in the distributor's view, would not be eligible for alternative bid. This distributor also provided a detailed breakdown of eleven different work activities that may be captured by the "Field Layout and Design" heading, as well as all other stages of work relating to an expansion

project, together with the distributor's view of whether or not the work in question would be eligible for alternative bid. The Board has found this distributor's framework for analysis to be particularly helpful, and will return to it below.

The Board is persuaded that greater precision would be useful in relation to the concept of "planning" as used in section 3.2.15 of the Proposed Amendments. Specifically, the Board's intention in referring to "planning" as being ineligible for alternative bid is to capture more specifically distribution system planning, including planning for an expansion (dealing with issues such as routing, size and the like). Distributors are accountable to the Board and others for the right-sized, rational, efficient and cost-effective planning of their systems to accommodate the needs of their existing customers as well as to accommodate load growth and new generation connections. As such, the Board believes that distribution system planning should be within the exclusive purview of the distributor. However, this does not mean that there is no role for planning by customers and their contractors. Once the basic parameters of an expansion have been planned by the distributor, planning associated with implementation of the expansion (including work execution planning and planning for materials procurement and construction) can be undertaken by either the distributor or the customer (in other words, should be eligible for alternative bid).

The Board has therefore revised section 3.2.15 of the Proposed Amendments by replacing the word "planning" with the phrase "distribution system planning". The Board has also revised sections 3.2.16(d) and 3.2.16(d.1) of the Proposed Amendments by replacing the word "planning" with the phrase "distribution system planning". To further clarify the distinction between distribution system planning and planning that may be undertaken by a customer, the Board has also revised section 3.2.16(d.1) of the Proposed Amendments by replacing the phrase "plans and specifications" with the phrase "plans for the design, engineering, layout, and work execution".

Returning to the eleven work activities referred to above, and identified by a distributor in its comments as falling under the heading "Field Layout and Design", the Board now provides its interpretation of how each activity should be treated in terms of eligibility for alternative bid. The interpretations set out below reflect the Board's intended application of the Final Amendments to the list of work activities provided by the distributor in its comments on the Proposed Amendments. The Board notes that these work activities are not meant to be an exhaustive list of activities related to field layout and design nor are they meant to be taken as the list of activities that other distributors must follow in their processes or work.

- *System planning:* As noted above, the Board has clarified that distribution system planning is not eligible for alternative bid.
- *Design of pole line and its configuration:* Any decisions regarding routing and capacity that are made under this heading are, in the Board's view, part of distribution system planning and thus do not form part of the activities that are eligible for alternative bid. The development of specifications for pole line

configuration is also ineligible for alternative bid. However, the actual application of those specifications to the distributor-selected route and capacity requirement is an activity that is eligible for alternative bid. The scope of this eligible activity will vary depending on how prescriptive the distributor's specifications are regarding pole lines.

- *Final connection between existing and new assets:* These activities are captured in the concept of “distribution system planning” and are therefore not eligible for alternative bid.
- *Materials procurement planning and staking in accordance with the design:* Neither of these activities fall within the concepts of “distribution system planning” or “the development of specifications for the design, engineering and layout of an expansion” as referred to in section 3.2.15 of the Final Amendments. The objective of the alternative bid scheme is to provide customers that are required to make capital contributions an opportunity to improve the economic efficiency of the expansion project by lowering their costs. Materials procurement and materials management can form a significant portion of the overall cost of the project. To the extent that the actual materials procured will be governed by the distributor's specifications, the Board sees no undue risk in allowing the customer the opportunity to perform its own materials procurement and materials management. The staking in accordance with the design should be included or excluded from the activities eligible for alternative bid based on the particulars of the design approval process. There may be situations where it is simply more efficient for the distributor to include the staking of the project as part of its design approval process in which case the activity would be excluded from the alternative bid activities. In other cases the customer could provide sufficient detail in a proposed design such that the staking is more integral to the construction element of the project in which case the activity would be included.
- *Planning of corners (location of anchors):* To the extent that this relates to the determination of where corners will be located, this activity falls within the concept of “distribution system planning” and is therefore not eligible for alternative bid. However, to the extent that this relates to the location or construction of anchors, this activity falls within the application of the distributor's specifications which the Board has determined is eligible for alternative bid. The Board recognizes that a distributor might, in some cases, be better placed in terms of permitting or landowner issues associated with this latter activity, but notes that where this is the case the customer can avail itself of the option of paying the distributor to administer certain aspects of the contract (including the acquisition of all required permissions, permits and easements) (see section 3.2.16(c) of the DSC).

- *Permits and approvals where required (e.g., easements, tree-cutting rights, road approval, water crossing, rail-way crossing):* Obtaining permits and approvals that are short term in nature relating to construction activities can form part of the project implementation and are therefore eligible for alternative bid. As noted above, if a customer believes that a distributor may be better placed to undertake these activities, section 3.2.16(c) of the DSC provides a mechanism to enable this.
- *Planning and coordinating with third parties (e.g., telecom companies, joint use occupants, and pole owners):* Planning and coordinating with third parties normally occurs either in the pre-construction phase as a part of “distribution system planning” or in relation to post-construction administration activities related to the expansion. In both instances, elements of these activities primarily constitute the ongoing management of the distribution system as a whole and are not eligible for alternative bid. However, to the extent that the planning and coordination relates to the actual construction of an expansion and not the establishment of ongoing business relationships, the activity is part and parcel of the construction activity that is eligible for alternative bid.
- *Pole height and class, pole framing, wire specs and size:* These activities are all part of the development of specifications for the design, engineering and layout of an expansion, and thus are not eligible for alternative bid.

The Board reiterates that, for activities that are eligible for alternative bid, the customer is nonetheless required to obtain the distributor’s approval of plans to ensure conformance with the distributor’s distribution system planning and specifications, as set out in section 3.2.16(d.1) of the Final Amendments.

The Board acknowledges the comment made by the distributor that greater clarity would ensue if the DSC were to include a detailed list of all activities, with accompanying definitions, that are or are not be eligible for alternative bid in the pre-construction phase. However, the Board is of the view that a highly prescriptive approach would necessitate a thorough contemplation of *all* the possible arrangements that may arise between customers and distributors and even then, the list may not be exhaustive and address *all* circumstances or activities. Accordingly, the Board believes that the illustrative examples provided in this Notice provide adequate guidance to distributors and customers.

5. *Assets Involving Third Parties*

One distributor commented that distributors sometimes negotiate "contracts of convenience" with third parties (e.g. telephone companies) that involve the use of those parties’ poles. The distributor commented that the DSC needs to recognize that the provisions of section 3.2 of the DSC do not extend to such parties and contracts. The Board agrees with that comment. The alternative bid provisions do not apply to poles

owned by third parties such as telephone companies. The alternative bid provisions apply to assets that would have been owned from the outset by the distributor had the customer not exercised the alternative bid option. The alternative bid provisions do not apply to assets that are not owned by the distributor and are never meant to be owned by the distributor (i.e., assets that are never intended to be transferred to the distributor). Section 3.2.14 of the Final Amendments regarding the transfer of ownership reflects this position.

The same distributor also commented that the alternative bid option cannot apply in cases where existing or new third party agreements are involved. The Board does not agree with that assertion. The Board reiterates its view from number 3 above—even if the assets to be constructed are asset replacements that may eventually hold third party assets under a joint use agreement, the assets are still eligible for the alternative bid provisions. The Board also reiterates that the assets constructed under the alternative bid provisions will eventually be transferred to the distributor and the distributor would then be able to honour its arrangements with third parties just as it did with its former assets.

IV. Anticipated Costs and Benefits

As indicated in the March Notice, the Board believes that its approach to the alternative bid option as set out in the Proposed Amendments will provide greater clarity regarding the scope and application of the alternative bid provisions of the DSC. This will, in turn, promote more effective dealings between distributors and their customers. As also stated in the March Notice, the Board does not anticipate that its approach will result in material additional costs being borne by distributors or ratepayers.

The Board believes that the revisions to the Proposed Amendments that the Board has adopted, as described in section III above, will provide greater clarity in relation to the application of the Board's approach to the alternative bid option. The Board does not believe that additional material incremental costs will be triggered as a result of the adoption of those revisions.

V. Coming Into Force

As set out in the March Notice, and in accordance with section 1.7 of the DSC, the Final Amendments to the DSC as set out in Attachment A to this Notice come into force today, being the date on which they are published on the Board's website after having been made by the Board.

This Notice, including the Final Amendments to the DSC as set out in Attachment A, will be available for public inspection on the Board's website at www.oeb.gov.on.ca and at the office of the Board during normal business hours.

Any questions regarding the Final Amendments to the DSC as set out in Attachment A should be directed to the Market Operations Hotline at 416-440-7604 or market.operations@oeb.gov.on.ca. The Board's toll free number is 1-888-632-6273.

DATED at Toronto, July 28, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Attachments:	Attachment A:	Final Amendments to the Distribution System Code
	Attachment B:	Comparison Version Showing the Final Amendments to the Distribution System Code relative to the Proposed Amendments (for information purposes only)

Attachment A

Final Amendments to the Distribution System Code

Note: The text of the amendments is set out in italics below, for ease of identification only.

1. Section 3.2.2 of the Distribution System Code is amended by deleting the phrase “for the uncontestable work” in the second sentence and replacing it with the phrase *“for the work that was not eligible for alternative bid”*.
2. Paragraph (d) of section 3.2.9 of the Distribution System Code is amended as follows:
 - i. by deleting the phrase “the contestable work” and replacing it with the phrase *“the work that is eligible for alternative bid”*; and
 - ii. by deleting the phrase “the uncontestable work” and replacing it with the phrase *“the work that is not eligible for alternative bid”*.
3. Paragraph (b) of section 3.2.10 of the Distribution System Code is amended by deleting the phrase “for the uncontestable work” and replacing it with the phrase *“for the work that is not eligible for alternative bid”*.
4. Section 3.2.14 of the Distribution System Code is amended as follows:
 - i. by deleting the phrase “the contestable work” in the first and second sentences and replacing it in each case with the phrase *“the work that is eligible for alternative bid”*; and
 - ii. by adding the following to the end of the first sentence of the section:

provided that the customer agrees to transfer the expansion facilities that are constructed under the alternative bid option to the distributor upon completion.
5. Section 3.2.15 of the Distribution System Code is deleted and replaced with the following:

3.2.15 The following activities are not eligible for alternative bid:

 - (a) distribution system planning; and*
 - (b) the development of specifications for any of the following:*

- (i) *the design of an expansion;*
- (ii) *the engineering of an expansion; and*
- (iii) *the layout of an expansion.*

3.2.15A *Work that requires physical contact with the distributor's existing distribution system is not eligible for alternative bid unless the distributor decides in any given case to allow such work to be eligible for alternative bid.*

3.2.15B *Despite any other provision of this Code, decisions related to the temporary de-energization of any portion of the distributor's existing distribution system are the sole responsibility of the distributor. Where the temporary de-energization is required in relation to work that is being done under alternative bid, the distributor shall apply the same protocols and procedures to the de-energization as it would if the customer had not selected the alternative bid option.*

6. Section 3.2.16 of the Distribution System Code is amended as follows:

- i. by deleting the phrase "the contestable work" in the opening paragraph, in paragraph (a), in item (ii) of paragraph (b) and in paragraph (d), and replacing it in each case with the phrase "*the work that is eligible for alternative bid*";
- ii. by deleting the phrase "design and technical standards and specifications" in paragraph (d) and replacing it with the phrase "*distribution system planning and the distributor's specifications for any of the following*":
 - (i) *the design of the expansion;*
 - (ii) *the engineering of the expansion; and*
 - (iii) *the layout of the expansion";*
- iii. by deleting the word "and" at the end of paragraph (d); and
- iv. by adding the following immediately after paragraph (d):
 - (d.1) *require the customer to obtain the distributor's review and approval of plans for the design, engineering, layout, and work execution for the work that is eligible for alternative bid to ensure conformance with the distribution system planning and specifications referred to in paragraph (d) prior to commencing that work; and*

7. Section 3.2.17 of the Distribution System Code is amended by adding the following immediately after paragraph (a):

- (a.1) *costs associated with any temporary de-energization of any portion of the existing distribution system that is required in relation to an expansion that is constructed under the alternative bid option;*

(a.2) *costs associated with the review and approval referred to in section 3.2.16(d.1);*

8. Section 3.2.18 of the Distribution System Code is amended by deleting the phrase “the contestable work” in the second and third sentences and replacing it in each case with the phrase “*the work that is eligible for alternative bid*”.

Attachment B

Comparison Version of Final Amendments to the Distribution System Code Relative to the Proposed Amendments

(for information purposes only)

Note: The text of the amendments is set out in italics below, for ease of identification only.

1. Section 3.2.2 of the Distribution System Code is amended by deleting the phrase “for the uncontestable work” in the second sentence and replacing it with the phrase “*for the work that was not eligible for alternative bid*”. Deleted: *subject to*
2. Paragraph (d) of section 3.2.9 of the Distribution System Code is amended as follows:
 - i. by deleting the phrase “the contestable work” and replacing it with the phrase “*the work that is eligible for alternative bid*”; and Deleted: *subject to*
 - ii. by deleting the phrase “the uncontestable work” and replacing it with the phrase “*the work that is not eligible for alternative bid*”. Deleted: *subject to*
3. Paragraph (b) of section 3.2.10 of the Distribution System Code is amended by deleting the phrase “for the uncontestable work” and replacing it with the phrase “*for the work that is not eligible for alternative bid*”. Deleted: *subject to*
4. Section 3.2.14 of the Distribution System Code is amended as follows:
 - i. by deleting the phrase “the contestable work” in the first and second sentences and replacing it in each case with the phrase “*the work that is eligible for alternative bid*”; and Deleted: *subject to*
 - ii. by adding the following to the end of the first sentence of the section:

provided that the customer agrees to transfer the expansion facilities that are constructed under the alternative bid option to the distributor upon completion.
5. Section 3.2.15 of the Distribution System Code is deleted and replaced with the following:

3.2.15 The following activities are not eligible for alternative bid:

Deleted: . Planning and

- (a) distribution system planning; and
- (b) the development of specifications for any of the following:

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- (i) the design of an expansion;
- (ii) the engineering of an expansion; and
- (iii) the layout of an expansion.

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Deleted: are not subject to alternative bid

3.2.15A Work that requires physical contact with the distributor's existing distribution system is not eligible for alternative bid unless the distributor decides in any given case to allow such work to be eligible for alternative bid.

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Deleted: subject to

3.2.15B Despite any other provision of this Code, decisions related to the temporary de-energization of any portion of the distributor's existing distribution system are the sole responsibility of the distributor. Where the temporary de-energization is required in relation to work that is being done under alternative bid, the distributor shall apply the same protocols and procedures to the de-energization as it would if the customer had not selected the alternative bid option.

6. Section 3.2.16 of the Distribution System Code is amended as follows:

i. by deleting the phrase "the contestable work" in the opening paragraph, in paragraph (a), in item (ii) of paragraph (b) and in paragraph (d), and replacing it in each case with the phrase "the work that is eligible for alternative bid";

Deleted: subject to

ii. by deleting the phrase "design and technical standards and specifications" in paragraph (d) and replacing it with the phrase "distribution system planning and the distributor's specifications for any of the following:

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- (i) the design of the expansion;
- (ii) the engineering of the expansion; and
- (iii) the layout of the expansion";

Deleted: ,

iii. by deleting the word "and" at the end of paragraph (d); and

iv. by adding the following immediately after paragraph (d):

(d.1) require the customer to obtain the distributor's review and approval of plans for the design, engineering, layout, and work execution for the work that is eligible for alternative bid to ensure conformance with the distribution system planning and specifications referred to in paragraph (d) prior to commencing that work; and

Deleted: the

Deleted: specifications

Deleted: subject to

7. Section 3.2.17 of the Distribution System Code is amended by adding the following immediately after paragraph (a):

- (a.1) *costs associated with any temporary de-energization of any portion of the existing distribution system that is required in relation to an expansion that is constructed under the alternative bid option;*
- (a.2) *costs associated with the review and approval referred to in section 3.2.16(d.1);*

8. Section 3.2.18 of the Distribution System Code is amended by deleting the phrase “the contestable work” in the second and third sentences and replacing it in each case with the phrase “*the work that is eligible for alternative bid*”.

Deleted: *subject to*