



# Canada-Newfoundland and Labrador Benefits Plan Guidelines

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## 1.0 Introduction

### 1.1 Atlantic Accord

The Atlantic Accord is a Memorandum of Agreement between the Governments of Canada and Newfoundland and Labrador on offshore oil and gas resource management and revenue sharing. One of the purposes of the Accord as described in section 2 is:

**2.(a)** to provide for the development of oil and gas resources offshore Newfoundland for the benefit of Canada as a whole and Newfoundland and Labrador in particular; [. . .]

**(c)** to recognize the right of Newfoundland and Labrador to be the principal beneficiary of the oil and gas resources off its shores, consistent with the requirement for a strong and united Canada; and

**(d)** to recognize the equality of both governments in the management of the resource, and ensure that the pace and manner of development optimize the social and economic benefits to Canada as a whole and to Newfoundland and Labrador in particular;

The Accord further addresses industrial benefits matters in section 50, Economic Growth and Development:

**50.** It is the objective of both governments to ensure that the offshore area is managed in a manner which will promote economic growth and development in order to optimize benefits accruing to Newfoundland (and Labrador) in particular and to Canada as a whole.

### 1.2 Implementing Legislation

The Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB or “the Regulator”) is responsible for the regulation of work and activity in the Canada-Newfoundland and Labrador Offshore Area, as regulated under the **Canada-Newfoundland and Labrador Atlantic Accord Implementation Act**, and the **Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act** (references herein are to the federal version, the **Accord Acts** or “the legislation”).

Section 45 of the **Accord Acts** requires that a “Canada-Newfoundland and Labrador Benefits Plan” (“Benefits Plan”) must be submitted and approved before any work or activity can take place in the Canada-Newfoundland and Labrador Offshore Area:

**45 (1)** In this section, Canada–Newfoundland and Labrador benefits plan means a plan for the employment of Canadians and, in particular, members of the labour force of the Province and, subject to paragraph (3)(d), for providing manufacturers, consultants,

contractors and service companies in the Province and other parts of Canada with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

**(2)** Before the Board approves any development plan under subsection 139(4) or authorizes any work or activity under paragraph 138(1)(b), a Canada–Newfoundland and Labrador benefits plan shall be submitted to and approved by the Board, unless it directs that that requirement need not be complied with.

**(3)** A Canada–Newfoundland and Labrador benefits plan shall contain provisions intended to ensure that

**(a)** before carrying out any work or activity in the offshore area, the corporation or other body submitting the plan shall establish in the Province an office where appropriate levels of decision-making are to take place;

**(b)** consistent with the Canadian Charter of Rights and Freedoms, individuals resident in the Province shall be given first consideration for training and employment in the work program for which the plan was submitted and any collective agreement entered into by the corporation or other body submitting the plan and an organization of employees respecting terms and conditions of employment in the offshore area shall contain provisions consistent with this paragraph;

**(c)** expenditures shall be made for research and development to be carried out in the Province and for education and training to be provided in the Province; and

**(d)** first consideration shall be given to services provided from within the Province and to goods manufactured in the Province, where those services and goods are competitive in terms of fair market price, quality and delivery.

**(4)** The Board may require that any Canada–Newfoundland and Labrador benefits plan include provisions to ensure that disadvantaged individuals or groups have access to training and employment opportunities and to enable those individuals or groups or corporations owned or cooperatives operated by them to participate in the supply of goods and services used in any proposed work or activity referred to in the benefits plan.

**(5)** In reviewing any Canada–Newfoundland and Labrador benefits plan, the Board shall consult with both Ministers on the extent to which the plan meets the requirements set out in subsections (1), (3) and (4).

**(6)** Subject to any directives issued under subsection 42(1), the Board may approve any Canada–Newfoundland and Labrador benefits plan.

### 1.3 Authority to Issue Guidelines

Subsection 151.1(1) of the **Accord Acts** authorizes the Regulator to issue and publish, in such manner as it deems appropriate, guidelines and interpretation notes with respect to the application and administration of section 45 and the preparation of a Benefits Plan.

A Benefits Plan should contain sufficient information to satisfy the Regulator that the benefits provisions of the Atlantic Accord and section 45 of the **Accord Acts** will be adhered to by the proponent and its contractors. It is not the aim of these guidelines or future, updated guidelines to impose new measures on any previously approved Benefits Plan. These guidelines have been issued to assist proponents in complying with the legislation and the Regulator's requirements, interpretations and expectations when preparing a Benefits Plan. They reflect current practices that have been established through lessons learned from the monitoring and oversight of previously approved Benefits Plans, as well as feedback from proponents on older versions. Revisions to these guidelines will be made as required in an effort to ensure that the guidelines are continuously improved.

### 1.4 Relationship of Benefits Plans to Development Plans

The **Accord Acts** establish the requirements that proponents of offshore development projects<sup>1</sup> must fulfill in order to obtain approval of a Development Plan. A Development Plan Application shall be comprised of a Benefits Plan, Development Plan, and ancillary documents. A summary of the Benefits Plan should be included in the Development Plan Application Summary.

The Board's approval of a Benefits Plan is a prerequisite to the Board's approval of a Development Plan Application.

Approval of a Development Plan is a fundamental decision of the Board; it must be subsequently approved by Ministers to take effect. While approval of a Benefits Plan is not a fundamental decision, and therefore not subject to approval by Ministers, the Newfoundland and Labrador and federal governments have keen interests and are important stakeholders in Benefits Plans. Accordingly, and as part of the Benefits Plan approval process, the Regulator will consult with the appropriate government departments.

As well, proponents should be aware that the responsible Ministers in the Newfoundland and Labrador and Federal governments have authority to issue joint directives, which are binding on the Regulator, in relation to Canada-Newfoundland and Labrador Benefits Plans and any of the provisions thereof.

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<sup>1</sup> Where the word "project" is used in these guidelines it shall be understood to refer to all activity associated with the project, which includes the development (construction) phase, operations phase, abandonment and decommissioning.

## 1.5 Consultation

The Regulator stresses the importance of early consultation between itself and the proponent in the preparation of a Benefits Plan. This early consultation is intended to assist the proponent in understanding the legislation and the Regulator's guidance in preparing a Benefits Plan. The Regulator's participation in early consultations with a proponent will not prejudice any decisions the Board may make with respect to a Benefits Plan. However, it is intended that such consultations, if diligently pursued, should facilitate the preparation of a comprehensive Benefits Plan, and streamline its consideration by the Board upon submission.

The Regulator also encourages proponents to consult with:

- Provincial and federal governments;
- Relevant municipal governments;
- Industry supply chain associations and local supply and service community;
- Industry trade and labour associations;
- Other stakeholder individuals, non-governmental organizations, etc.;
- Indigenous groups; and
- The general public.

Sharing information about the proposed project and the potential training, employment, and business opportunities will build strong relationships in the community and facilitate local participation.

The proponent should engage early and often with the Regulator where procurement and employment activity is taking place in the planning stages of a project or activity. Where employment and procurement takes place prior to Benefits Plan submission, proponents should act in accordance with these guidelines and within the intent of the legislation.

## 1.6 Exploration Benefits Plan

Guidance with respect to Benefits Plans for exploration programs is provided in Appendix 1.

## 1.7 Benefits Plan Amendments and Supplements

At any time during a project's life, if a proponent presents a Development Plan Amendment for consideration, the Regulator may determine that a Benefits Plan Amendment is also required. An amendment to an existing Benefits Plan may be required when the proposed activity will generate substantial industrial benefits. A Benefits Plan Amendment requires Board approval before the proposed activity can take place.

Alternatively, a Benefits Plan Supplement may be required for smaller scale project expansion or modification activities where a Development Plan Amendment is not required. A Benefits Plan Supplement assists the Regulator in understanding the proposed activity and typically contains a description of the activity, associated contracting, employment and other relevant benefits information to ensure consistency with approved Benefits Plans, but formal Board approval of the Supplement is not required for the activity to take place.

A determination on the requirement for either a Benefits Plan Amendment or Supplement will be finalized following consultation between the Regulator and the proponent on a case-by-case basis.

## 1.8 Public Review Process

A Benefits Plan may be subject to a public review process, unless the Regulator determines that, in the public interest, a public review is not required.

A complete description of the public review process is contained in the **Development Plan Guidelines**.

## 2.0 Statutory Benefits Plan Requirements

The statutory requirements of a Benefits Plan are described in section 45 of the legislation. An explanation of each of these requirements follows below. A proponent is required to address each of these provisions in its Benefits Plan.

### 2.1 Office in the Province

The legislation requires that, before carrying out any work or activity in the Canada-Newfoundland and Labrador Offshore Area, a proponent establish an office in the Province with appropriate decision-making authority.<sup>2</sup> The Regulator interprets this provision to mean that proponents are obligated to establish a local office that manages the project, through all phases, including exploration, pre-development, development, operations, abandonment and decommissioning. However, the Regulator also recognizes that the size of, and functions at, the local office should be commensurate with the nature, duration, and significance of activity taking place in the Canada-Newfoundland and Labrador Offshore Area.

The proponent will be expected to demonstrate that the number and functions of locally-based employees can support the appropriate level of decision-making inherent in the activities and

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<sup>2</sup> Paragraph 45(3)(a) of the **Accord Acts**.

operations taking place. Accordingly, the proponent's Benefits Plan should provide the following information, to the degree practical at the time of submission:

- The location of the office and number and functions of the positions working there;
- The level of authority the local office has in control of the project, through all facets and phases (i.e., describe the local office's responsibility for day-to-day operational control of the project);
- How the local office fits into the national and/or global structure of the proponent's company (i.e., describe any national or global office supports that will be performed at other locations relating to the project);
- Organization charts showing the planned positions, residency status and location of employees proposed for the development phase of the project;
- The timing of establishment of the local office; and
- Any other actions, plans or commitments the proponent intends to undertake with respect to the local office.

## 2.2 Full and Fair Opportunity

Proponents must provide a full and fair opportunity<sup>3</sup> for businesses in the Province and other parts of Canada to participate in supplying goods and services used in carrying out any proposed work or activity referred to in a Benefits Plan. Providing a full and fair opportunity means that the proponent should demonstrate that efforts will be taken to ensure that Canadian suppliers are afforded an opportunity to participate in the contracting process on a competitive basis.

The Regulator also interprets "full and fair opportunity" to mean that companies in Newfoundland and Labrador and other parts of Canada are:

- Afforded the same opportunity to participate in all aspects of a project;
- Treated on an impartial basis;
- Given sufficient information about tender opportunities; and
- Given reasonable time to prepare and submit tender responses.

Proponents should describe how their contracting strategies will not unfairly disadvantage Canadian and Newfoundland and Labrador suppliers and how they will apply the full and fair principle in their procurement activities.

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<sup>3</sup> Subsection 45(1) of the **Accord Acts**.

## 2.3 First Consideration - Employment

The employment of Canadians, and in particular members of the labour force of the Province, is an essential feature of governments' policy as enshrined in the **Accord Acts**, concerning offshore resource development.

The Regulator defines a Newfoundland and Labrador resident as a Canadian citizen (or Permanent Resident) who meets the rules of residency set out in the **Elections Act, SNL 1992, Chapter E-3.1** (i.e., location of principal residence is in the Province at the time of hire). Proponents are expected to report employment statistics using this definition.

The “first consideration” for employment provision of the legislation<sup>4</sup> requires that the proponent and its contractors look first to the Newfoundland and Labrador labour market to meet their human resource requirements. Proponents and contractors have the right to establish, in advance of the recruitment process, the qualifications, experience and competencies required of candidates for employment. However, the first consideration obligation means that once the requirements for a position have been established, a Newfoundland and Labrador resident who meets these requirements should be given employment preference over non-residents. Proponents should describe how they will apply the first consideration for employment principle in their Benefits Plan.

The Regulator also interprets first consideration for Newfoundland and Labrador residents to be a continuing obligation during the course of employment, including at the time of layoff. However, the Regulator recognizes that decisions regarding layoffs may be subject to provisions in contractor (but not Operator) collective agreements, and other considerations including performance, experience, conduct and qualifications.

Proponents should state how they will manage compliance with these expectations in the Benefits Plan.

## 2.4 First Consideration - Procurement

The legislation requires that first consideration be given to services provided from within the Province and to goods manufactured in the Province, where those services and goods are competitive in terms of fair market price, quality and delivery.<sup>5</sup>

The proponent should describe in its Benefits Plan how it will apply the first consideration principle in any procurement practices and bid evaluation procedures expected to be used for

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<sup>4</sup> Paragraph 45(3)(b) of the **Accord Acts**.

<sup>5</sup> Paragraph 45(3)(d) of the **Accord Acts**.

the acquisition of goods and services. More specifically, the proponent should describe how local benefits considerations will factor into its bid evaluation procedures.

## 2.5 Research and Development and Education and Training

The Regulator has established specific guidance relating to R&D/E&T expenditures in Appendix 2.

## 2.6 Diversity and Inclusion Plan

A proponent's Benefits Plan is expected to include a Diversity and Inclusion Plan. This may be included within the Benefits Plan or filed as a separate document. In the context of a Diversity and Inclusion Plan, the Regulator considers "disadvantaged individuals or groups" (herein referred to as "under-represented groups") referenced at the time of the legislation<sup>6</sup> to include:

- Women;
- Indigenous peoples;
- Persons with disabilities;
- Members of visible minorities; and
- Any other disadvantaged individuals or groups.

Diversity and Inclusion Plans should encompass employment equity measures with an explicit objective to facilitate the participation of under-represented groups. Generally, the Regulator expects a proponent's Diversity and Inclusion Plan to include a range of actions aimed at increasing the participation of under-represented groups such as:

- Collecting information and conducting analysis of the workforce in each occupational category to determine the degree of underrepresentation of persons in under-represented groups;
- Reviewing employment systems, policies and practices to identify and address employment barriers against persons in under-represented groups;
- Establishing short and long term goals to increase representation of persons in under-represented groups;
- Describing how the design of facilities and policies and procedures accommodates persons from under-represented groups;

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<sup>6</sup> Subsection 45(4) of the **Accord Acts**.

- Describing how a supportive work environment that fosters diversity and inclusion will be established, implemented and evaluated;
- Outlining measures to educate and inform members of the workforce of employment equity and diversity, and ensuring there is a culture consistent with the provisions of employment equity;
- Establishing timelines for implementation of initiatives;
- Including measures to promote opportunities for corporations or firms owned by under-represented groups to supply goods and services;
- Ensuring diversity and inclusion practices are contractually passed along to contractors and sub-contractors and demonstrate contractor and sub-contractor commitments;
- Using inclusive language in job postings and collective agreements to ensure that members of under-represented groups have access to employment opportunities;
- Describing public information and outreach initiatives to familiarize members of under-represented groups with the project and the types of employment, training and contracting opportunities associated with it;
- Describing strategies (e.g., mentoring, special assignments, management training, etc.) to increase participation of under-represented groups in occupational groups; and
- Describing how partnering with local training institutions to promote education and employment opportunities to members of under-represented groups will be achieved.

## 2.7 Collective Agreements

A proponent will be expected to confirm that any collective agreement it enters into with an organization of employees respecting terms and conditions of employment in the Canada-Newfoundland and Labrador Offshore Area contains provisions consistent with section 45(3)(b).

## 3.0 Other Benefits Plan Elements

The following topics are other relevant Regulator considerations for proponents to demonstrate commitment to the optimization of benefits. Proponents should address these topics in its Benefits Plan, and identify any specific plans, commitments or intentions to address each of these areas.

### 3.1 Project Description

A Benefits Plan typically includes a detailed description of all phases of the proposed project in sufficient detail to allow an understanding of the potential industrial benefits that may accrue to Canada and Newfoundland and Labrador (i.e., the project, location, and mode of development; the major activities that will be carried out; key activity timelines and milestones; forecasts of total expenditures - including estimates of Newfoundland and Labrador, Canadian, and foreign content).

The proponent's Benefits Plan should provide an estimate or overview of major work activities committed or expected to take place in the Province and other parts of Canada, in particular for engineering, project management and fabrication activities.

Summary tables of project expenditures and project employment for the development phase for each major project component, categorized by Newfoundland and Labrador, other Canadian, and foreign content should be provided to the degree practical at the time of submission.

Summary tables of project expenditures and project employment for the operations phase categorized by Newfoundland and Labrador, other Canadian, and foreign content should also be provided.

The Regulator recognizes these estimates are typically calculated at the time of Front End Engineering Design (FEED), are subject to competitive contracting processes, and therefore subject to change.

### 3.2 Benefits Culture

Given that the most senior executive-level decision making authority of most oil and gas companies operating in the Canada-Newfoundland and Labrador Offshore Area will typically reside outside the Province, it is important for a proponent's locally-based senior management to uphold and reinforce, where appropriate, the uniqueness of the Atlantic Accord, with respect to corporate policies and processes. The Regulator refers to this as the implementation of a 'Benefits Culture', with industrial benefits being one of the four pillars of the Atlantic Accord.

A proponent's Benefits Plan should describe procedures it will implement to:

- Instill such a Benefits Culture in its own organization and within its major contractors' organizations;
- Manage the implementation of its Benefits Plan;
- Provide oversight and accountability for its commitments and initiatives and also for those of its contractors and subcontractors;

- Provide an enabling environment for local project staff to consider benefits in decision making and implementation of the Benefits Plan; and
- Build internal benefits-related capacity and expertise.

### 3.3 Contractor/Subcontractor Oversight

The proponent should describe in its Benefits Plan how it will develop benefits management systems and procedures to ensure adherence by contractors and subcontractors to the commitments and principles in the proponent's Benefits Plan. The systems and procedures should clearly specify that contractors and subcontractors have the same level of obligation to the proponent's benefits commitments and philosophies as does the proponent. These procedures should be provided in a separate document and submitted to the Regulator for review in a timely manner following a decision by the proponent to proceed with the development phase of a project.

### 3.4 Demand/Supply Analysis

The Benefits Plan should provide an analysis of the potential for Canadian companies and, in particular, Newfoundland and Labrador companies to participate in the engineering, supply, fabrication, construction, operation and support activities of the project. A similar analysis of the labour force required to meet the employment needs of the project should be provided.

The project **construction phase** offers significant procurement and employment opportunities for businesses and residents in the Province. This section offers guidance that facilitates the optimization of these opportunities.

The **construction phase** demand for goods and services should be estimated for each of the following categories:

- Fabrication, construction and installation of the facilities;
- Materials required in bulk such as steel plate, pipe, concrete, tubular goods, etc.;
- Major equipment such as pumps, compressors, generators, wellheads, pressure vessels etc.;
- Major services such as engineering and project management, transportation, warehousing, drilling, and other support services; and
- Services required for data processing, data storage, automation, and digital/software services.

For each of the major components identified, the proponent is expected to provide a thorough assessment of the ability of the Canadian and, in particular, the Newfoundland and Labrador economies to participate in the project, and to identify constraints to their participation.

The **construction phase** annual demand for labour, in person-hours and headcount, for each major component of the production system, should be projected by job category in accordance with Canada's National Occupation Codes (NOC) and by expected location of the work in Newfoundland and Labrador and Canada.

The proponent is also expected to:

- Provide an assessment of the availability of Canadian and Newfoundland and Labrador labour to meet this demand and how it might be increased or enhanced;
- Consider any special training requirements which might be needed to facilitate participation by the Canadian and Newfoundland and Labrador labour force;
- Assess the impact of project demands on the educational infrastructure in the Province; and
- Assess the impact of other major projects in the region (if applicable) which may draw on the same pool of workers as the project being considered, and any mitigation strategies.

The annual **production phase** demand for goods and services should be estimated for each major category and probable sources should be identified. For each of the major categories identified, the proponent is expected to provide a thorough assessment of the ability of Canadian and, in particular, Newfoundland and Labrador industry to participate, and to identify any constraints to its participation. The proponent should also provide a description of the aspects of its contracting strategy designed to facilitate such participation.

The annual **production phase** labour requirements, in persons, should be projected by job category in accordance with the NOC. The proponent is expected to provide an assessment of the availability of Canadian and Newfoundland and Labrador labour to meet this demand and to identify any special training requirements which might be needed to maximize the Canadian and Newfoundland and Labrador labour force participation.

### 3.5 Project Management and Engineering

Project management and engineering services can represent significant benefits to Newfoundland and Labrador, and Canada, in every project. The proponent should describe its approach to the management and engineering of the project, including its plans concerning:

- Contracting strategy and proposed location of FEED and detailed design for major components of the project; and

- Extent and type of participation by Canadian and, in particular, Newfoundland and Labrador engineering firms and individual contractors, in project management and engineering activities.

### 3.6 Supplier Development

The objective of supplier development is to develop and sustain reliable domestic sources of goods and services. Generally, the proponent is expected to describe its plans for achieving this objective through a range of actions that can include:

- Proactive supplier development activities (such as supplier information seminars, business-to-business sessions, major contractor presentations, etc.);
- Providing timely information concerning project requirements for goods and services to Newfoundland and Labrador and other Canadian suppliers and contractors;
- Assessing Newfoundland and Labrador and other Canadian supply capabilities, including the identification of constraints and new supply opportunities;
- Specific initiatives to transfer technology/knowledge to Newfoundland and Labrador and other Canadian suppliers and contractors;
- Visiting supplier facilities to review procedures, equipment, technologies and personnel qualifications to assess the competitive capabilities of Newfoundland and Labrador and other Canadian suppliers;
- Enabling Newfoundland and Labrador and other Canadian suppliers to participate in the proponent's national and international supply chain;
- Encouraging international contractors to partner with Newfoundland and Labrador, and other Canadian firms, by means of joint ventures and other business models;
- Initiatives to provide or facilitate training and certification that enhances Newfoundland and Labrador, and other Canadian firms' ability to compete; and
- Initiatives to enable under-represented groups or companies owned or operated by them to participate in the supply of goods and services used in the proposed work.

### 3.7 Procurement and Contracting

The proponent is expected to describe its contracting strategies for goods and services for the project. The Regulator normally views that bundling broad categories of work scopes into a single scope of work which is too large for Newfoundland and Labrador and Canadian suppliers and

contractors does not provide a full and fair opportunity. The proponent should therefore identify the major contracts and describe its strategy for the packaging of contracts which provide full and fair opportunity and first consideration to qualified Canadian and Newfoundland and Labrador suppliers and contractors, respectively.

Proponents should also give due consideration to the ability and opportunity for small and medium sized enterprises to participate.

The proponent should describe its plans concerning:

- Preparation of bid specifications and packages to ensure that they provide full and fair opportunity and first consideration to qualified Canadian and Newfoundland and Labrador suppliers and contractors, respectively, to participate in the bid process. As mentioned above, packages should be scoped appropriately so as not to unfairly disadvantage local suppliers, and the proponent should demonstrate all reasonable efforts have been taken to ensure that local suppliers have been afforded an opportunity to participate in the contracting process on a competitive basis. It should also be noted that contracting outcomes should not be determined solely on the basis of lowest price;
- Publishing of proponent and contractor quarterly procurement forecasts, Expressions of Interest (EOIs), bid lists and awards for all contracts and purchase orders greater than CDN \$250,000 for the development phase of a project. It is expected that procurement information will be posted via media such as local newspapers, oil and gas industry procurement websites (e.g., energynl.ca, bidsalert.com), industry association websites, and proponent/contractor websites, and will be updated on a regular basis;
- Publishing of proponent and contractor semi-annual procurement forecasts, EOIs, and awards for all contracts and purchase orders greater than CDN \$250,000 for the operations phase of a project. It is expected that procurement information will be posted via media such as local newspapers, general procurement websites (e.g., energynl.ca, bidsalert.com), industry association websites and proponent/contractor websites, and will be updated on a regular basis;
- Communication of its bid procedures to Newfoundland and Labrador and other Canadian suppliers and manufacturers on a timely basis. The Regulator's expectation is that proponent and contractor bid procedures are consistent with the Canadian Association of Petroleum Producers (CAPP) Industry Recommended Practice document titled **Atlantic Canada Offshore Petroleum Industry – Supply Chain Management**;
  - Location of proponent and major contractor procurement offices, and the names of key procurement personnel in Newfoundland and Labrador and other parts of Canada;

- Requests for Canada and Newfoundland and Labrador benefits information (i.e., benefits questionnaires) as a part of the bid solicitation process, along with a description as to how such information will be used in the bid selection process; and
- Provision of debriefings to unsuccessful bidders when so requested, consistent with CAPP's Industry Recommended Practice document titled **Atlantic Canada Offshore Petroleum Industry – Supply Chain Management**.

The Regulator may monitor any pre-development contracting activity which occurs prior to a project Benefits Plan approval. Such contracting will be at the proponent's own risk, if it does not conform to the Benefits Plan which may be subsequently submitted for approval. In monitoring this process, the Board is in no way prejudicing any decisions it may take in approving the Benefits Plan. However, this risk may be mitigated to the extent contracting activity is conducted in accordance with these guidelines (including the monitoring and reporting processes in Appendix 3), and to the extent there have been diligent consultations with the Regulator.

The use of global frame agreements, global supply agreements and other international, company-wide contracting agreements of a similar nature between a proponent and contractor (or between a contractor and subcontractor) may not be compliant with the Benefits obligations under the **Accord Acts**. In particular, the use of such agreements is not compliant if full and fair opportunity is not provided to companies in the Province or Canada, or first consideration is not provided for the supply of goods and services from within the Province on a competitive basis.

Therefore, Newfoundland and Labrador and Canadian markets should be assessed, and full and fair opportunity and first consideration must be provided<sup>7</sup> to Canadian and Newfoundland and Labrador suppliers and contractors, respectively, before procurement of goods and services using global frame, or similar agreements is contemplated. Proponents should describe in their Benefits Plan how they and their contractors will ensure compliance with the full and fair opportunity and first consideration principles where the use of global frame, or similar agreements is contemplated. Proponents are encouraged to consult with the Regulator on these matters.

### 3.8 Employment and Training

The proponent should provide an employment strategy in its Benefits Plan, which addresses the following:

- A commitment to provide project organization and staffing plans for the construction phase. In particular, at the beginning of the construction phase, employment plans for the **proponent and each major contractor** are required, identifying key positions to be filled by

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<sup>7</sup> Subsection 45(1) of the **Accord Acts**.

proponent/contractor personnel, and other positions to be filled by qualified Newfoundland and Labrador and other Canadian residents, subject to availability at the time of hire;

- A commitment to provide an operations phase Human Resources Plan for the **proponent and each major contractor** including organization charts by position and residency submitted to the Regulator 12 months prior to first oil;
- Strategies for succession of qualified residents of the Province, and other Canadians, to any positions held initially by non-Canadians in the construction and operations phases;
- Identification of specific education and training programs at an early stage in the project, to be provided in the Province for Newfoundland and Labrador residents and other Canadians to participate in the project, in particular due to any anticipated shortages in labour supply during the construction phase;
- Establishment of specific measures and initiatives to increase employment opportunities for under-represented groups including: women, Indigenous groups, persons with disabilities and members of visible minorities (refer to section 2.6); and
- Cooperation with governments and training institutions in identifying and developing suitable employment-related training programs to address production phase skill gaps/labour shortages.

## 4.0 Monitoring and Reporting

Effective monitoring and reporting of procurement decisions, employment levels and expenditures are necessary to demonstrate that the commitments of the Benefits Plan are being followed by a proponent and its contractors, and that those commitments are being achieved. Suggested formats for the Regulator's monitoring and reporting requirements for development and operations phase procurement are described in Appendix 3. Proponents may propose alternative reporting methodologies in their Benefits Plan.

## 5.0 Benefits Reviews and Complaints

As part of its compliance monitoring role, the Regulator may identify areas of concern with respect to a proponent's compliance with its Benefits Plan or issues of broad concern to the industry affecting benefits generally. Accordingly, a proponent and its contractors may be asked to provide relevant information to the Regulator, in sufficient detail consistent with privacy-related legislation, to allow the Regulator to assess whether adherence with the proponent's Benefits Plan has been achieved.

The Regulator may also receive complaints on specific employment or procurement matters. A proponent and its contractors may be asked to provide relevant information in response to a complaint, with sufficient detail respectful of, and compliant with any privacy legislation, that enables the Regulator to assess its merits. This may entail obtaining information from contractors or other third parties to verify facts.

A proponent should describe its commitment to co-operate in these reviews in the Benefits Plan, including a commitment to participate in complaint investigation and resolution, and a commitment to remedy well-founded complaints or findings of non-adherence to its Benefits Plan.

# Appendix 1

## Canada-Newfoundland and Labrador Exploration Benefits Plan

## 1.0 Introduction

Section 45 of the **Accord Acts** requires that a Canada-Newfoundland and Labrador Benefits Plan be submitted and approved by the Board, before it authorizes any work or activity in the Canada-Newfoundland and Labrador Offshore Area.

This guidance is presented to assist a proponent with the preparation of an Exploration Benefits Plan. All guidance referenced throughout this appendix reflects and codifies current practices in relation to Exploration Benefits Plans.

## 2.0 Statutory Requirements

An Exploration Benefits Plan must address the statutory requirements from section 45 of the **Accord Acts**. The Regulator's requirements with respect to these provisions are described fully in section 2.0 of the **Benefits Plan Guidelines**.

The Exploration Benefits Plan should describe a proponent's plans and commitments related to the statutory Benefits Plan requirements and other Benefits Plan elements below, as well as the consultative, monitoring and reporting procedures the proponent intends to establish to demonstrate the achievement of these objectives.

The legislation requires that a proponent establish an office in the Province where appropriate levels of decision-making are to take place.<sup>8</sup> The Regulator would not consider an application for exploration drilling or any other exploration activity from a proponent which does not have an office with appropriate levels of decision-making authority located in the Province. However, the Regulator also recognizes that the size of and functions at the local office are commensurate with the nature, duration, and significance of activity taking place in the Canada-Newfoundland and Labrador Offshore Area.

At a minimum, the local office should be sufficiently staffed by personnel who would be accountable for and responsive to any incidents that may arise during the course of the exploration activity, and are able to make decisions on behalf of the proponent in ensuring regulatory compliance or responding to any regulatory issues.

The proponent should describe its plan for establishment of a local office, including the number and type of positions.

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<sup>8</sup> Paragraph 45(3)(a) of the **Accord Acts**.

### 3.0 Description of Work Activity

The proponent should provide a description of the proposed activity, including an estimate or overview of the work expected to take place in the Canada-Newfoundland and Labrador Offshore Area. Proponents should also provide an estimate of project expenditures, as well as a summary of forecasted project employment categorized by Newfoundland and Labrador, other Canadian and foreign residents.

### 4.0 Procurement and Contracting

The proponent is expected to describe its contracting strategy for goods and services in its Exploration Benefits Plan. The proponent is also expected to describe:

- A procurement forecast of all contracts greater than CDN \$100,000, as well as strategies for subcontracting and the packaging of contracts;
- Its commitment to provide manufacturers, consultants, contractors and service companies in the Province and in other parts of Canada with a **full and fair opportunity** on a competitive basis in the supply of goods and services;
- Its commitment to provide **first consideration** to services provided from within the Province and to goods manufactured in the Province, where those services and goods are competitive in terms of fair market price, quality, and delivery;
- Its commitment to communicate contracting information on a timely basis;
- Its commitment to publish proponent and contractor Expressions of Interest (EOIs) for the contracts (and purchase orders of a significant dollar value) that will be procured for the program. It is the Regulator's expectation that information on procurement opportunities will be posted via media such as local newspapers, general procurement websites (e.g., [energynl.ca](http://energynl.ca), [bidsalert.com](http://bidsalert.com)) and proponent/contractor websites (if applicable), and these will be updated on a regular basis;
- The location of the proponent's procurement offices, and the names of key procurement personnel in Newfoundland and Labrador and other parts of Canada. Depending on the magnitude and duration of the project, the Regulator's expectation is that key proponent and contractor procurement personnel will be located in the Province. This would support the principles of full and fair opportunity and first consideration;

- Its process for requesting Canada and Newfoundland and Labrador benefits information as a part of the bid solicitation process, along with a description as to how such information will be used in the bid selection process;
- Initiatives to ensure that contractors and subcontractors comply with the provisions of an approved Exploration Benefits Plan, as well as a definitive statement in the plan to that effect; and
- The provision of debriefings to unsuccessful bidders when so requested, consistent with CAPP's Industry Recommended Practice document titled **Atlantic Canada Offshore Petroleum Industry – Supply Chain Management**.

It is the Regulator's intention to monitor (designate) certain contracts for detailed review, to ensure the legislative benefits principles of full and fair opportunity and first consideration are followed by proponents and contractors (refer to Appendix 3).

A proponent's activity with respect to any procurement or contracting prior to the approval of an Exploration Benefits Plan will be at the proponent's own risk, if it does not conform to the Exploration Benefits Plan which may be subsequently approved. However, this risk may be mitigated to the extent such activity is conducted in accordance with this guidance, and to the extent there have been diligent consultations with the Regulator. The Regulator may monitor contracting for any exploration activity which occurs prior to an Exploration Benefits Plan approval in accordance with the monitoring framework described in Appendix 3. In monitoring this process, the Board is in no way prejudicing any decisions it may take in approving the Exploration Benefits Plan.

## 5.0 Employment and Training

The proponent should provide an employment strategy for the exploration program, and in particular is expected to address the following:

- A plan for the employment of Canadians, with first consideration to residents of Newfoundland and Labrador;
- Project organization and staffing plans for the exploration program. In particular, the proponent is expected to provide employment plans for each major contractor, identifying key positions to be filled by contractor personnel, and other positions to be filled by qualified Newfoundland and Labrador and other Canadian residents, subject to availability at the time of hire;

- Strategies for succession of qualified residents of the Province, and other Canadians, to any positions held initially by non-Canadians (if applicable); and
- Identification of specific education and training programs to be provided in the Province for Newfoundland and Labrador residents and other Canadians to participate in the project.

## 6.0 Consultation

The proponent should initiate and maintain timely consultation with the Regulator and supplier community during the preparation of the Exploration Benefits Plan. The Regulator will consult with the appropriate government departments in its review of the plan. This consultation is not intended to limit in any way direct contact between the proponent and governments.

## 7.0 Exploratory Drilling Special Requirements

Proponents should note that, in accordance with the recommendations of the Regional Assessment Committee for Offshore Exploratory Drilling East of Newfoundland and Labrador, and the June 4, 2020 Ministerial Response, Benefits Plans submitted for proposed exploratory drilling programs in the Regional Assessment Study Area will be made publicly available (with allowances for any commercially sensitive information to be redacted as appropriate prior to release), and must include a Diversity and Inclusion Plan. Proponents are encouraged to consult with the Regulator on the content of an Exploration Diversity and Inclusion Plan (refer to section 2.6 of the **Benefits Plan Guidelines** for potential content).

## 8.0 Reporting

The proponent is expected to submit an annual Canada-Newfoundland and Labrador Exploration Benefits Report, in a format satisfactory to the Regulator. Annual reports are due within one (1) month of the end of the calendar year, and should contain the following information:

- Synopsis of activity during the year, including project progress, milestones, and benefits/diversity achievements;
- Description of any specific initiatives, such as supplier development, technology transfer, training programs, succession of Newfoundland and Labrador residents and other Canadian residents into senior positions, etc.;
- Summary of project expenditures; and

- Statistical information respecting persons employed for the project, including residency status (and employment of members of under-represented groups for exploratory drilling programs).

# Appendix 2

## Research and Development and Education and Training Expenditures

## 1.0 Introduction

The legislative requirement for expenditures related to research and development and education and training (R&D/E&T) in the Province is contained in section 45(3)(c) of the **Accord Acts**. Section 151.1(1) of the **Accord Acts** authorizes the Regulator to issue and publish in such manner as it deems appropriate guidelines and interpretation notes with respect to the application and administration of section 45.<sup>9</sup>

The level of R&D/E&T expenditure by proponents is expected to be consistent with the norms for such expenditures by the upstream petroleum industry in Canada. While the expenditures must be “in the Province”, Canadian tax criteria will be used as a general guide, as well as other criteria, to determine eligible expenditures.

## 2.0 R&D/E&T Expenditure Requirements

Eligible R&D/E&T expenditures can be made in either the exploration, development or production phases of a project.

### 2.1 Exploration Phase

Research and Development and Education and Training expenditures during the exploration phase by a proponent that meet the eligibility criteria of the guidelines may be credited towards a development or production project in which there is participation by the proponent.

Alternatively, in accordance with the Regulator’s **Allowable Expenditure Credit Guideline**, a proponent may claim R&D/E&T expenditures as allowable expenditures for credit against the Exploration Licence security deposit. Research and Development and Education and Training expenditures up to a maximum of five (5) percent of the expenditure bid will be allowed.

### 2.2 Development Phase

Required R&D/E&T expenditures during the development phase of a project are established at a maximum of **0.5 percent of the development phase capital cost**, as estimated at the time of submission of the Benefits Plan. This expenditure should occur during the

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<sup>9</sup> Also refer to **Hibernia Management & Development Co. v. Canada-Newfoundland Offshore Petroleum Board**, 2008 Carswell Nfld 225, 2008 NLCA 46.

development phase, which is defined as the time period from submission of a proponent's Development Plan Application/Benefits Plan to the date of achievement of first oil.

## 2.3 Production Phase

The Regulator has selected a benchmark for R&D/E&T expenditures, based on R&D expenditures as a percentage of revenues by upstream petroleum companies in Canada. This data can be found in Statistics Canada, Industrial Research and Development: Intentions Reports, typically in the table titled "Current intramural research and development expenditures as a percentage of performing company revenues" under the category Mining and Oil and Gas Extraction, Total Country of Control.

Establishing a benchmark based on industry practice in Canada is viewed to be a reasonable approach and the Regulator will apply the most recent five-year data reported by Statistics Canada. The R&D/E&T expenditure obligation for a project will be determined by multiplying the Statistics Canada benchmark by project production, oil price, ten (10) percent discount, and exchange rate. This calculation would be performed on a monthly basis.

- The Regulator's Benchmark is based on the most recent five-year average of the benchmarks reported by [Statistics Canada](#) in respect of R&D expenditures by oil and gas extracting companies, expressed as a percentage of gross revenue, to a maximum of 0.5 percent (0.005);
- Production (barrels) is based on the Regulator's published [production statistics](#);
- Oil Prices are based on Brent crude spot prices published monthly by the [U.S. Energy Information Administration](#);
- Ten (10) percent discount on Brent crude price; and
- The Exchange Rate is from the [Bank of Canada](#) monthly averages.

A similar calculation will apply to the production of Natural Gas Liquids and Natural Gas.

The production phase R&D/E&T expenditure requirement will be calculated for each project on an annual basis (and monthly if required) for the period covered by each Operations Authorization (OA) issued by the Regulator.

Expenditures during the development phase will be credited against the calculated required spending during the production phase. This is known as the "development phase credit" and will be deducted from the proponent's production phase obligations on the basis of the lesser of project field life or the duration of three OA periods.

## 3.0 Eligible Expenditures

### 3.1 Research and Development

In order to be eligible, research and development expenditures should occur in the Province of Newfoundland and Labrador. In addition, expenditures must be made by proponents, interest owners, and/or their contractors and subcontractors. Projects considered for eligibility can include elements such as infrastructure, materials and equipment, and overheads (i.e., salaries and wages, heat and light, office supplies, etc.).

To aid in determining eligible expenditures, the Regulator uses the definition of Scientific Research and Experimental Development (SR&ED) under section 248(1) of the **Income Tax Act** as a guide. While the Regulator uses the definition of SR&ED in the **Income Tax Act** as a guide to determine the eligibility of a project, the Regulator's conclusions as to the eligibility of a project on occasion may differ from the conclusions of the Canada Revenue Agency. The Regulator's decision will take precedence over that of the Canada Revenue Agency for eligibility of expenditures against this guidance. In such cases, the Regulator will rely on its in-house expertise to guide its decision making.

In addition to the elements included in the above definition, eligible projects may extend beyond science and technology to include research and development in other areas, including those outside the oil and gas sector. All projects are reviewed in detail to determine eligible expenditures, but as examples, projects focused on lower carbon energy solutions and emissions reductions would generally be viewed favourably by the Regulator.

### 3.2 Education and Training

For the purposes of these guidelines, the definition of education and training in the Province may include expenditures for any or all of the following:

- The establishment of education and training programs (these can include elements such as infrastructure, materials and equipment, and overheads (i.e., salaries and wages, heat and light, office supplies, etc.));
- Tuition fees at recognized educational institutions;
- Technology transfer;
- Chairs, scholarships, bursaries and fellowships; and

- Work terms/work placements conducted inside or outside the Province, by students enrolled at recognized educational institutions in the Province.

Other areas pertaining to education and training will be considered on a case by case basis. Regulatory-required training is not an eligible expenditure. Also, wages and salaries of employees while engaged in education and training activities are ineligible expenditures.

In addition to the elements included in the above definition, eligible expenditures may extend beyond the oil and gas sector.

## 4.0 Pre-Approval of Expenditures

A proponent may wish to confirm the eligibility of a R&D/E&T program it plans to undertake by filing a R&D/E&T Work Expenditure Application Form, which may be found on the Regulator's website. The form should be submitted to the Regulator for approval prior to commencement of the project.

The Regulator will undertake to review an application in a timely and efficient manner upon receipt. The proponent will be notified of the results of this review. While a decision on the eligibility of a program may be obtained through the work expenditure pre-approval process, approval of actual expenditures occurs following the submission and review of a proponent's annual R&D/E&T report by the Regulator.

## 5.0 Reconciliation of Expenditures

### 5.1 Annual Expenditure Assessments

A proponent must submit an annual R&D/E&T report pursuant to section 183 of the **Framework Regulations** and should submit this report by the end of February of each year describing its actual R&D/E&T expenditures in the previous calendar year. The Regulator will review this report and determine the eligibility of reported expenditures. A proponent will also be expected to prepare a public annual benefits report, which contains a summary of actual R&D/E&T expenditures for the preceding year (with appropriate redactions for commercially confidential information).

The Regulator may also periodically conduct assurance reviews of selected expenditures in annual reports to verify that expenditures are in accordance with the Regulator's guidelines.

## 5.2 Reconciliations

At the end of the development phase (as defined by achievement of first oil), the Regulator will reconcile the development phase expenditure requirement against reported actual eligible expenditures.

As well, at the end of each production OA period a reconciliation of actual expenditures against obligations will be conducted. The cut-off date for submitting eligible expenditures to be included in the reconciliation will be six (6) months prior to the expiry date of the OA. The Regulator will calculate the total spending obligation for each year of the OA and reconcile it against the reported eligible expenditures in the same period.

Any surplus eligible expenditures resulting from the reconciliation will be carried over and applied to the reconciliation conducted for the next OA period. If the actual eligible expenditures are less than the obligation (i.e., a deficit), the Regulator will require a Letter of Credit issued by a financial institution listed in Schedule I of the **Bank Act** to be provided as security that the proponent will fulfill its expenditure obligations. The proponent will be given until six (6) months prior to the expiration of its next OA period to make up the spending shortfall. Otherwise, the Regulator may elect to draw upon the Letter of Credit and distribute the funds to recognized research or educational institutions in the Province, to be used in a manner consistent with the eligibility criteria in these guidelines and subject to oversight by the Regulator.

The value of the Letter of Credit provided for any deficit may be decreased on an annual basis as expenditures are made and approved by the Regulator. The Letter of Credit will be returned to the proponent once the Regulator is satisfied that any expenditure deficit has been eliminated. Questions regarding Letter of Credit matters should be directed to the Regulator's Legal Services Department.

# Appendix 3

## Monitoring and Reporting

## 1.0 Introduction

This guidance is intended to provide a framework for the Regulator's monitoring of a proponent's adherence to the applicable legislation and its approved Benefits Plan.

The proponent is expected to submit Canada-Newfoundland and Labrador Benefits Reports on a quarterly and annual (calendar) basis. The proponent is also expected to prepare separate public quarterly and annual reports.

## 2.0 Development Phase Reporting

**Development Phase Quarterly Reports** are due one (1) month after the end of each quarter (i.e., by April 30, July 31, October 31, and January 31). Quarterly reports should contain the following information:

- A synopsis of activity during the preceding quarter, including project progress, milestones, and benefits achievements;
- Project expenditures classified by component, including associated Newfoundland and Labrador, other Canadian and foreign expenditure content;
- Persons employed for the project as of the end of the quarter, classified by project component, geographical location, residency status and gender at the time of hire. Reasonable methodologies can be used in determining whether a worker is considered to have worked in a particular quarter (e.g., a minimum of 50% hours worked in a quarter, or headcount at the end of the quarter);
- Project person hour total, classified by component, and hours in the Province;
- Persons employed for the project as of the end of the quarter, classified by major disciplines (NOC Codes) and gender;
- Procurement summary for all contracting and procurement greater than CDN \$250,000;
- R&D/E&T expenditure summary; and
- Diversity and Inclusion Plan achievements.

**Development Phase Annual Reports** are due two (2) months after the end of each calendar year (i.e., by February 28), and in addition to the information contained in quarterly reports, should contain the following information:

- Supplier development and technology transfer achievements;
- R&D/E&T expenditure report;
- Annual Diversity and Inclusion Plan Report explaining initiatives and achievements, including an analysis of the employment of under-represented groups versus availability in the workforce. Statistical information respecting the employment of members of under-represented groups on the project should be provided; and
- A forecast of project expenditures for the upcoming year.

### 3.0 Operations Phase Reporting

**Operations Phase Quarterly Reports** are due one (1) month after the end of each quarter (i.e., by April 30, July 31, October 31, and January 31). Quarterly reports should contain the following information:

- A synopsis of activity during the quarter, including project progress, milestones, and benefits achievements;
- Project expenditures classified by component including associated Newfoundland and Labrador, other Canadian and foreign expenditure content;
- Persons employed for the project as of the end of the quarter, classified by proponent and contractors, geographical location, residency status and gender at the time of hire;
- Procurement summary for all contracting and procurement greater than CDN \$250,000, and a vendor analysis for purchase orders, by geographical location;
- Diversity and Inclusion Plan achievements; and
- R&D/E&T expenditure summary.

**Operations Phase Annual Reports** are due within two (2) months of the end of each calendar year (i.e., by February 28), and in addition to the information contained in quarterly reports, should contain the following information:

- Human resources and succession planning update;
- Initiatives with respect to supplier development and technology transfer;
- Examples where the proponent and/or contractors provided first consideration to goods and services in the Province;

- Annual R&D/E&T expenditure report;
- Annual Diversity and Inclusion Plan Report explaining diversity and inclusion initiatives and achievements, including an analysis of the employment of under-represented groups versus availability in the workforce. Statistical information respecting the employment of members of under-represented groups on the project should be provided. This information should also be included in the proponent’s public annual benefits reports;
- Community investment update; and
- A forecast of project expenditures for the upcoming year.

## 4.0 Monitoring of Full and Fair Opportunity and First Consideration

A significant part of the Regulator’s oversight of Benefits Plans involves the review of the full and fair opportunity and first consideration principles with regard to procurement activities.

The key methods of oversight are:

- Review of procurement forecasts;
- The contract designation process; and
- Review of all contract awards greater than CDN \$250,000 (\$100,000 in exploration phase).

### 4.1 Procurement Forecasts

In the **Exploration Phase**, the proponent is expected to provide a forecast of all contracts, subcontracts and purchase orders greater than CDN \$100,000 which are expected to be commenced during the exploration program.

In the **Development Phase**, the proponent is expected to provide a forecast of all contracts, subcontracts and purchase orders greater than CDN \$250,000 which are expected to be commenced in the upcoming quarter. This procurement forecast should be submitted 30 days prior to the first day of each quarter (i.e., by March 1, June 1, September 1, and December 1).

In the **Operations Phase**, the proponent is expected to provide a semi-annual procurement forecast of all contracts, subcontracts and purchase orders greater than CDN \$250,000. This procurement forecast should be submitted 30 days prior to the beginning of each semi-annual period (i.e., June 1 and December 1).

Procurement forecasts will be shared with Governments for their information and comment.

## 4.2 Designated Contracts

The Regulator will select or 'designate' some of the procurement opportunities listed on the proponent's procurement forecast for a detailed review over the duration of the procurement opportunity. The Regulator will advise the proponent which contracts, subcontracts and purchase orders have been designated by the Regulator for review.

The Regulator may also designate any contracts, subcontracts or purchase orders less than CDN \$250,000 (or less than \$100,000 for the exploration phase) on a case by case basis.

The proponent will be expected to provide the following information to the Regulator at each stage of the contracting process:

### **Bidders List Stage**

- A list of all bidders that have been accepted to submit a bid response to the procurement opportunity;
- A list of all bidders that have been rejected from submitting a bid response, with a short explanation why each was disqualified from submitting a bid response; and
- A copy of the Request for Proposal or Invitation to Tender documents, prior to issuing to bidders (upon request by the Regulator on a case by case basis).

### **Award Stage**

- The preferred bidder to be awarded the contract;
- The price differential between bidders;
- The estimated Newfoundland and Labrador, other Canadian and foreign content for each bidder;
- The estimated Newfoundland and Labrador, other Canadian and foreign employment hours for each bidder; and
- Any commentary explaining the choice of the winning bidder including award rationale, commercial, technical, health, safety, environment and benefits aspects of the bid evaluation.

**Contractor Assessment Profile**

Ref No: _____ Contract Name: _____ Description of Scope work: _____ Estimated Value: \$ _____		Pre-qualification Closure Date: _____ RFP Issuance Date: _____ Bid Closure Date: _____ Contract Award Date: _____ Contract Duration, Options: _____									
EOI Respondents	Company Location			Price Differential (%)	Content (%)			Project Hours			Remarks
		Bid	Award		NL	QC	FOR	NL	QC	FOR	
A	CAD	X	X	Base	xx%	yy%	zz%				
B	UK	X	X	xx%							
C	US										
D	CAD	X	X	xx%							
E	CAD										

**Table 1**

**Table 1** provides a suggested format for a procurement evaluation form which may be used for the bid and award stages for designated contracts. All relevant information requested in the form should be provided by the proponent or contractor to ensure an efficient review process.

The Canadian and Newfoundland and Labrador content associated with each bidder should be calculated in accordance with the Canadian General Standards Board (CGSB) definition of Canadian Content (refer to section 7.0 of this Appendix).

**Review Timelines**

The Regulator will normally conduct its reviews of designated contracts within the following timeframes:

- Bidders list review – 3 business days
- Award review – 2 business days

However, it should be expected that if concerns are raised regarding application of full and fair opportunity or first consideration principles, additional time will be required to communicate with the proponent, governments, or other parties to obtain relevant information and make a determination.



down the contracting chain to its contractors and subcontractors, and to adequately monitor their reported benefits achievements.

The Regulator adopted the definition of Canadian content developed by the CGSB, which is based on the principle of value added to an economy. The Standard is reproduced for ease of reference at the end of this Appendix.

For the purposes of this guideline, the Regulator also uses the term “other Canadian content” which can be expressed as the value added in Canada, excluding Newfoundland and Labrador.

The CGSB definition does not address complex situations; it provides general definitions and broad guidelines only. There are two important principles to be followed in calculating content:

- Information should be derived through either International Financial Reporting Standards (IFRS) or Generally Accepted Accounting Principles (GAAP), both of which describe the basis on which financial statements are normally prepared. Therefore, the information from which benefits achievement is reported to the Regulator should be derived from accounts and records which are integrated with corporate job cost records and financial statements; and
- Reasonableness and materiality should always be considered. Reasonableness implies the use of common sense. Materiality, in financial management, accounting or auditing sense, implies significance.

Reasonable benefits reporting requires a knowledge of the cost elements included in the total cost incurred and an assessment of the risk of errors of content classification in each of the cost elements. The following are the major elements to be considered in determining content on a cost incurred basis:

- Direct Labour;
- Direct Material and Equipment;
- Subcontracts;
- Other Direct Charges;
- Overhead; and
- Profit.

There are two aspects to the reporting of benefits achievement on **direct labour**. It is important to distinguish between reporting employment in terms of hours and in terms of costs because the reporting requirement is different.

For the reporting of direct labour (or employment), in terms of costs, the content will be considered an industrial benefits achievement for the area where the work is performed. For example, regardless of employee residency status, the cost of labour performed in the Canada-Newfoundland and Labrador Offshore Area is Newfoundland and Labrador content.

On the other hand, the reporting of employment in terms of hours (or any other time period) is normally determined on the location of the employee's principal residence **at the time of hire**. This is also known as reporting employment by residency status.

For purposes of this guideline, Newfoundland and Labrador, Canadian and foreign residents are defined as follows:

- Newfoundland and Labrador resident – a Canadian citizen (or Permanent Resident) who meets the residency requirements of the **Elections Act, SNL 1992, CE-3.1** (i.e., location of principal residence in the Province);
- Canadian resident – a person who was born in Canada and who has not relinquished their Canadian citizenship; or, a person who has been granted permanent resident (landed immigrant) status in Canada; the Regulator uses the term “other Canadian resident” to define a resident of Canada, outside of Newfoundland and Labrador; and
- Foreign resident – all persons who are not Newfoundland and Labrador or Canadian residents.

The benefits reported for **direct material and equipment** should be based on an analysis of the costs in the contractor's books of account.

**Subcontracts** may include significant elements of labour, materials, overhead, profit, equipment and other types of costs. The benefits claimed should be based on an analysis of these charges in the contractor's books of account and from benefits reports from their major subcontractors when the procurement has been, for instance, at a value greater than CDN \$100,000. Because of their materiality, every effort should be made to obtain accurate and current Newfoundland and Labrador and other Canadian content information on these charges. For example, it should be possible to ensure subcontractor labour performed in the Canada-Newfoundland and Labrador Offshore Area has been classified as Newfoundland and Labrador content.

**Other direct charges** will require an analysis of the contractor's accounts to determine if there are any items of a material nature. An example of other charges might be head office computer services, which relate to equipment, labour and overhead costs that may have been incurred in a foreign location. In this example then, costs would be classified as foreign content.

**Overheads** include all the contractor's indirect expenses, or those expenses not directly chargeable to jobs. Overhead may be grouped into pools (for example, Production, Engineering, Material Handling, and General and Administrative). These costs are usually prorated to jobs on some acceptable basis, such as a percentage of direct labour or cost of sales.

The content classification of these types of costs is dependent upon where the costs are actually incurred. For example, if the overhead related to the contracted activity is providing for reimbursement of general and administrative operations which result from offices located in the Province, then that overhead cost is Newfoundland and Labrador content.

The industrial benefit claimed for **profit** should be based upon the actual profit recorded on the project in the company's books of account in accordance with IFRS/GAAP. The assignment or distribution of profit depends upon where the profit is being taxed, which is usually dependent upon the location of ownership.

For normal cost distributions, approximately 20% of the items usually account for 80% of the dollar value. Since both reasonability and materiality are major principles to be followed in the determination of content, efforts to calculate content should concentrate on higher value items. For procurement expenditures greater than CDN \$100,000, the benefits distribution should be estimated by the contractor or supplier at proposal submission and contract award, and adjusted to periodic reported actual content supported by cost analysis (if required).

For lower valued procurement, content can be estimated on some reasonable basis. Accordingly, the Regulator accepts the following calculation of content for procurement expenditures less than CDN \$100,000 (unless there is a valid reason to adjust to some other basis of distribution):

- Goods and services sourced from firms elsewhere in Canada – 100% other Canadian content;
- Goods and services sourced from firms outside Canada – 100% foreign content;

- Goods and services sourced from firms in Newfoundland and Labrador, but originating elsewhere in Canada – 25% Newfoundland and Labrador content, 75% other Canadian content; and
- Goods and services sourced from firms in Newfoundland and Labrador, but originating outside Canada – 25% Newfoundland and Labrador content, 75% foreign content.

Upon completion of a contract, actual cost and employment content should be reported and certified by a contractor or supplier for all procurement with a value greater than CDN \$100,000.

To ensure that the processes described above for the accurate calculation and reporting of content is passed down the contracting chain to its contractors and subcontractors, these processes should be established in the project benefits management systems and procedures manual.

Some examples of content calculation are provided for reference below.

#### **Supply Vessel Charter of a Foreign Owned Vessel**

A foreign owned company provides a fully equipped supply vessel. The Newfoundland and Labrador and/or Canadian content would apply only to any significant overhaul (modification) costs or capital costs incurred in Canada, as well as the vessel operating costs incurred in Canada. Operating costs would include wages, consumables, fuel and other local purchases. The balance of the lease costs would be foreign content.

If a similar vessel was chartered from a company owned by a Newfoundland and Labrador resident, then the profit on the charter would also be included as Newfoundland and Labrador content.

#### **Rental Costs – Leased Premises**

If a contractor leased office space in the St. John's metro area in a building owned by a corporation which was owned by residents in the Province, the rental expense would be 100% Newfoundland and Labrador content.

If the building was owned by an Ontario based corporation, then the Newfoundland and Labrador content would be reduced by a reasonable estimate of the Ontario based overhead and profit percentage included in the rental charges.

### **Catering – Newfoundland and Labrador Corporation**

If a contractor entered into a catering contract with a Newfoundland and Labrador resident-owned corporation, the Newfoundland and Labrador content should be adjusted to reflect a reasonable estimate of the foreign and other Canadian cost of the groceries provided.

### **Foreign Made Equipment – Local Distributor**

If foreign equipment is purchased through a Newfoundland and Labrador resident-owned agency, the percentage of Newfoundland and Labrador content should reflect only the agent's mark-up.

## **7.0 Canadian General Standards Board Standard For Definition of Canadian Content**

### **Introduction**

The **CAN/CGSB-147.3-82 Definition of Canadian Content** was withdrawn in March 2012, however this standard defines Canadian content and provides explanations and examples of the terms in the definition, and may still be used as a reference. "Canadian content", frequently an important aspect of the procurement process, is defined so that it can be the basis of common understanding between proponents and the Regulator.

### **Definition**

Canadian Content is that portion of the selling price of a product or service associated with the work performed in Canada. Canadian Content may also be calculated as the selling price less the cost of directly and indirectly imported materials, labour, services, overhead and profit not taxable in Canada.

Selling Price is the net selling price to the buyer after all discounts. It includes all applicable federal and provincial sales taxes, excise taxes and tariffs.

Cost of Direct Imports is that portion of the selling price associated with directly imported materials, labour, services and overhead. It includes the tariffs and the cost of transportation to the Canadian place of Importation (place where first landed in Canada).

Cost of Indirect Imports is that portion of the selling price associated with the costs for materials, labour, services and overheads that, while obtained through a Canadian supplier, in fact originated outside Canada.

## Examples

To aid in the interpretation of several terms, the following examples are provided:

### ***Cost of Direct Imports***

Directly Imported Material Cost – the cost of an electric motor bought directly from a firm producing it outside Canada. The cost of Import includes all duties paid and the transportation cost to the Canadian place of Importation.

Directly Imported Labour Cost – the labour cost of sewing together, in a factory outside Canada, a glove from leather and other materials supplied from Canada.

Directly Imported Service Cost – the cost of design work performed outside Canada.

Directly Imported Overhead Cost – the royalties or management fees paid outside Canada.

### ***Cost of Indirect Imports***

Indirectly Imported Material Cost – the cost of an electric motor produced outside of Canada and purchased from a distributor located in Canada for incorporation into a product assembled or manufactured in Canada.

Indirectly Imported Labour Cost – the labour cost, to a company with manufacturing facilities in Canada, of testing product in facilities outside Canada.

Indirectly Imported Service Cost – the computer costs, to a Canadian firm that provides computer services, of using a computer outside Canada in providing those services.

## Notes

Examples of the calculation of Canadian content as both a dollar value and a percentage of total net selling price, based on knowledge of either imported costs or domestic costs, are given below:

### **Calculation Based on Knowledge of Imported Costs (\$CDN)**

A. Total Net Selling Price \$287,000

B. Imported Costs: Costs related to directly and indirectly imported materials, labour, services, overhead and profit not taxable in Canada.

Materials (including Tariffs)

- Direct	\$ 35,000
- Indirect	18,000

Labour		
- Direct	20,000	
- Indirect	3,000	
Services		
- Direct	3,000	
- Indirect	-----	
Transportation (to Place of Importation)	4,000	
Overheads	<u>16,000</u>	
	<u>\$ 99,000</u>	<u>\$ 99,000</u>
C. Canadian Content (A minus B)		<u>\$188,000</u>
D. Percentage Canada Content (C divided by A) x 100		66%

#### Calculation Based on Knowledge of Domestic Costs

A. Total Net Selling Price		\$287,000
B. Canadian Content – Cost related to domestic materials, labour services, overheads, taxes and profits.		
Domestic Costs		
Materials	\$ 60,000	
Labour	40,000	
Services	2,500	
Transportation (within Canada)	5,000	
Overheads (incl. Profit)	42,500	
Federal/Provincial Taxes	<u>38,000</u>	
	<u>\$188,000</u>	<u>\$188,000</u>
C. Percentage Canadian Content (B divided by A) x 100		66%