

CANADA-NEWFOUNDLAND AND LABRADOR
BENEFITS PLAN GUIDELINES
(DRAFT)

January 2016



NEIA REVIEW AND RECOMMENDATIONS

To whom it may concern,

We would like to thank you for giving the Newfoundland and Labrador Environmental Industry Association (NEIA) the opportunity to review the Canada-Newfoundland and Labrador Benefits Plan Guidelines (Draft) and provide input.

After consulting with our members, we would like to offer the following recommended changes to the document.

We have attempted to make these recommendations as clear as possible; if you have any questions please contact us.

Best,

A handwritten signature in dark ink, appearing to read "Ted Lomond". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Ted Lomond
Executive Director

2.0 STATUTORY REQUIREMENTS

2.2 Full and Fair Opportunity and Competitive Basis

➤ DRAFT GUIDELINES STATEMENT:

“Proponents must provide a full and fair opportunity for businesses in the Province and other parts of Canada to participate in supplying goods and services used in carrying out work activities. Providing a full and fair opportunity means that the proponent must demonstrate that efforts have been taken, to the satisfaction of the Board, to ensure that Canadian suppliers have been afforded an opportunity to participate in the contracting process (on a competitive basis).”

NEIA Recommendation:

NEIA suggests that more direction be given on how a “full and fair opportunity” can be provided. This statement should also explicitly reference a requirement to provide full and fair opportunity for work resulting from rebidding or changes of scope.

➤ DRAFT GUIDELINES STATEMENT:

“Therefore, proponents and contractors are encouraged to limit bids to Canadian suppliers; or, in the event there is a single supplier in Canada, to sole source that supplier.”

NEIA Recommendation:

The word “encouraged” suggests that limiting bids to Canadian firms is optional. NEIA recommends that the wording should be changed to strengthen the statement.

2.4 First Consideration - Procurement

➤ DRAFT GUIDELINES STATEMENT:

“It is the Board’s expectation that in cases where a local supplier is not the low bidder with respect to price, but is competitive in relation to the low bidder, and meets or is comparable to other evaluated factors (e.g., technical, HSE, benefits, etc.), consideration should be given to award the work to the local supplier.”

NEIA Recommendation:

NEIA suggests that the statement should provide more direction as to what “competitive in relation to” and “comparable to other evaluated factors” mean. Further, a prime consideration in the selection process should be the potential to create or grow local capacities to service industry for the long term, versus strictly choosing the lowest bid. NEIA believes a statement to this effect should be included.

➤ DRAFT GUIDELINES STATEMENT:

“...the Board encourages a proponent and its contractors to limit bids only from suppliers from within the Province, should there be competitive capacity in the Province.”

NEIA Recommendation:

NEIA recommends that the phrase “competitive capacity” should be expanded upon to more clearly outline its meaning.

3.5 Procurement and Contracting

➤ DRAFT GUIDELINES STATEMENT:

“The proponent should also describe its plans concerning... publishing of proponent and contractor quarterly procurement forecasts, EOIs, bid lists and awards for all contracts and purchase orders greater than \$250,000 for the development phase of a project. It is expected that procurement information will be posted via media such as local newspapers, general procurement websites (e.g. noia.ca, bids.ca) and proponent/contractor websites, and will be updated on a regular basis.”

NEIA Recommendation:

In the interest of providing a “full and fair opportunity for businesses in the Province and other parts of Canada to participate in supplying goods and services”, NEIA recommends that procurement information should be posted online centrally in a forum which does not require payment or an organizational membership to access or view. It is NEIA’s contention that limiting procurement information to such websites creates a needless communications barrier for local firms and innovators. The same recommendation applies to the publication of semi-annual procurement forecasts, EOIs, bid lists and awards, as well as the exploration requirements as outlined in section 4.1 of *Appendix 1: Exploration Benefits Plan*.

APPENDIX 2: RESEARCH AND DEVELOPMENT AND EDUCATION AND TRAINING EXPENDITURES

1.0 The Legislation

➤ DRAFT GUIDELINES STATEMENT:

“R&D represents one avenue whereby the exploration for, and the development and production of the petroleum resources in the Canada-Newfoundland and Labrador Offshore Area can make a contribution to the sustainable development of the Province. “

NEIA Recommendation:

NEIA suggests that the phrase “sustainable development” be expanded upon to highlight and differentiate its economic and environmental aspects. It is NEIA’s position that sustainable development implies both economic and environmental elements and that R&D should strive to contribute to both.

➤ DRAFT GUIDELINES STATEMENT:

“R&D represents one avenue whereby the exploration for, and the development and production of the petroleum resources in the Canada-Newfoundland and Labrador Offshore Area can make a contribution to the sustainable development of the Province. This was the vision or intent of the legislators at the time when they inserted the requirement for research and development and education and training ‘in the Province’ into the Accord Acts.”

NEIA Comment:

NEIA agrees with this statement, and asserts that the “in the Province” provision with respect to R&D is essential to the long-term economic development of the province and should not be weakened or diluted in anyway. Newfoundland and Labrador is home to world class research and development institutions, organizations, and facilities. These groups are nested within leading global R&D networks. Quite simply, there is no R&D which is unable to be conducted within Newfoundland & Labrador.

➤ **DRAFT GUIDELINES STATEMENT:**

“The petroleum resource is finite and exhaustible, and it is the intent of this provision of the legislation that its exploitation create a lasting economic legacy for the people of the Province.”

&

“R&D expenditures are viewed by the Board to be strategically important contributions to growth and sustainable development associated with the offshore petroleum sector in the Province.”

NEIA Recommendation:

Given the finite nature of the resource NEIA contends that R&D activities should, where practical, lend themselves to economic diversification.

2.3 Production Phase

➤ **DRAFT GUIDELINES STATEMENT:**

“Establishing a benchmark based on industry practice in Canada is viewed to be a reasonable approach and the Board will apply the most recent five-year data reported by Statistics Canada. R&D expenditures for a project will be determined by the Statistics Canada benchmark, annual production, monthly Brent Crude oil price, discount/premium, and exchange rate.”

NEIA Recommendation:

NEIA suggests that the formula for benchmark setting be explicitly stated.

3.1 Research and Development

➤ **DRAFT GUIDELINES STATEMENT:**

“In order to be eligible, any research and development expenditures must occur in the Province of Newfoundland and Labrador. In addition, expenditures must be made by proponents, interest owners, and/or their contractors. 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).”

NEIA Comment:

NEIA strongly supports the requirement that R&D expenditures occur within the province. Such investments strengthen the province’s R&D ecosystem and enhance our reputation as a leading site of R&D. This contributes to cluster development and industry growth. It also contributes to knowledge spillovers into related industries that foster economic diversification.

➤ **DRAFT GUIDELINES STATEMENT:**

“To aid in determining eligible expenditures, the Board uses as a guide the definition of Scientific Research and Experimental Development (SR&ED) under Section 248(1) of the Income Tax Act. SR&ED references the systematic investigation or search that is carried out in a field of science or technology by means of experiment or analysis and that is basic research, applied research, or experimental development.”

NEIA Comment and Recommendation:

An important aspect of innovation is market adoption. Adoption is more likely where innovators enter the marketplace able to demonstrate the successful application of their new goods and services. NEIA holds that industry procurement can assist companies to bridge the pre-commercialization gap by procuring and testing late-stage innovative goods and services developed in Newfoundland and Labrador. The industry would award selected contracts to entrepreneurs with pre-commercial innovations through an open, transparent, and competitive procurement process consistent with the intent of *Section 2.4. First Consideration Procurement*. There is some risk associated with such procurements as well as the effort required to test and provide feedback to selected entrepreneurs on the performance of their goods or services. For this reason, NEIA would support the R&D eligibility of all or a portion of costs associated with procurement and ancillary services such as installation, training and testing support services for the pre-commercialized innovations. We suggest the C-NLOPB consider the model used by the Government of Canada’s Build in Canada Innovation Program (BCIP).

3.2 Education and Training

➤ **DRAFT GUIDELINES STATEMENT:**

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

NEIA Comment:

NEIA strongly supports this statement.

5.0 Reconciliation of Required and Eligible Expenditures

➤ **DRAFT GUIDELINES STATEMENT:**

“A proponent is required to submit an annual R&D report by January 31st of each calendar year describing its R&D expenditures in the previous year. The Board will review this report to determine eligible expenditures. The Board may also periodically conduct assurance reviews of selected expenditures in annual reports to verify that expenditures are in accordance with the Board’s guidelines.”

NEIA Recommendation:

NEIA would suggest that a version of this report be shared with relevant industry stakeholders in Newfoundland and Labrador. These might include local industry Associations (NEIA, NOIA, NATI, etc.) and R&D institutions, organizations, and facilities. NEIA would not, however, object to the redaction of some information if the expenditure is related to a project deemed sensitive from a commercial or academic publication perspective.