

DOC/2017/02794-03

July 31, 2017



s. 40(1)

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [Our File #: MAE/39/2017]

On July 13, 2017, the Department of Municipal Affairs and Environment received your request for access to the following records/information:

"The letter of engagement and terms of reference for the expert government retained to report on the cause of the Mud Lake flooding."

I am pleased to inform you that a decision has been made by the Deputy Minister to grant access in part to the requested information. Portions of the attached document have been severed in accordance with the following exceptions to disclosure as specified in the *Access to Information and Protection of Privacy Act* (the *Act*):

Section 40(1): The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

As required by 8(2) of the *Act*, we have severed information that is unable to be disclosed and have provided you with as much information as possible.

In accordance with your request, the contract between the Department of Municipal Affairs and Environment and Dr. Karl-Erich Lindenschmidt is enclosed. Schedule "A" of this contract contains the Scope of Work detailing the work Dr. Lindenschmidt is to complete in relation to the cause of the flooding event at Mud Lake. With regards to your request for an engagement letter, please be advised that no such letter exists as the engagement process related to this contract took place via phone conversations with Dr. Lindenschmidt; however, I would offer that the contract in its entirety outlines the terms of engagement on the file.

Section 42 of the *Act* provides that you may ask the Information and Privacy Commissioner to review the processing of your access request (a copy of this section of the *Act* has been enclosed for your reference). A request to the Commissioner must be made in writing within



15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference).

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact me by telephone at 709-729-3631 or by e-mail at debikeith@gov.nl.ca.

Sincerely,

A handwritten signature in blue ink that reads "Debi Keith".

DEBI KEITH
ATIPP Coordinator
Policy and Strategic Planning

Enclosure

Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.
- (2) A complaint under subsection (1) shall be filed in writing not later than 15 business days
- (a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or
 - (b) after the date the head of the public body is considered to have refused the request under subsection 16(2).
- (3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.
- (4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.
- (5) The commissioner may allow a longer time period for the filing of a complaint under this section.
- (6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.
- (7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.
- (8) A complaint shall not be filed under this section with respect to
- (a) a request that is disregarded under section 21;
 - (b) a decision respecting an extension of time under section 23;
 - (c) a variation of a procedure under section 24; or
 - (d) an estimate of costs or a decision not to waive a cost under section 26.
- (9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.
- (2) An appeal shall be commenced under subsection (1) not later than 15 business days
- (a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or
 - (b) after the date the head of the public body is considered to have refused the request under subsection 16(2).
- (3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.
- (4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

AGREEMENT

THIS AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador, on this 23rd day of June, 2017

BETWEEN: **HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR** as
represented by the Minister of **Municipal Affairs and Environment**
("the Client")

AND: **Dr. Karl-Erich Lindenschmidt**

("the Consultant")

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants expressed, and as amended, the Parties agree as follows:

1. Definitions

In addition to the terms defined in the General Terms and Conditions attached as Schedule "C", the following words and phrases shall have the following meanings:

- a. "Contract Documents" shall mean and include:
 - i. This head agreement (the "Head Agreement"),
 - ii. The Scope of Work attached as Schedule "A";
 - iii. The Special Terms and Conditions attached as Schedule "B";
 - iv. The General Terms and Conditions attached as Schedule "C"; and
 - v. Protocols for Security of Government Information on Information Technology assets of Contractors attached as Schedule "D".

- b. "Representatives" means directors, officers, employees, consultants, sub-consultants, agents, advisors or partners.

2. The Consultant's Work

The Consultant shall do all things necessary to fulfill all of the obligations of the Consultant as set out in the Contract Documents (the "Work"). The Work shall be performed by the Consultant to the satisfaction of the Client.

3. Payment

1.1 Consideration

It is agreed and understood that payments made for the satisfactory performance of the Work pursuant to this Agreement shall be made in accordance with either Option 1, 2 or 3 below.

Payment Option #1 **Applicable**

Subject to Article 3.1.3, upon presentation of itemized and substantiated invoices satisfactory to the Client, the Client shall pay to the Consultant, for the satisfactory performance of the Work, **twenty nine thousand (\$29,000)** (plus HST) in accordance with the following payment schedule:

- (i) **Periodic payments – 50% initial payment; 50% upon completion of the project and satisfactory report submission.**

1.2 Reimbursement of Expenses

It is agreed and understood that reimbursements for the Consultant's expenses pursuant to this Agreement shall be made in accordance with either Option A or B below.

Reimbursement Option A [**Applicable**]

- (a) The Client shall only be responsible for the following reimbursable expenses, payable at cost, provided the Consultant can demonstrate to the Client that such expenses were incurred in relation to the Work, and that documentation, satisfactory to the Client, is provided in support of the reimbursable expense claimed and is attached to the applicable invoice, including for example, originals of supporting receipts, invoices or statements issued by non-parties to this Agreement:

- (i) **Airfare**
- (ii) **Meal per diems**
- (iii) **Accommodations**
- (iv) **Transportation**
- (v) **Incidentals**

- (b) All claims submitted for reimbursable expenses in accordance with this Article 3.1.2 shall be reimbursed at rates not to exceed those established by Treasury Board pursuant to the guidelines and policies of the Client even if such rates are lower than the actual costs incurred by the Consultant.

1.3 Payment General

- (a) Regardless of the payment option selected in Article 1.1 and/or 1.2, the Parties agree and confirm that total amounts payable for the Work shall not exceed a monetary ceiling of **\$40,000 Per Treasury Board Guidelines / Authorization (\$40,000)** and that a minimum of ten percent (10 %) of the total fees payable for the Work will be withheld until such time as the project is completed to the satisfaction of the Client.
- (b) The Consultant shall remain obligated to complete the Work notwithstanding that the actual costs of the Consultant, whether in respect of professional services or in respect of costs or expenses incurred, may exceed the total aggregate sum set out in Article 1.3(a).
- (c) The Parties agree and confirm that as set out in section 25(6) of the *Financial Administration Act*, RSNL1990 cF-8, as amended, all fees payable in accordance with this Agreement are subject to there being an appropriation for the work for the fiscal year in which payment under this Agreement is due.
- (d) Payment will be made within 60 calendar days of receipt of a properly documented invoice.
- (e) All invoices shall clearly show the amount of HST billed by the Consultant as a separate item.
- (f) The Consultant shall conform to any request that may be made by the Client to alter the form of invoice customarily used by the Consultant as may be reasonably required for the purposes of the Client's internal accounting systems. The Consultant agrees that each invoice shall clearly show and identify the work or service which is being charged under that invoice to the Client. The invoice shall have appended thereto any documentation required by the Client.
- (g) The Client shall not be responsible to pay any amounts invoiced by the Consultant which may arise from work, services or expenses incurred to remedy errors or omissions in the Work for which the Consultant is responsible.
- (h) The Consultant shall submit invoices to:
Department of Municipal Affairs
P.O. Box 8700
St. John's, NL
A1B 4J6

4. Notices

All notices, claims, payments, reports and other communications required under this Agreement shall be in writing. The addresses for service are as follows:

For the Client:

Haseen Khan, P.Eng.
Director, Water Resource Management Division
Department of Municipal Affairs and Environment
P.O. Box 8700
St. John's, NL
A1B 4J6
Phone: (709) 729-2563
Fax: (709) 729-0320
Email: hkhan@gov.nl.ca

For the Consultant:

Karl-Erich Lindenschmidt, Ph.D., P.Eng.
Associate Professor
Global Institute for Water Security, University of Saskatchewan
11 Innovation Boulevard, Saskatoon, Saskatchewan, Canada S7N 3H5
Tel: [REDACTED]
Fax: (306) 966-1193
Email: karl-erich.lindenschmidt@usask.ca

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Notices, requests or documents shall be deemed to have been received by the addressee as follows:

- (a) As of the date on which they are delivered where delivery is by a party or by messenger or special courier service;
- (b) As of the date on which they are sent where delivery is by telecopier or other means of electronic communication; and
- (c) Six (6) days after delivery to Canada Post Corporation where the postal service is used.

5. **Entire Agreement**

It is hereby agreed that the Contract Documents constitute the entire agreement between the parties (the "Agreement"). There are no understandings, representations or warranties of any kind except as expressly set forth herein. No changes, alterations, modifications or amendments of this Agreement shall be effective unless made in writing and signed by those persons designated for such purpose. This Agreement may be amended or otherwise modified by e-mail.

6. **Representations and Warranties**

The Consultant hereby represents and warrants that every fact stated or represented by the Consultant or its Representatives to the Client in connection with any proposal made by the Consultant in respect of the Work is true and agrees that the Client shall be

conclusively deemed to have relied on each such representation or statement in entering into this Agreement.

7. **Conflict Between Provisions**

In the event of any conflict or inconsistency between provisions in the Contract Documents, the Contract Documents shall have precedence as follows: first the Head Agreement, second the Special Terms and Conditions, third the General Terms and Conditions, fourth the Protocols for Security of Government Information on Information Technology assets of Contractors, fifth the Scope of Work, **and last, any documents incorporated by reference in any of the foregoing.**

8. **Start and Completion Date**

The Consultant shall commence activities in relation to the Work with the start and completion dates mutually agreed upon as follows:

Start Date:	June 14th, 2017
Completion Date:	September 30th, 2017

9. **Effective Date**

The effective date of this Agreement shall be the earlier of the start date referred to in Clause 8 or the date on the first page of this Head Agreement.

10. **Paragraph Numbering**


In the event that the General Terms and Conditions are modified, the numbering references in the General Terms and Conditions shall remain unchanged.

11. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be considered an original of this Agreement, and which together will constitute one and the same instrument. No Party will be bound to this Agreement unless and until all Parties have executed a counterpart. A facsimile signature or an otherwise electronically reproduced signature of either Party shall be deemed to be an original.

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HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR



Minister of Municipal Affairs and Environment

DR. KARL-ERICH LINDENSCHMIDT

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Authorized Signature

Date: 22 June 2017

SCHEDULE "A"
SCOPE OF WORK

The Consultant shall complete the work and/or perform the following services:

Mission:

The mission of the Independent Technical Expert Advisor (ITEA) is:

- to oversee the scope of work and selection of an external engineering consultant;
- to act as a project authority and manage the technical aspects of the work undertaken by the external engineering consultant;
- to provide independent assessment of the adequacy of the technical work to be undertaken by the external engineering consultant;
- to engage with local traditional knowledge experts;
- to provide advice and recommendations to the Responsible Ministers with respect to the primary contributing factors to the May 17, 2017 flood in Mud Lake area; and
- to recommend measures to protect residents downstream of the Muskrat Falls reservoir against potential future floods.

Mandate:

The mandate of the Independent Technical Expert Advisor (ITEA) is:

- to finalize terms of reference (TOR) for scope of work for the external engineering consultant;
- to review proposals submitted by potential consultants and make recommendations for the selection of an external engineering consultant;
- to supervise the work of the external engineering consultant;
- to identify, and design and conduct effective consultation, with local traditional knowledge experts;
- to ensure that the best available data, peer reviewed engineering techniques and local traditional knowledge are used by the engineering consultant to undertake the work as per provisions of the terms of reference for the technical work;
- to call and preside over meetings with the engineering consultant;

- to brief Responsible Ministers on a regular basis about the progress of the work being undertaken by the engineering consultant;
- to consult technical experts within Nalcor and request any technical assistance to carry out his/her mandate if needed;
- to consult technical experts within the Department of Municipal Affairs and Environment and request any technical assistance to carry out his/her mandate if needed;
- to review the technical work undertaken by the engineering consultant for its adequacy and accuracy, provide a summary of the work, and make recommendations to the Responsible Ministers with respect to the primary contributing factors to the May 17, 2017 flood in Mud Lake area and to recommend measures to protect residents downstream of Muskrat Falls reservoir against potential future floods; and
- to attend a minimum of two community meeting; one prior to the beginning of the study and another prior to the release of the final report.

Compensation and Benefits:

- The ITEA will be paid as per agreed terms and conditions of his/her contract agreement.
- The ITEA will be provided with an office space and other office amenities within government buildings on an as needed basis.
- Travel costs and related expenses of the ITEA shall be reimbursed in accordance with his contract agreement.