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## Crown Construction Contracts Act – Bid Security Deposit

An amendment has been made to subsection 16(3) of *Regulation 82-109 - General Regulation* of the *Crown Construction Contracts Act* authorizing the use of an Irrevocable Standby Letter of Credit as a bid security deposit. Form 1, as stipulated in the Regulation, must be issued by a financial institution (ex. bank, loan company or credit union, etc.). Bid security deposits may be accepted for tenders if the contract value of work to be performed is estimated to be < \$500,000.

### What is an Irrevocable Standby Letter Credit?

This form of Letter of Credit, commonly used in the banking industry, is an agreement entered into between a customer and a financial institution in which the customer (the contractor) directs the financial institution to make payments to a beneficiary (Department of Transportation) named in the letter under the circumstances as set out in the document (failure of due performance of requirements under a contract.) Under the terms of the agreement the Department of Transportation could demand that the financial institution make full or partial payment basically “cash in” the form of security by presenting the original Irrevocable Letter of Credit to the financial institution along with a notice certifying the contractor is in default and that the amount demanded represents the amount that the contractor is indebted to the Province.

### The Process

- The Irrevocable Standby Letter of Credit (LC – Letter of Credit) will be identified in any tender documents in which a security bid in the form of a certified cheque is presently accepted.
- Only the 1st page of the document and the required signatures on the bottom of the 2nd page need to be completed by the contractor for tendering purposes. Information on the 2<sup>nd</sup> page would be entered if the department was cashing in the LC.
- The \$ amount of the LC will equal that of a certified cheque.
- The LC must be completed on Form I and issued or endorsed by a financial institution as set out in the Regulation. The completed LC would be submitted with the bidder’s tender package, as is the case with a certified cheque.
- The LC requires 2 signatures, that of the financial institution official (along with the financial institution’s stamp) and that of the customer (contractor).
- The LC must be an original document completed correctly in the required amount in order to be accepted as a security deposit.
- If the contractor is to be awarded the contract the original LC will be kept in safekeeping by DOT and will be returned to the contractor upon completion of the work. If the contractor is not the successful tenderer, the LC will be returned to the contractor prior to or at the time of award.

### Completion of the contract

- When the contract is successfully performed, the original document is returned to the contractor upon completion of the work.
- OR
- If the contractor defaults on the contract, the original LC document is taken to the financial institution with a letter signed by the District Engineer/Director or Chief Engineer identifying the contractor as in default of the contract. A cheque payable to the Minister of Finance in the amount of indebtedness will be requested.  
(Note- this amount can be any amount up to and including the full amount of the LC and partial drawings are allowed.)

Note- this amount can be any amount up to and including the full amount of the LC and partial drawings are allowed. Please be advised that some financial institutions may require a minimum of 5 days to provide customers with a Letter of Credit.

Appendix A is a sample of a completed copy of Form 1,

If you have any questions, please contact the Department of Transportation Contract Administration Unit at 453-2663.

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**Department of Transportation**  
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**FORM 1**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

(NB Reg. 82-109, paragraph 16(3)(f) under the  
*Crown Construction Contracts Act*, R.S.N.B. 1973, c. C-36)

**Place of Issue:** \_\_\_\_\_

**Date of Issue:** \_\_\_\_\_

<b>Letter of Credit Reference No.</b> _____	
<b>Beneficiary:</b> Her Majesty the Queen in right of the Province of New Brunswick as represented by: <b>(Department/Agency/Board)</b>	<b>Applicant:</b> _____ <b>(Name)</b> _____ _____ <b>(Address)</b> _____ _____ _____
<div style="border: 1px solid black; width: 200px; height: 40px; margin-bottom: 5px;"></div> <b>(Address)</b> _____ _____ _____	
<b>Amount:</b> CAD (Figures) _____ _____ <b>(Words)</b> Canadian Dollars _____	<b>Date of Expiry:</b> _____ DD/MM/YYYY

We, **(Lending Institution)** \_\_\_\_\_,

**(Lending Institution Address)** \_\_\_\_\_

(the "Lending Institution"), at the request of the above-mentioned Applicant, hereby issue in favour of Her Majesty the Queen in right of the Province of New Brunswick, \_\_\_\_\_

**(the "Beneficiary")** this irrevocable standby letter of credit for the above-mentioned amount.

This standby letter of credit is available for payment against presentation to the Lending Institution at its above-noted address of the Beneficiary's dated written demand addressed to the Lending Institution, signed by the Beneficiary and completed as follows: "We, the undersigned Her Majesty the Queen in right of the Province of New Brunswick, **(Beneficiary)** \_\_\_\_\_

hereby demand payment of **the sum of** CAD \_\_\_\_\_  
(Canadian Dollars) under **(Lending Institution)** \_\_\_\_\_

**Standby Letter of Credit No.** \_\_\_\_\_ and certify that the amount demanded herein is due and payable to us by **(Name of Applicant)** \_\_\_\_\_

in connection with a default of the terms and conditions of our **Contract No.** \_\_\_\_\_  
**dated** \_\_\_\_\_ with respect to **(indicate type of work)** \_\_\_\_\_  
\_\_\_\_\_ **located at** \_\_\_\_\_

and the amount demanded represents funds required by us to correct such default".

Partial drawings are permitted.

This standby letter of credit shall be reduced automatically, by the amount of each drawing paid hereunder and/or by amendment, by the amount of reduction that may be authorized by the Beneficiary from time to time by their written request, signed by the Beneficiary and given to the Lending Institution.

The Lending Institution hereby agrees that it will honour the Beneficiary's demand for payment, presented in compliance with the terms of this standby letter of credit, without inquiring whether the Beneficiary has a right as between itself and the Applicant to make such demand, and without recognizing any claim of the said Applicant.

This standby letter of credit will expire on the above-mentioned expiry date, subject to the following condition:

It is a condition of this standby letter of credit that it shall be deemed to be automatically extended without amendment for one year periods from the present or any future expiration date hereof, unless at least 30 days prior to any such expiration date, the Lending Institution notifies the Beneficiary in writing by registered mail or courier that the Lending Institution elects not to consider this standby letter of credit renewed for such further period. Upon receipt of such notice of non-renewal (the "Notice of Cancellation"), the Beneficiary may draw the total amount outstanding hereunder by presentation to the Lending Institution at its above-noted address of the Beneficiary's dated and signed written demand, addressed to the Lending Institution and completed as follows: "We, the undersigned Her Majesty the Queen in right of the Province of New Brunswick, **Beneficiary**) \_\_\_\_\_

\_\_\_\_\_ hereby demand payment of **the sum of** CAD \_\_\_\_\_  
(Canadian Dollars) under (**Lending Institution**) \_\_\_\_\_

**Standby Letter of**

**Credit No.** \_\_\_\_\_ and certify that we have received a Notice of Cancellation under the said standby letter of credit, that the amount demanded above shall be retained and used by us in connection with any default of the terms and conditions of our **Contract No.** \_\_\_\_\_  
**dated** \_\_\_\_\_ with respect to (**indicate type of work**) \_\_\_\_\_  
\_\_\_\_\_ **located at** \_\_\_\_\_. Any amounts not used by us shall be returned to (**Name of Applicant**) \_\_\_\_\_."

Notwithstanding the expiration date and the condition above, this standby letter of credit shall be cancelled effective the date of receipt by the Lending Institution of the original standby letter of credit instrument and a dated letter addressed to the Lending Institution, signed by the Beneficiary, referencing this standby letter of credit number and requesting the cancellation of same.

The Beneficiary may from time to time advise the Lending Institution of the Beneficiary's address by letter to the Lending Institution at the Lending Institution's address stated above, dated and signed by the Beneficiary and quoting this **Standby Letter of Credit No.** \_\_\_\_\_. Any notice by the Lending Institution to the Beneficiary regarding this standby letter of credit shall be adequately given if sent by registered mail or courier to the last address so advised, or if no address has been so advised, then to the address of the Beneficiary stated above.

This standby letter of credit is subject to the International Chamber of Commerce publication of the *Uniform Customs and Practice for Documentary Credits* that is in effect on the above date of issue and engages the Lending Institution in accordance with the terms thereof.

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Authorized signature