

CONSULTING SERVICES RFP TERMS AND CONDITIONS

1. TERMINOLOGY

Throughout the RFP, terminology is used as follows:

- .1 “Additional Services” means the Services, work, duties, functions and deliverables not otherwise included in the Contract.
- .2 “Alberta Time” means Mountain Standard Time or Daylight Saving Time as provided for in the *Daylight Saving Time Act* of Alberta.
- .3 “ATIA” means the *Access to Information Act* (Alberta), as amended from time to time.
- .4 “Business Day” means 08:15 to 16:30, Alberta Time, Monday to Friday, excluding holidays observed by the Province.
- .5 “Business Hours” means 08:15 to 16:30 Alberta Time on Business Days.
- .6 “Contract” means the written agreement between the successful Proponent and the Province to provide the Services and Materials contemplated by the RFP.
- .7 “Consultant” means the legal entity that signs the Contract with the Province. Consultant is the term that is used to refer to the successful Proponent after the Contract is signed.
- .8 “Fixed Fee” means a definite and predetermined fee.
- .9 “Hourly Rate Fee” means a definite and predetermined hourly rate.
- .10 “Unit Rate Fee” means a definite and predetermined unit rate.
- .11 “Key Individuals” means the individuals that will play lead role on behalf of a Proponent or a Team Member.
- .12 “Materials” means all the working papers, surveys, notes, plans, designs, reports, records, studies, drawings, examinations, assessments, procedures, specifications, evaluations, results, conclusions, interpretations, calculations, analyses, systems, software, source code, documents, writings, programs, hardware, devices, data or any components of these, regardless of how they are represented, stored, produced, or acquired.
- .13 “must”, “required”, “shall” means a requirement that must be met in a substantially unaltered form in order for the Proposal to receive consideration.
- .14 “optional” means a requirement not considered essential, but for which preference may be given.
- .15 “Personal Information” means personal information as defined in ATIA or POPA, or ATIA and POPA, as the case may be, as provided for in this RFP.
- .16 “POPA” means the *Protection of Privacy Act* (Alberta), as amended from time to time.
- .17 “Proponent” means a legal entity responding to the RFP with a Proposal.

- .18 “Proposal” means the Proponent’s response to the RFP and includes all the Proponent’s attachments and presentation materials.
- .19 “Province” means His Majesty the King in right of Alberta as represented by the Minister of Infrastructure, or the duly authorized representatives.
- .20 “Request for Proposal” or “RFP” means the solicitation for the Services including appendices, if any.
- .21 “Subconsultant” means a person or firm with whom the Consultant enters into a contract to perform part of the Services.
- .22 “Services” means the Materials, work, functions, duties, tasks and responsibilities to be provided by the Proponent as described in the Contract.
- .23 “Team Members” means agents, subcontractors, subconsultants, business entities or firms forming a particular Proponent’s team.
- .24 “Vendor Performance Management Program” or “VPMP” is the Province’s vendor performance program which records and manages performances of vendors contracting with the Province.
- .25 Headings are used for convenience only, and they do not affect the meaning or interpretation of the clauses.
- .26 Words in the singular include the plural and vice versa.

2. RFP AVAILABILITY

- .1 RFP documents are only available through Alberta Purchasing Connection at www.purchasingconnection.ca
- .2 The Province will assume no responsibility or liability for the completeness of any RFP documents, updates or amendments obtained from a source other than identified above.

3. PROPONENT QUESTIONS AND COMMUNICATIONS

- .1 Submit questions about the RFP by email to the individual identified under “Inquiries Contact” on the cover of the RFP document.
- .2 If an inquiry requires an interpretation or modification of the RFP, the response to that inquiry will be issued in the form of a written addendum only.
- .3 Submit inquiries as early as possible before the RFP Closing Date and Time. If an inquiry requires an interpretation or modification of the RFP, but is received too close to the RFP Closing Date and Time to permit issuance of an addendum, the Province may be unable to respond to that inquiry.
- .4 Any replies to inquiries or interpretations or modifications of the RFP made verbally, or by any manner other than in the form of a written addendum, are not binding on the Province.

4. ACCESS TO INFORMATION AND CONSENT TO THE USE OF PERSONAL INFORMATION

The Proponent acknowledges that:

- .1 ATIA applies to all information and records relating to, or obtained, generated, created, collected or provided under, the RFP or the Contract and which are in the custody or under the control of the Province. ATIA allows any person a right of access to records in the Province's custody or control, subject to limited and specific exceptions as set out in ATIA;
- .2 POPA applies to the collection, use and disclosure of Personal Information for the purposes of this RFP or the Contract; and
- .3 The Proponent, if it considers portions of its Proposal to be confidential, shall identify those parts of its Proposal to the Province considered to be confidential and what harm could reasonably be expected from disclosure. The Province does not warrant that this identification will preclude disclosure of information under ATIA or Personal Information in accordance with POPA.
- .4 The purpose of collecting Personal Information for the RFP is to enable the Province to ensure the accuracy and reliability of the information, to evaluate the Proposal, and for other related program purposes of the Province. Authority for this collection is the *Government Organization Act* (Alberta), as amended from time to time and section 4(c) of POPA. The Proponent may contact the inquiries contact identified on the cover of the RFP regarding any questions about collection of Personal Information pursuant to the RFP.
- .5 The Proponent consents, and represents that it has obtained the written consent from any individuals proposed or identified in the Proposal, to the use of their Personal Information in the Proposal by the Province, the Province's employees, subcontractors and agents, to enable the Province to evaluate the Proposal and for other program purposes related to this RFP. The Proponent must provide those written consents within two (2) Business Days of a request by the Province to do so.

5. ACTS AND REGULATIONS

- .1 The Proponent acknowledges and is responsible for complying with all the applicable Acts, Statutes and Regulations in Alberta including *Lobbyists Act*, *ATIA*, *POPA*, *Conflicts of Interest Act*, and *Workers' Compensation Act*.

6. CONFLICT OF INTEREST

- .1 Proponents must fully disclose, in writing to the Province before the RFP Closing Date and Time, the circumstances of any possible conflict of interest or what could be perceived as a possible conflict of interest if the Proponent were to become a contracting party pursuant to the RFP. The Province shall review any submissions by Proponents under this provision and may reject any Proposals where, in the opinion of the Province, the Proponent could be in a conflict of interest or could be perceived to be in a possible conflict of interest position if the Proponent were to become a contracting party pursuant to the RFP.

7. ADDENDA

- .1 The Province may extend the RFP Closing Date and Time, or the Province may amend, postpone, or cancel this RFP in its sole discretion. The Province may issue any number of addenda to this RFP in its sole discretion.
- .2 Addenda will be posted on the Alberta Purchasing Connection (APC) website at www.purchasingconnection.ca

8. PROPONENT EXPENSES

- .1 The Proponent is responsible for all costs of preparing and presenting its Proposal.

9. PROPOSAL

- .1 A proponent must not submit more than one Proposal.

10. FEE

- .1 Submit a fee for the Services in Canadian dollars and exclusive of the Goods and Services Tax and the Harmonized Sales Tax.
- .2 In event of Fixed Fee any inconsistency between words and numbers, words shall govern.
- .3 In the event of hourly rate fee proposal, if arithmetical errors are discovered in extended amount, the Hourly Rate Fee shall be considered as representing the Proponent's intentions and the extended amount and the total amount entered in the schedule of hourly rates will be corrected accordingly by the Province.
- .4 In the event of unit rates, if arithmetical errors are discovered in extended amount, the Unit Rate Fee shall be considered as representing the Proponent's intentions and the extended amount and the total amount entered in the schedule of unit rates will be corrected accordingly by the Province.
- .5 Reimbursable expenses will be paid as identified in the draft Contract.

11. WAIVER

- .1 Proponents shall not have any claim for compensation of any kind as a result of participating in the RFP's process, and by submitting a Proposal each Proponent shall be deemed to have waived its right to make a claim.

12. LANGUAGE

- .1 All Proposals, including attachments, presentation material, other information, resumes, reference letters, etc. must be submitted in English.

13. PROPOSAL PUBLIC OPENING

- .1 Proposals will not be opened in public.

14. RECAPITULATION OF PROPOSALS

- .1 The Province reserves the right to publish the names of responding Proponents and any summary cost information deemed appropriate by the Province.

15. PROPOSAL RETENTION

- .1 Proposals and accompanying documentation, upon receipt by the Province, will become the property of and will be retained by the Province.

16. PROPOSAL IRREGULARITY OR NON-COMPLIANCE

- .1 The Province reserves the right to waive an irregularity or non-compliance with the requirements of the RFP where the irregularity or non-compliance is minor or inconsequential. The determination of what is or is not a minor or inconsequential irregularity or non-compliance, and the determination of whether to waive or not waive the irregularity or non-compliance, shall be at the Province's sole discretion.

17. PROPOSAL EVALUATION

- .1 Proponents are deemed to understand and agree that the Proposals submitted by them will be evaluated against the evaluation criteria in the RFP by the evaluation team, according to the evaluation team's sole and best judgment and discretion, to determine the Proponent who is best qualified to provide the required services and whose Proposal offers the best value to the Province. Past performance records will be applied in order to determine the successful Proponent.
- .2 In the event of any mandatory requirements, Proponents meeting the mandatory requirements identified in the RFP will have their Proposals evaluated further.
- .3 Subject to the requirements of ATIA and POPA, such ratings shall be confidential, and no totals or scores of such ratings, fee amounts shall be released to any party.
- .4 Disqualification of a submission at the fee proposal stage will result in the Proponent's scoring being excluded from the evaluation process.
- .5 The Province may conduct steps of the evaluation consecutively or concurrently. That is, the fact that the Province has proceeded to a later step shall not imply that the Province has conclusively determined that the Proponent has passed any or all of the preceding steps.

18. CLARIFICATION INFORMATION AND INTERVIEWS

- .1 At any time during the evaluation process, the Province may ask the Proponent to clarify statements made in its Proposal. Following receipt and evaluation of the response from a Proponent, the Province may modify the evaluation score.
- .2 If interviews are held:
 - .1 the interviews will take place at a place and time determined by the Province, anticipated to be within 15 Business Days after the RFP Closing Date and Time,
 - .2 the Province will notify Proponents of the interview date, time and location no later than three (3) Business Days prior to the scheduled interview, and

- .3 representaives of the Proponent's firm, the Proponent's team lead for the project, and key personnel designated by the Proponent, including major subconsultants, will be required to attend.
- .3 Following receipt of clarifying information, and interviews (if any), the Evaluation Team may modify their initial evaluation scores to reflect the clarifying information.
- .4 The Province will not consider unsolicited supplementary or clarifying information received from Proponents after the RFP Closing Date and Time.

19. PROPOSAL REJECTION

- .1 The Province may reject the lowest cost Proposal, or any or all Proposals.

20. PROPONENT DEBRIEFING

- .1 The Province will debrief a Proponent who responded to the RFP, at the written request received by the Province after posting notification of Contract award on APC.

21. LIMITATION OF LIABILITY

- .1 Notwithstanding any other provision in this RFP, a Proponent who responds to this RFP agrees that any claim for damages or compensation of any kind related directly or indirectly to a breach of contract or other cause of action arising from:
 - .1 the RFP process;
 - .2 the evaluation of Proposals;
 - .3 the awarding of the Contract; or
 - .4 a decision by the Province not to award the Contract

shall be limited to the Proponent's actual Proposal preparation costs. "Proposal preparation costs" are the actual costs borne by a Proponent to prepare and submit its Proposal. By submitting a Proposal a Proponent acknowledges and accepts this limitation.

22. CONTRACT

- .1 Contract Finalization
 - .1 The Contract to be entered into shall be finalized with the preferred Proponent by the Province and shall contain the terms and conditions specified for the Contract in the RFP.
 - .2 If, in the opinion of the Province, it appears that a Contract may not be finalized with the preferred Proponent within fifteen (15) days of the issuance of the Contract, the Province may contract with other Proponents submitting responsive Proposals.
- .2 Order of Precedence
 - .1 In the case of conflicts, discrepancies, errors or omissions among RFP, the Proposal, and the main body of the Contract, the documents and amendments to them shall take precedence and govern in the following order:
 - .1 The main body of the Contract;
 - .2 Schedules;

.3 RFP Document issued by the Province;

.3 Contractual Warranties

.1 Claims made in the Proposal shall constitute contractual warranties. Any provisions in the Proposal may be included in the main body of the Contract.

23. TRADE AGREEMENTS

.1 This procurement is subject to Chapter 5 (Government Procurement) of the Canadian Free Trade Agreement, and the New West Partnership Trade Agreement.

24. SUBSTITUTION

.1 If Proponents become aware that any of the Team Members or Key Individuals will be unable or is likely to be unable to participate in Proponent's team, the Proponent must immediately so advise Province, and indicate proposed substitute Team Member or Key Individual.

.2 Failure to do so may result in disqualification of the Proponent from the RFP process or, if the Province becomes aware of such breach of this provision after the RFP has been issued from the RFP process.

.3 Upon receipt of notification of a requested substitution of a Team Member or Key Individual, it is at the sole discretion of the Province to allow such a substitution. In making a determination regarding the acceptability of a proposed substitution, the Province, without limiting the generality of its considerations, will consider whether or not a proposed substitution:

- a. Provides an unfair advantage to the Proponent; or
- b. Jeopardizes or delays the RFP evaluation process.

.4 All information required by this RFP in respect of Team Members and Key Individuals must be provided to the Province in respect of any proposed substitute Team Members or Key Individuals, as applicable.

25. LEGAL JURISDICTION

.1 This RFP shall be governed and interpreted in accordance with the laws in force in Alberta. The Proponent shall comply with the provisions of all laws, now in force or in force after the submission of the Proposal, or parts thereof, that expressly or by implication apply to this RFP or resulting Contract, if applicable. The Proponent irrevocably attorns to the exclusive jurisdiction of the Courts in Alberta. This provision shall survive the termination or conclusion of this RFP.

END OF RFP TERMS AND CONDITIONS