

1. GENERAL

- Time is of the essence.
- An incomplete, conditional, unbalanced, obscure, altered or irregular proposal may be rejected.
- Proposal shall be irrevocable for the proposal validity period, and the lowest or any Proposal or part thereof will not necessarily be accepted.
- "Contract" includes Blanket/Purchase Order, "Intent to Award", Contract, these Terms and Conditions, Request for Proposal for Professional Services, Drawings and Consultant's Proposal, with document precedence in the order named.
- "Owner" means the issuer of the Purchase Order and includes its agents. It may also be referred to as Nalcor Energy, Hydro or Cf(L)Co, whichever is applicable.
- "Owner" is the entity identified in the RFP and includes its successors and assigns.
- "Owner's Representative" means Owner's Representative appointed from time to time by Owner.
- "Consultant" means the party or parties named in the Contract with Owner for the Work and the successors and permitted assigns of the said party or parties.
- "Consultant's Representative" means Consultant's representative appointed from time to time by Consultant and designated to the Owner in writing to act as Consultant's representative for the purposes of the Contract.
- Respondent means the company submitting the proposal.
- RFP means Request for Proposal.
- Services means those Services to be provided in the Scope of Services described in the Request for Proposal document.
- "Work" means supply of specified labour, equipment, materials, goods and Services as defined in the RFP.
- Work Site means all places where Work is to be performed.
- "Site" means the designated site or location where the Work or part of the Work is to be performed as identified in this RFP
- Communications and documentation shall be in English.
- Measurement units shall comply with RFP.
- Work and Contract shall be governed by the laws of Newfoundland and Labrador and any action or proceeding arising from the Work shall be determined exclusively by a court in Newfoundland and Labrador.
- Contract binds and benefits the parties and their successors and permitted assigns.

2. INTERPRETATION

- a) The doctrine of *contra proferentem* shall not apply in the interpretation of Contract meaning that if there is any ambiguous language in the Contract it shall not be interpreted more strongly against the party who prepared or drafted the ambiguous language.
- b) The rights and recourse of Owner and Consultant contained in the Contract are cumulative and not in the alternative unless otherwise provided. The exercise of any such rights or recourse shall not constitute a waiver or renunciation of any other rights or recourse

3. PROPOSAL EVALUATION

Proposal will be evaluated on the basis of key considerations noted in the evaluation criteria which include but not limited to the following considerations:

- a) all relevant legal and financial considerations.
- b) capability of Proponent, based on the relevant experience of the Proponent and the personnel to be assigned to the Services.
- c) technical adequacy of the Proposal including appreciation of the scope of the Services and proposed methodology to undertake the study; and
- d) basis of remuneration and the proposed cost estimate for performance of the Services.

4. PRICING AND PAYMENT TERMS

Prices should be in Canadian currency, payable at par in St. John's, NL. Unless otherwise provided in RFP, payment shall be net thirty (30) days from receipt of an acceptable invoice, subject to work being completed to satisfaction of Owner.

Consultant's acceptance of final payment, releases Owner from claims of and liability to Consultant for Owner's acts, omissions or neglect. Invoices shall separately identify the amounts of federal GST/HST.

5. CHANGES ORDERS

Changes shall be made by duly authorized written Change Order.

6. CONSULTANT'S REGISTRATION REQUIREMENTS

The Consultant shall be authorized to do business in the Province of Newfoundland and Labrador prior to performance of the Work. Where the Consultant is a corporation, it shall be registered to carry on business in compliance with the laws of the Province of Newfoundland and Labrador and shall be registered in good standing with the Registry of Companies of Newfoundland and Labrador.

If applicable the Consultant shall be authorized to engage in the practice of engineering in the Province of Newfoundland and Labrador in accordance with the requirements of the *Engineers and Geoscientists Act*, RSNL 1990, Chapter E-12, as amended, prior to performance of the Services. If required by Owner, the Consultant shall provide evidence satisfactory to Owner to this effect.

7. LIMITATION OF LIABILITY

The aggregate liability of Consultant with respect to any and all claims, demands, losses or damages arising out of or connected to the performance or non-performance of the Contract or any matter associated therewith, whether based on contract, warranty, indemnity, tort (including negligence), strict liability, property damage, product liability or any other legal theory, shall in no event exceed two times the value of the Contract.

8. INSURANCE

Consultant shall provide insurances as per RFP.

9. ENVIRONMENTAL PROTECTION

Owner uses an Environmental Management System (EMS) registered to the ISO 14001 Standard. Owner has an environmental policy that commits to compliance with legal and other requirements, prevention of pollution and continual improvement. Consultant must be aware of potential environmental impacts of Work provided. Consultant shall protect the environment of the areas where the Work is located. Work shall be subject to inspection by Owner and relevant provincial and federal governments. Specific matters relating to environmental protection shall be dealt with between Consultant and Owner.

10. HAZARDOUS OR CONTROLLED PRODUCTS

Consultant shall not deliver or use a hazardous or controlled product as defined by the *Hazardous Products Act* Revised Statutes of Canada, 1985, Chapter 14-3, unless such product has a WHMIS label attached and is supplied with a Material Safety Data Sheet (MSDS).

Consultant shall inform workers of all information concerning use, storage and handling of, or working in proximity to, hazardous or controlled products.

11. PERMITS

Unless otherwise provided for in RFP, Consultant shall obtain and pay for all permits and licenses and shall give all notices necessary or required for lawful performance of WORK.

12. WORKER'S COMPENSATION

If applicable, prior to starting work, Consultant shall provide a Letter of Good Standing from the Work Place Health, Safety and Compensation Commission.

13. OWNERSHIP OF INFORMATION

All reports, drawings, software and intellectual property, developed, prepared, or caused to be prepared by Consultant in connection with the WORK shall become the property of Owner.

Any pre-existing patent, copyright, trademark, intellectual property rights, methodologies, processes, techniques, data, ideas, concepts, trade secrets and know-how of Consultant used in the execution of the WORK shall remain the property of Consultant.

All of Owner's information, procedures, processes, reports, drawings, calculations, work sheets, data and like documents, including software and intellectual property, collected or used by Consultant in connection with the WORK shall remain the property of Owner and shall be returned to Owner upon completion of the WORK.

14. CONFIDENTIALITY

Each Party shall keep confidential all information relating to the other party which is disclosed to it by the other party, or otherwise acquired by it, during the performance of the Work, except that such information may be provided to those persons who need to know it for the purposes of the Work. The foregoing shall not apply to any information which:

- a) was in a party's possession prior to the invitation to commence the Work; or
- b) becomes published through some agency other than the receiving party or becomes generally available to the public or is in the public domain; or
- c) is the same as technical information hereafter lawfully acquired by the receiving party from third parties not connected with the WORK or performance of the Work.

A party may disclose information relating to the other party when it is legally required to do so.

15. CONFLICT OF INTEREST

Respondent must disclose in its Proposal any potential conflict of interest. If a conflict of interest does exist, Owner may, at its discretion, refuse to consider the Proposal. If during the Proposal evaluation process or the negotiation of an Agreement or following entry into an Agreement, the Respondent is retained by another client giving rise to a potential conflict of interest, then the Respondent will refuse the new assignment or will take such steps as are necessary to remove the conflict of interest at no cost.

16. ACCESS TO INFORMATION

1. Owner and its Affiliates are subject to provisions of Newfoundland and Labrador legislation, including, but not limited to, the *Access to Information and Protection of Privacy Act, 2015*, SNL 2012 c.A-1.2 ("ATIPP Act"), or any amendments or replacements thereto and consequently the public may have a right of access to records of the Owner and its Affiliates, including tender submissions.
2. The ATIPP Act provides an exception which may sometimes be enforceable when access to information relating to a third party is requested however there may be instances when Owner is required to provide a member of the public with access to such information.
3. Owner shall not be liable for any claims, costs, losses or damages experienced by a Bidder or Consultant as a result of Owner's release of information to another party pursuant to the provisions of the ATIPP Act. Bidder should familiarize itself with the provisions of the ATIPP Act and its obligations under the ATIPP Act.

17. DUTY OF CARE

Consultant agrees to use reasonable care, skill, competence and judgment in the performance of the Work hereunder which are consistent with professional standards for individuals providing similar services at the

same time, in the same locale, and under like circumstances. No other warranty, expressed or implied, is made or intended by this Contract.

18. INDEMNITY

Each party agrees to indemnify, defend and hold harmless the other party, its officers, directors, employees, Owners, agents, Subcontractors, consultants, successors and assigns against all claims and liabilities arising out of, related to, or based upon the negligence or wilful misconduct of the indemnifying party or a breach of this Contract by the indemnifying party.

19. SAFETY AND HEALTH

Consultant shall comply with legislated occupational health and safety requirements, and any Owner specified additional requirements.

20. PATENTS

Consultant shall indemnify and save harmless Owner from all claims, costs and damages arising from Consultant associated with the Work contributed to by infringement, or alleged infringement, upon any patent, trademark or copyright.

21. PERFORMANCE

Consultant shall perform Work as an independent Consultant and not as an employee or agent of Owner.

22. SUBCONTRACTS

Consultant shall not subcontract the Work, shall perform the Work and shall render invoice, unless otherwise authorized by Owner. Consultant shall be responsible for payment of all assessments for levies relating to Work performed by employees, agents or sub-contractors of Consultant.

23. ASSIGNMENTS

Neither party shall not assign the Work, shall perform the Work and shall render invoice, unless otherwise authorized by Owner. Consultant shall be responsible for payment of all assessments for levies relating to WORK performed by employees, agents or sub-contractors of Consultant.

24. NO WAIVER

Contract provisions may only be waived by Owner, in writing.

25. DUTIES AND TAXES

Proposal prices shall include all duties and taxes except federal GST/HST. Unless otherwise provided for in RFP, Owner will be the importer of record.

If applicable, Non-Resident Withholding Tax will apply, unless Consultant has provided a waiver from Canada Customs Revenue Agency (CCRA).

26. FORCE MAJEURE

Neither party to the contract shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered or prevented by Force Majeure. "Force Majeure" means acts of God, acts of public enemies, acts of a competent governmental authority and includes any other cause which could not have been avoided by the exercise of reasonable human foresight and skill.

27. TERMINATION

Owner shall have the right, in its sole discretion, upon written notice to Consultant, to terminate the Contract in whole or in part without being subject to a claim for damages for such termination.

Consultant's obligations as to Work performed and bona fide obligations assumed prior to termination shall continue after termination; and as full compensation, Consultant will be paid for Work performed to Owner's satisfaction prior to termination and cancellation expenses judged necessary by Owner. Total payments shall not exceed the Contract Price.

28. CONSEQUENTIAL DAMAGES

In no event shall Consultant be liable in, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as but not limited to loss of product, loss of anticipated revenue or profits or cost of capital.