



**AFMC PROCESS, TERMS AND CONDITIONS FOR REQUESTS FOR PROPOSALS (RFPs)**

**No Guarantee of Volume of Work or Exclusivity of Contract**

The AFMC makes no guarantee of the value or volume of work to be assigned to the successful proponent. The Agreement to be negotiated with the selected proponent will not be an exclusive contract for the provision of the described Deliverables. The AFMC may contract with others for the same or similar deliverables to those described in the RFP or may obtain the same or similar deliverables internally.

**Agreement on Internal Trade**

Proponents should note that procurements falling within the scope of Chapter 5 of the Canadian Free Trade Agreement are subject to that chapter but that the rights and obligations of the parties shall be governed by the specific terms of each particular tender call. For further reference, please see <https://www.cfta-alec.ca/cfta-alec>

**Proposal Evaluation Process**

**Stages of Proposal Evaluation**

The AFMC will conduct the evaluation of proposals in the following four (4) stages:

**Stage I – Mandatory Requirements, Submission and Rectification**

Stage I will consist of a review to determine which proposals comply with our requirements. Proposals failing to satisfy the requirements as of the Submission Date and Time will be provided an opportunity to rectify any deficiencies. Proposals failing to satisfy the mandatory requirements as of the Rectification Date and Time will be excluded from further consideration. Proponents may be invited to an inquiry session by the review committee to provide a demonstration of the service and to answer questions the review committee may have.

Proposals satisfying the mandatory requirements before the Rectification Date and Time will proceed to Stage II. Proposals failing to satisfy the mandatory requirements will be excluded from further consideration.

**Stage II – Evaluation of Rated Criteria**

Stage II will consist of a scoring by the AFMC of each qualified proposal on the basis of the rated criteria, excluding Pricing. Proponents failing to meet the minimum threshold for any section will be excluded from further consideration in Stage III.

**Stage III – Evaluation of Pricing**

Stage III will consist of a scoring of the Pricing submitted which covers all foreseen costs. The evaluation of price will be undertaken after the evaluation of mandatory requirements and any rated requirements has been completed and will only apply to proponents that have not been excluded in earlier stages.

Use of Relative Pricing Formula

Pricing will be scored based on a relative pricing formula using the rates as defined under C3 (Pricing). Under the relative pricing formula, each proponent will receive a percentage of the total possible points allocated to price for the particular category it has bid on by dividing that proponent’s price for that category into the lowest bid price in that category. For example, if a proponent bids \$120.00 for a particular category and that is the lowest bid price in that category, that proponent receives 100% of the possible points for that category (120/120 = 100%). A proponent who bids \$150.00 receives 80% of the possible points for that category (120/150 = 80%), and a proponent who bids \$240.00 receives 50% of the possible points for that category (120/240 = 50%).

$$\frac{\text{Lowest rate}}{\text{Second-lowest rate}} \times \text{Total available points} = \text{Score for proposal with second-lowest rate}$$

$$\frac{\text{Lowest rate}}{\text{Third-lowest rate}} \times \text{Total available points} = \text{Score for proposal with third-lowest rate}$$

And so on, for each proposal.

**Stage IV – Cumulative Score and Selection of Highest Scoring Proponent**

At the conclusion of Stage III, all scores from Stage II and Stage III will be added and the highest-ranking proponent will be selected for contract negotiations in accordance with the Terms and Conditions of the RFP Process.

In a situation where one proponent cannot meet all the mandatory requirements, the RFP may be awarded to more than one proponent as a result.

**Tie Score**

In the event of a tie score, the selected proponent will be determined by way of a coin toss.

## Terms and Conditions of the RFP Process

### 1. General Information and Instructions

#### 1.1 Proponents to Follow Instructions

Proponents should structure their proposals in accordance with the instructions in the RFP. Where information is requested in the RFP, any response made in a proposal should reference the applicable section numbers of the RFP where that request was made.

#### 1.2 Language of Proposals

Submissions should be made in English.

#### 1.3 AFMC's Information in RFP Only an Estimate

The AFMC and its advisers make no representation, warranty or guarantee as to the accuracy of the information contained in the RFP or issued by way of addenda. Any quantities shown or data contained in the RFP or provided by way of addenda are estimates only and are for the sole purpose of indicating to proponents the general size of the work. It is the proponent's responsibility to avail itself of all the necessary information to prepare a proposal in response to the RFP.

#### 1.4 Proponents Shall Bear Their Own Costs

The proponent shall bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews or demonstrations.

### 2. Communication after Issuance of RFP

#### 2.1 Proponents to Review RFP

Proponents shall promptly examine all of the documents comprising the RFP, and

- (a) shall report any errors, omissions or ambiguities; and
- (b) may direct questions or seek additional information

in writing by email on or before the proponent's Deadline for Questions to the AFMC Contact. All questions submitted by proponents by email to the AFMC Contact shall be deemed to be received once the email has entered into the AFMC Contact's email inbox. No such communications are to be directed to anyone other than the AFMC Contacts listed in this RFP. The AFMC is under no obligation to provide additional information.

It is the responsibility of the proponent to seek clarification from the AFMC Contact on any matter it considers to be unclear. The AFMC shall not be responsible for any misunderstanding on the part of the proponent concerning the RFP or its process.

#### 2.2 All New Information to Proponents by Way of Addenda

The RFP may be amended only by an addendum in accordance with this section. If the AFMC, for any reason, determines that it is necessary to provide additional information relating to the RFP, such information will be communicated to all proponents by addenda. Each addendum forms an integral part of the RFP.

Such addenda may contain important information, including significant changes to the RFP. Proponents are responsible for obtaining all addenda issued by the AFMC.

#### 2.3 Post-Deadline Addenda and Extension of Submission Date

If any addendum is issued after the Deadline for Issuing Addenda, the AFMC may at its discretion extend the Submission Date for a reasonable amount of time.

#### 2.4 Verify, Clarify and Supplement

When evaluating responses, the AFMC may request further information from the proponent or third parties in order to verify, clarify or supplement the information provided in the proponent's proposal. The AFMC may revisit and re-evaluate the proponent's response or ranking on the basis of any such information.

#### 2.5 No Incorporation by Reference

The entire content of the proponent's proposal should be submitted in a fixed form, and the content of websites or other external documents referred to in the proponent's proposal will not be considered to form part of its proposal.

#### 2.6 Proposal to Be Retained by the AFMC

The AFMC will not return the proposal or any accompanying documentation submitted by a proponent.

### 3. Negotiations, Notification and Debriefing

#### 3.1 Selection of Top-Ranked Proponent

The top-ranked proponent, as established via the proposal evaluation process, will receive an invitation to enter into direct contract negotiations with the AFMC.

#### 3.2 Timeframe for Negotiations

The AFMC intends to conclude negotiations within thirty (30) days commencing from the date the AFMC invites the top-ranked proponent to enter negotiations. A proponent invited to enter into direct contract negotiations should

therefore be prepared to provide requested information in a timely fashion and to conduct its negotiations expeditiously.

### 3.3 Process Rules for Negotiations

Any negotiations will be subject to the process rules contained in the Terms and Conditions of the RFP Process and in the Terms and Conditions portion of the Acknowledgement Form and will not constitute a legally binding offer to enter a contract on the part of the AFMC or the proponent. Negotiations may include requests by the AFMC for supplementary information from the proponent to verify, clarify or supplement the information provided in its proposal or to confirm the conclusions reached in the evaluation, and may include requests by the AFMC for improved pricing from the proponent.

### 3.4 Terms and Conditions as Starting Point

The terms and conditions of the RFP Process and in the Terms and Conditions portion of the Acknowledgement Form, are to form the starting point for negotiations between the AFMC and the selected proponent.

### 3.5 Failure to Enter into Agreement

Proponents should note that if the parties cannot execute a contract within the allotted thirty (30) days, the AFMC may invite the next-best-ranked proponent to enter into negotiations. In accordance with the process rules in the Terms and Conditions of the RFP Process and in the Terms and Conditions portion of the Acknowledgement Form there will be no legally binding relationship created with any proponent prior to the execution of a written agreement. With a view to expediting contract formalization, at the midway point of the above-noted timeframe, the AFMC may elect to initiate concurrent negotiations with the next-best-ranked proponent. Once the above-noted timeframe lapses, the AFMC may discontinue further negotiations with that particular proponent. This process shall continue until a contract is formalized, until there are no more proponents remaining that are eligible for negotiations or until the AFMC elects to cancel the RFP process.

### 3.6 Notification to Other Proponents

Other proponents that may become eligible for contract negotiations will be so notified at the commencement of the negotiation process. Once a contract is executed between the AFMC and a proponent, the other proponents may be notified directly in writing of the completion of this procurement process.

### 3.7 Debriefing

Proponents may request a debriefing after receipt of a notification of award. All requests must be in writing to the AFMC Contact and must be made within sixty (60) days of notification of award. The intent of the debriefing information session is to aid the proponent in presenting a better proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

## 4. Prohibited Communications and Confidential Information

### 4.1 Prohibited Proponent Communications

The proponent shall not engage in any Conflict of Interest communications and should take note of the Conflict of Interest declaration set out in the Terms and Conditions portion of the Acknowledgement Form. For the purposes of this section, the term "Conflict of Interest" means

- (a) in relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the AFMC in the preparation of its proposal that is not available to other proponents, (ii) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the RFP process; or
- (b) in relation to the performance of its contractual obligations contemplated in the contract that is the subject of this procurement, the proponent's other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

### 4.2 Proponent Not to Communicate with Media or Other Parties

A proponent may not at any time directly or indirectly communicate with the media in relation to the RFP or any contract awarded pursuant to the RFP without first obtaining the written permission of the AFMC Contact. Similarly, a proponent may not at any time directly or indirectly communicate about the RFP or any contract in negotiation or awarded pursuant to the RFP with any other parties, for example through the company website or any other communication medium, without first obtaining the written permission of the AFMC Contact.

### 4.3 Confidential Information of the AFMC

All information provided by or obtained from the AFMC in any form in connection with the RFP either before or after the issuance of the RFP

- (a) is the sole property of the AFMC and must be treated as confidential;

- (b) is not to be used for any purpose other than replying to the RFP and the performance of any subsequent Contract;
- (c) must not be disclosed without prior written authorization from the AFMC; and
- (d) shall be either permanently deleted or returned by the proponents to the AFMC immediately upon the request of the AFMC

#### 4.4 Confidential Information of Proponent

A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the AFMC. The confidentiality of such information will be maintained by the AFMC, except as otherwise required by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed on a confidential basis, to the AFMC's advisers retained for the purpose of evaluating or participating in the evaluation of their proposals. If a proponent has any questions about the collection and use of personal information pursuant to the RFP, questions are to be submitted to the AFMC Contact.

### 5. Procurement Process Non-binding

#### 5.1 No Contract A and No Claims

The procurement process is not intended to create and shall not create a formal legally binding bidding process and shall instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation: (a) the RFP shall not give rise to any "Contract A"-based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and (b) neither the proponent nor the AFMC shall have the right to make any breach of contract, tort or other claims against the other with respect to the award of a contract, failure to award a contract or failure to honour a response to the RFP.

#### 5.2 No Contract until Execution of Written Agreement

The RFP process is intended to identify prospective vendors for the purposes of negotiating potential agreements. No legal relationship or obligation regarding the procurement of any good or service shall be created between the proponent and the AFMC by the RFP process until the successful negotiation and execution of a written agreement for the acquisition of such goods and/or services.

#### 5.3 Non-binding Price Estimates

While the pricing information provided in responses will be non-binding prior to the execution of a written agreement, such information will be assessed during the evaluation of the responses and the ranking of the proponents. Any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation, ranking or contract award.

#### 5.4 Disqualification for Misrepresentation

The AFMC may disqualify the proponent or rescind a contract subsequently entered if the proponent's response contains misrepresentations or any other inaccurate, misleading or incomplete information.

#### 5.5 References and Past Performance

The AFMC's evaluation may include information provided by the proponent's references and may also consider the proponent's past performance on previous contracts with the AFMC or other institutions.

#### 5.6 Inappropriate Conduct

The AFMC may prohibit a supplier from participating in a procurement process based on past performance or based on inappropriate conduct in a prior procurement process, and such inappropriate conduct shall include but not be limited to the following: (a) the submission of quotations containing misrepresentations or any other inaccurate, misleading or incomplete information; (b) the refusal of the supplier to honour its pricing or other commitments made in its proposal; or (c) any other conduct, situation or circumstance, as solely determined by the AFMC, which constitutes a Conflict of Interest. For the purposes of this Section, "Conflict of Interest" shall have the meaning ascribed to it in the Section E. Terms and Conditions of the RFP Process and in the Terms and Conditions portion of the Submission Form.

#### 5.7 Cancellation

The AFMC may cancel or amend the RFP process without liability at any time.

### 6. Governing Law and Interpretation

#### 6.1 Governing Law

The terms and conditions of the RFP Process (a) are included for greater certainty and are intended to be interpreted broadly and separately (with no particular provision intended to limit the scope of any other provision); (b) are non-exhaustive (and shall not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations); and (c) are to be governed by and construed in accordance with the laws of the province or territory within which the AFMC is located (Ontario) and the federal laws of Canada applicable therein.