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Revision to a Request for a Standing Offer

Révision à une demande d'offre à commandes

National Master Standing Offer (NMSO)

Offre à commandes principale et nationale (OCPN)

The referenced document is hereby revised; unless otherwise indicated, all other terms and conditions of the Offer remain the same.

Ce document est par la présente révisé; sauf indication contraire, les modalités de l'offre demeurent les mêmes.

Comments - Commentaires

Vendor/Firm Name and Address

**Raison sociale et adresse du
fournisseur/de l'entrepreneur**

Issuing Office - Bureau de distribution

Training and Specialized Services Division/Division
de la formation et des services spécialisés
11 Laurier St. / 11, rue Laurier
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Title - Sujet Fairness Monitoring Services	
Solicitation No. - N° de l'invitation EP737-122873/B	Date 2012-12-18
Client Reference No. - N° de référence du client 20122873	Amendment No. - N° modif. 008
File No. - N° de dossier 113zh.EP737-122873	CCC No./N° CCC - FMS No./N° VME
GETS Reference No. - N° de référence de SEAG PW-\$ZH-113-25016	
Date of Original Request for Standing Offer Date de la demande de l'offre à commandes originale 2012-10-19	
Solicitation Closes - L'invitation prend fin at - à 02:00 PM on - le 2013-01-16	
Address Enquiries to: - Adresser toutes questions à: Reynolds(zh), Diane	Buyer Id - Id de l'acheteur 113zh
Telephone No. - N° de téléphone (819) 956-1141 ()	FAX No. - N° de FAX (819) 956-9235
Delivery Required - Livraison exigée	
Destination - of Goods, Services, and Construction: Destination - des biens, services et construction: See Herein Voir aux présentes	
Security - Sécurité This revision does not change the security requirements of the Offer. Cette révision ne change pas les besoins en matière de sécurité de la présente offre.	

Instructions: See Herein

Instructions: Voir aux présentes

Acknowledgement copy required	Yes - Oui	No - Non
Accusé de réception requis	<input type="checkbox"/>	<input type="checkbox"/>
The Offeror hereby acknowledges this revision to its Offer. Le proposant constate, par la présente, cette révision à son offre.		
Signature	Date	
Name and title of person authorized to sign on behalf of offeror. (type or print) Nom et titre de la personne autorisée à signer au nom du proposant. (taper ou écrire en caractères d'imprimerie)		
For the Minister - Pour le Ministre		

Amendment no. 008 is raised to provide a response to questions raised to date and to amend Part 7, as follows:

Q15 Canada provided the following response to Q12 in Amendment 004: The Department has decided that clearer **direction** was required **on what the FM could constitute as a fairness deficiency**. Throughout Annex A, Statement of Work, the importance of the **independence** of the FM is emphasized, for example:

- it is the **independence** of the FM that allows PWGSC to protect the interests of its clients and Canadians...
- To enhance the **independence** of the FM...
- PWGSC engages **independent**, third party Fairness Monitors to provide an impartial opinion...
- It is the duty of the Fairness Monitor to maintain his/her **independence**...
- Actions do not compromise or appear to compromise the **independence** and integrity of the Fairness Monitor

The response to Q12 provided by Canada clearly impinges on the **independence** of the Fairness Monitor by restricting what the FM can consider as a fairness deficiency. This requirement forces the FM to **pre-agree** at the RFSO solicitation stage that there is no fairness deficiency **in specific cases with currently unknown circumstances**.

This is of special concern with respect to item "a) PWGSC policies, including Branch policy instruments such as the Supply Manual" prescribed by Canada, in cases for which the **detail of the circumstances cannot be foreseen** at this time. This will result in the FM being prevented from expressing its professional opinion that a fairness deficiency does in fact exist in a **particular future case** covered by a), and Canada will be denied the opportunity of being made aware of the opinion that such a fairness deficiency exists.

Would Canada please explain why, in the future, it would not wish to be made aware of an independent professional opinion that a fairness deficiency exists in a particular case with known circumstances.

A15 PWGSC's Acquisitions Program policy instruments include the following: Supply Manual, Standard Acquisitions Clauses and Conditions Manual, Acquisitions Program Policy and Policy Notifications. These policy instruments are vetted through stringent internal processes and approvals as well as through PWGSC Legal Counsel. They are consistent with Government Legislation, Policies and Regulations. PWGSC is open and transparent about these policies as they are available to all suppliers online. They describe the process and rules that Procurement Officers are required to follow in procurement.

PWGSC is willing to entertain comments, remarks and suggestions from Fairness Monitors on these instruments. These suggestions and comments on potential improvements cannot be part of the fairness deficiencies (qualified reports) if the Procurement Officer is abiding by the rules as set out in these instruments. PWGSC will review any comments and suggestions for improvement.

Q16 The following is included in subsection 3.1 of II. Terms of Reference in Annex A, Statement of Work: "a) PWGSC policies, including Branch policy instruments such as the Supply Manual". Please advise if standard clauses and conditions from the Standard Acquisition Clauses and Conditions (SACC) Manual, and clauses and conditions from a PWGSC procurement bid solicitation template contained in a particular bid solicitation would be considered as "Branch policy instruments". Please provide a complete list of "Branch policy instruments" that would apply, in addition to the example given of the Supply Manual.

A16 PWGSC's Acquisitions Program policy instruments include the following: Supply Manual, Standard Acquisition Clauses and Conditions Manual, Acquisitions Program Policy Suite and Policy Notifications.

The list includes, but is not limited to:

<https://buyandsell.gc.ca/policy-and-guidelines/Policy-and-Legal-Framework/Key-Policies-and-Directives>

Q17 Would Canada please provide examples and sources of "policies that apply to the information" referred to in subsection 3.2 of II. Terms of Reference in Annex A, Statement of Work: "Furthermore, in connection with transparency, the Parties agree that there is no Fairness Deficiency if the department's decision not to disclose information is required by the Privacy Act, the Access to Information Act or other laws or policies that apply to the information or if the decision not to disclose information is due to the fact that the proposed recipient of the information does not hold the required level of security clearance."

A17 Any Treasury Board Secretariat and departmental policies stemming from the aforementioned Acts.

Q18 Subsections 3.1 and 3.2 of II. Terms of Reference in Annex A, Statement of Work contain the following assertion: "the Parties agree that there is no Fairness Deficiency", under certain stated general situations, the details of specific case(s) of which are in the future and the circumstances thus unknown. The wording suggests that the Parties concerned, i.e. Canada and the Offeror(s), have discussed this matter which, to the Offeror's knowledge is not the case. If, for professional reasons, an Offeror does not agree with the assertion that there will necessarily be no Fairness Deficiency in the stated general situations described, and so states in its response, will the Offeror be declared non-responsive by Canada?

A18 By submitting an Offer, the Offeror agrees to the Terms of Reference for Fairness Monitoring Engagements. If an Offeror states in its response that it does not agree to these Terms of Reference, in whole or in part, the Offeror will be declared non-responsive.

- Q19 The definition of fairness monitoring opinion services in point rated technical criterion RT2.2 states: "Delivery of fairness monitoring opinion services including work performed as a fairness monitor, fairness advisor, fairness consultant or fairness facilitator, fairness auditor, fairness commissioner". It is the Offeror's understanding that this definition includes the provision of an Expert Opinion Report that would be unbiased and fair to all parties including acting as a Witness of Opinion, in respect of a claim made by a contractor for work that it had carried out. Would Canada please confirm that the Offeror's understanding of this definition is correct.
- A19 Depending upon the field of expertise, the provision of an Expert Opinion Report while acting as an expert Witness of Opinion will be rated based upon the type of expertise called upon to serve in this role. For instance, acting as an expert Witness of Opinion where the area of expertise is fairness will score 150 points, whereas the delivery of expert Witness of Opinion services where the area of expertise is engineering will score 50 points.
- Q20 Fairness monitoring for public sector procurement is a specialized practice that has arisen among a body of professionals who have been direct participants in the development of contemporary public procurement practices, which includes fairness oversight, that have taken place at all levels of government over the past decade. To relate the requirements of this practice to designations from other professions such as chartered accountants, architects, professional engineers, internal auditors, or real property management specialists, etc. is, in the Offeror's opinion, a significant misread of the current professional nature and requirements of the fairness monitor role.
- None of these professions would have had fairness monitoring in a public procurement environment as part of their professional training and accreditation. Would Canada consider removing the requirement that one member of the FM team possess one of the listed professional certifications? If Canada would prefer to keep the professional designation requirement, would Canada be willing to accept sufficient public sector procurement experience (sufficient to be further defined) as equivalent?
- A20 Canada will not remove the requirement that one member of the FM team possess one of the listed professional certifications. As the FM team is required to provide a professional attestation, it is required that a member of the FM team have a professional designation.
- Q21 It is the Offeror's opinion that a successful Fairness Monitor must be intimately familiar with all aspects of Canadian public procurement best practices. For example, to be an effective Fairness Monitor, one must be intimately familiar with the implied duties and express rights in Canadian law that are inherent in Contract A procurements that form part of the RFP process in public procurement (Contract A refers to the legal requirement of the owner to abide by both best practice and their own bid document to ensure equal and fair dealings with all bidders.)
- For experienced Fairness Monitor professionals this kind of knowledge is generally complemented by their firsthand experience and their knowledge base of public procurement cases that have set precedents both in law and in generally accepted or best practices for the application of fairness, openness and transparency principles. Would Canada consider amending point rated technical criterion RT2.2 so that a project which involved the provision of procurement opinion services scores the same as one which involved the provision of Fairness monitoring services?
- A21 Canada will not amend the point rated technical criterion RT2.2. The premise of the question is that professional Fairness Monitoring requires expertise in procurement, but it does not follow that experience in procurement equivalent to experience in Fairness Monitoring.

REASON FOR AMENDMENT

1.0 To amend the General Conditions under Part 7.

1.0 Part 7A, Standing Offer, delete clause 3.1 General Conditions in its entirety and replace with:

3.1 General Conditions

2005 (2012-11-19) General Conditions - Standing Offers - Goods or Services, apply to and form part of the SO.

2.0 Part 7A, Standing Offer, delete article 9. Priority of Documents in its entirety and replace with:

9. Priority of Documents

If there is a discrepancy between the wording of any documents that appear on the list, the wording of the document that first appears on the list has priority over the wording of any document that subsequently appears on the list.

- a) the call up against the SO, including any annexes;
- b) the articles of the SO;
- c) the general conditions 2005 (2012-11-19), General Conditions - Standing Offers - Goods or Services
- d) the general conditions 2035 (2012-11-19), General Conditions - Higher Complexity - Services;
- e) Annex A, Statement of Work;
- f) Annex B, Basis of Payment;
- g) Annex C, Security Requirements Check List;
- h) Annex D, Insurance Requirements;
- i) the Offeror's offer dated (insert date of offer)

3.0 Part 7B, Resulting Contract Clauses, delete clause 2.1 General Conditions in its entirety and replace with:

2.1 General Conditions

2035 (2012-11-19), General Conditions - Higher Complexity - Services, apply to and form part of the Contract.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED