Question 47

How will a contractor bidding with subcontractors be evaluated on meeting mandatory and point rated technical criteria requirements as per Annex J? Will Canada consider revising the requirements to include experience, capabilities and qualifications by the Bidder and/*or its subcontractors* for all criteria?

Alternatively, how will Canada evaluate responses to the mandatory and technical criteria from companies that form a joint venture to bid on the RFP?

Answer 47

Bidders will be able to submit proposals in the way that best allows them to meet Canada's needs as expressed in the Statement of Work that will be provided in the final Request for Proposal.

Canada only Contracts with the prime Contractor and not sub-contractors. Canada cannot take into account experience from sub-contractors as we will not be contracting with them. Alternatively, a joint venture can be formed and Canada can then evaluate the experience of the joint venture.

If a bid is received from a joint venture, the bid and any resulting contract must be signed by all the members of the joint venture unless one member has been appointed to act on behalf of all members of the joint venture. The Contracting Authority may, at any time, require each member of the joint venture to confirm that the representative has been appointed with full authority to act as its representative for the purposes of the bid solicitation and any resulting contract. If a contract is awarded to a joint venture, all members of the joint venture will be jointly and severally or solidarily liable for the performance of any resulting contract.

Question 48

In Section 1.b – Mandatory - Key Personnel identifies resources that must meet the minimum requirements listed. The Bid Submission requirement states that information for each key discipline (6) must be submitted. Similarly, in the Technical Criteria, Section 2.3, the RFP requires identification of Key Personnel from Bidders at the time of submission.
In relation to the above requirements, please confirm that a description of the Bidder's job profile to fill each of the Key Personnel positions is sufficient, coupled with examples of the Bidder's Key Personnel who provide similar services for other Clients?

This approach will enable Bidders to demonstrate service-based capabilities that focus on technical expertise, delivery model and organizational structure, instead of resource-based capabilities. This will also facilitate competitiveness as more Bidders will be able to bid, rather than evaluating resources that fewer Bidders will be able to identify at the time of submission, resulting in fewer submissions for Canada.

Answer 48

Canada will only be evaluating the key personnel listed in Annex J. It is the Bidder's responsibility to ensure that they have Key Personnel at Contract Award, those personnel not listed in Annex J will not be evaluated should not be mentioned in the bid.

It is a mandatory requirement that the Bidder has named resources at the time of bid submission and that these resources are available at Contract award. It is not sufficient to only give a description of the profile.

Question 49

Please clarify the security requirements for the Goose Bay Site Support Services, such as a designated organizational screening, if needed. Can the Security Requirement Check List be provided as part of the RFI to enable a full understanding of the requirements?

Answer 49

The SRCL will be made available to Bidders prior to the release of the final RFP.

Generic Questions

Topic: DND Security Clearances

1. For most DND contracts, there is typically a requirement that the bidding entity holds a Secret level organizational security clearance so that they can perform classified work on the contract or have access to classified IT systems. It is our understanding from PSPC that:
    a. If the bidding entity does NOT currently hold a Canadian DND Secret-level Facility Clearance, a Facility Clearance Request can be made based on the RFP's Security Requirements Checklist (TBS/SCT 350-103), typically provided in the RFP package, if they intend to submit a proposal for a contract that will require a Secret Organizational clearance. Correct?
        i. Yes. Furthermore, the PSPC Contract Authority can also sponsor a prospective bidder with CISD during the pre-RFP stage (ie: Letter of Interest phase, Request for Information stage etc) as well as during the RFP stage.
    b. PSCP does not require the bidding entity to hold the Secret level facility clearance upon submission of a proposal, but need to have it by time the award of the contract by PSPC. Correct?
        i. The answer depends on the specific solicitation. Some solicitations will require the bidding entity to have the security clearances in place by the time of submission of bids while others will require the clearances by contract award and some will only require clearances before start of certain work. Using the current DND requirements as examples, PSPC wanted to give as much time as possible and thus, Facility Clearance for the Meaford, Goose Bay and Alert files is only required before contract award.

c. If the Facility Clearance is still in progress when the award announcement is made, what leeway does PSPC provide for additional time for the bidding entity to finish the process before work begins?
    i. Assuming this and the next question are based on a solicitation that requires the Facility Clearance to be in place by the time of contract award, any leeway would be dependent on when PSPC is ready to award the contract. If the winning bidder does not hold that specific clearance when PSPC is ready to award, then the award would go to the next highest ranked bidder who holds the appropriate clearance. PSPC cannot delay the award of contracts to allow bidders to finalize security clearances.

d. If the Facility Clearance has not been finalized by contract award, would PSPC allow for the contractor to begin the Project Transition-In period while the security clearance process is being finalized?
    i. No, Facility Security Clearance is mandatory at Contract Award.

Topic: Price Adjustments after Award

1. If a contractor is executing a contract with staff that is not Unionized, but during execution of the contract the staff forms a Union that includes requirements for higher salaries and benefits that when the contract was initially bid, is there a mechanism for the contractor to request and equitable adjustment to the contract to cover the increased costs?
    a. For fixed price elements, it would be expected that a contractor fulfill its obligations of the contract as per the proposal submitted. Should any of a contractor’s costs increase, these would be borne by the Contractor. For example, the province of Ontario increased the minimum wage rate in November 2017 but the cost increases were borne by contractors for federally executed contracts. PSPC understood this particular event could have caused some hardship to certain contractors. In this unique case, contractors were given the option of continuing work under the same existing terms and conditions, or to negotiate a termination by mutual consent to the Contract with Canada (contract had to remain in place until Canada was able to replace it) – normally a contractor wanting out of a contract does so under a Termination for Default.

2. On a contract that PSPC has awarded to a vendor, where some or all of the workers on the contract are Union employees, if during the execution of the contract the Union strikes and negotiates a higher salary/benefits package to begin work again, is there a mechanism for PSPC to authorize an adjustment to the vendors fixed price bid to account for the higher Union wages and/or benefits the Union demanded to get back to work? ?

a. For fixed price elements, it would be expected that the contractor fulfills the obligation of the contract as per the proposal submitted. Should any costs within a fixed price element increase, these would be borne by the contractor. Of course, any decreases in similar costs would be to the benefit of the contractor.

Topic: Option Years

1. When PSPC notifies the incumbent contractor that it wants to exercise an Option Year, is there the ability for the contractor to opt out of the contract? Are option years mandatory for the contractor to accept, or can the contractor reject the option year?
    a. Option periods are exercised by Canada. The clause utilized in our contracts reads as follows: "The Contractor grants to Canada the irrevocable option to extend the term of the Contract by up to ….". As a result, the Contractor cannot opt out of any option years. Doing so would result in a termination by default scenario (see question 2 and 3 below for more details). If the Contractor wishes to terminate the Contract, they should communicate with the Contracting Authority as soon as possible so negotiations to terminate the Contract can begin.

2. If the contractor opts out of the contract at any time after execution has started, what mechanisms are available for the contractor to end a contract early?
    a. Should a contractor request a termination of contract, the PSPC Contract Authority will follow the guidelines listed in the Supply Manual at article 8.135.25 Request for Termination by the Contractor which states "When a contractor requests a termination because of anticipated losses in performing the contract, consent will not be granted. Instead, the contractor should be instructed to carry out its obligations under the contract. The contractor may, on completion of the contract, request an "extra payment" for additional costs incurred or losses suffered, if some responsibility for the additional cost or for the loss can be ascribed to Canada. (See 8.135.1 Suspension of the Work - Stop Work Order).

    If the contractor refuses to carry out the contractual obligations, the contract must be terminated for default. " Weblink: https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/8/135

3. What actions does PSPC take if a contractor either wants to end their support of a contract?
    a. As per the answer above, Canada would proceed with a Termination by Default as per article 8.135.15 of the Supply Manual (including cashing contract security if in place or seeking termination costs, etd…).

b. Understanding this, Canada would try to understand why the contractor is not meeting its obligations and every effort would be made to prevent a Termination by Default.

Topic: Cost Reasonableness

1. What mechanisms are in place for PSPC to determine if the bidder price is reasonable for the execution of a contract that has a ten year base and up to ten years of options?
    a. For reasonableness, Canada can employ a number of mechanisms to determine if a bid is "reasonable" in terms of price. For example, the technical authority will typically provide rationale from the technical proposal to ascertain the level of effort. Should that level of effort be considered adequate, then direct links can be extrapolated to the price quoted for a particular SOW and Basis of Payment section. When possible, Canada will determine the reasonableness of the overhead rate and profit rate. Furthermore the solicitation and contract will normally include Price Certification and Discretionary Audit clauses as allowing PSPC to utilize the services of a cost analyst to determine that the price proposed is fair and reasonable. It should be noted that "reasonable" is not always seen the same way between different bidders – an efficiency or different delivery methodology may result in one proposal that may be seen by other competitors as "unreasonable."
2. If the contractor underbid on a project (example: The contractor believes that it take 20 people to provide food services, but upon execution finds that it requires 30 people, and as a result the contractor either a) understaffs falling short of the service levels needed, or b) fully staffs to meet the service level and thereby loses money), is there a mechanism to renegotiate with PSPC for equitable adjustment?
    a. To answer this question on the cost reasonableness section and for the cost of commodities sections, the following parameters from a client and PSPC authority needs to be taken into consideration:
        i. Fixed prices are requested where we believe that bidders are in a position to clearly understand the work required (level of effort) and where significant price fluctuations are not expected.
        ii. Where price fluctuations can be expected or the term of the contract is long, fixed prices are generally supported by a pre-determined escalation/reduction factor (CPI or other).
        iii. Where the work requirements are variable or unclear fixed pricing is not generally used. Cost reimbursable or negotiated pricing frameworks are used.

   b. Assuming a fixed price element, the Contractor would be expected to deliver the contracted services for the amount bid by the Contractor (and ultimately written into the contract). Canada would expect the Contractor to meet the obligations as per the Terms and Conditions of the contract. Failure to do so could result in a termination by default.
   c. From a bidders perspective, should a Statement of Work (SOW) not be aligned with the Basis of Payment (BoP) proposed (ie: the SOW is vague and the BoP is Firm Fixed), then bidders should inform the Contracting Authority as early in the process as possible so that modifications can be brought to ensure a better solicitation document.
3. If unforeseen costs make the contract unmanageable from the contractor's perspective, are there mechanisms for the contractor to renegotiate the contract with PSPC? If not, what are the penalties for a contractor to self-terminate a contract?
   a. See answer for Option Years (question 2), Request for Termination by the Contractor.

Topic: Costs of Commodities

1. On a PSPC awarded contract that is Fixed Price and requires the contractor to provide materials as "Contractor Furnished", and during execution of the contract the costs for the material increases, far exceeding inflation, is there a mechanism for the contractor to work with PSPC to adjust the contract to account for the increased costs? (Example: If a contractor is required to provide copper wire on a contract, and the price of copper triples within a contract year, can the contract be adjusted to account for this additional cost, a cost that the contractor would not reasonably have been expected to foresee when the proposal was submitted?)
   a. Canada understands that a transfer of risk occurs from Canada to the Contractor related to increased/decreased costs. Bidders must be vigilant as they prepare their financial proposal and consider the inclusion of a cost contingency within their bid. As a result, Canada understands that it may pay a higher price as a contractor addresses that risk. Please see the Cost Reasonableness, answer 2 for background on this question.

Topic: Award and Contract Start Timelines

1. We understand that from the time of submission of a proposal to PSPC, that the award of a contract can take anywhere from 61 days, up to 450 days. Can PSPC provide what they believe is a realistic expectation for how long awards take?

    a. The time frame from submission to contract award varies based on a number of factors. On the most basic level, the complexity of the evaluation process and the number of evaluators can impact the amount of time required. Also, internal approval authority to award a contract can greatly change the amount of time required to award a contract – contracts within the Contracting Officer's authority can be done within days while those larger files requiring Cabinet to approve through Treasury Board can take months to go through the process. Canada will typically add a time contingency for factors such as elections, change of government, policy changes or legislation changes that could impact or delay contract award. However, it is always Canada's intention to award any contract as soon as possible after bid receipt.

2. From the day of the award announcement, how long does PSPC typically provide the awarded contractor to get its staff ready to begin work (or as appropriate start transition) on the contract?
    a. The contract can be awarded fairly quickly upon notification to the successful bidder (1 to 2 weeks). The transition period is typically structured to ensure the new contractor has sufficient time to implement all major SOW sections to ensure full operational status within the confines of that pre-established transition in period.