



Advance Contract Award Notice (ACAN)

Specialize Legal Advice Regarding Banking

1. Advance Contract Award Notice (ACAN)

An ACAN is a public notice indicating to the supplier community that a department or agency intends to award a contract for goods, services or construction to a pre-identified supplier, thereby allowing other suppliers to signal their interest in bidding, by submitting a statement of capabilities. If no supplier submits a statement of capabilities that meets the requirements set out in the ACAN, on or before the closing date stated in the ACAN, the contracting officer may then proceed with the award to the pre-identified supplier.

2. Definition of the requirement

Background:

The Canadian Energy Regulator (CER) is the successor organization of the National Energy Board (NEB). It regulates international and interprovincial aspects of the oil, gas, offshore renewable energy and electric utility industries in the Canadian public interest. The CER is accountable to Parliament through the Minister of Natural Resources Canada.

On 19 June 2016, amendments to the *National Energy Board Act* that establish absolute liability limits and financial resource requirements came into force. These changes require companies operating pipelines to carry a minimum level of financial resources to cover the costs of an unintended or uncontrolled release from one of their pipelines. Companies are required to demonstrate and maintain financial resources that match, at a minimum, the amount of absolute liability applicable to them. A portion of the financial resources must be readily accessible to the company.

CER-regulated companies operating pipelines that individually or in the aggregate have the capacity to transport at least 250,000 barrels of oil per day (major oil pipelines) are subject to an absolute liability limit of \$1 billion. The *Pipeline Financial Requirements Regulations* (SOR/2018-142) (the Regulations) set out the absolute liability limits for companies other than those operating major oil pipelines, the amount of readily accessible financial resources, acceptable types of financial resources, and the requirements of pooled funds.

The CER is responsible for ensuring compliance with both the *Canadian Energy Regulator Act* (the Act) and its regulations.

The CER has directed all CER-regulated companies operating pipelines to submit financial resources plans to demonstrate compliance with the Act and the Regulations. The proposed plans include various financial instruments. For example, some companies have proposed utilizing line of credit agreements, and have submitted copies of the agreements for CER review and approval.



Requirement

Canadian Energy Regulator (CER) requires expert legal advice about financial instruments being submitted by companies pursuant to the Canadian Energy Regulator Act (CERA)'s financial resources requirements.

That expertise must be in the fields of banking law, contracts, as well as the CERA and the Pipeline Financial Requirements Regulations and associated Guidelines. The legal expert should have demonstrated ability to advise both on technical points of law and broader policy objectives.

Scope of Work

The Contractor will

- a. Examine financial submissions filed with the CER for compliance
- b. Identify any potential gaps or deficiencies in the filings, and work with CER Staff to consider and prepare recommendations for obtaining further information as appropriate
- c. Support CER staff in preparing drafts of any correspondence from the CER to regulated companies on matters related to financial resources requirements.

3 Criteria for assessment of the Statement of Capabilities

Any interested supplier must demonstrate, by way of a statement of capabilities, that it meets the following requirements:

- 1) Ability to provide concise advice in a timely, efficient manner;
- 2) Experience advising a government regulator;
- 3) Familiarity with:
 - a. *National Energy Board Act*
 - b. *Canadian Energy Regulator Act*
 - c. *Pipeline Financial Requirements Regulations*
 - d. *Draft Pipeline Financial Requirements Guidelines*
- 4) Experience providing advice to banking or financial entities;
- 5) Experience in reviewing, analyzing and advising clients on corporate and commercial issues arising from the following financial instruments:
 - a. Insurance policies
 - b. Letters of credit
 - c. Lines of credit
 - d. Credit agreements
 - e. Participation in pooled funds, within the meaning of s.139 of the Act
 - f. Parent company guarantees
 - g. Surety and Indemnity bonds
 - h. Suretyship and Pledge agreements;
- 6) Experience reviewing financial submissions and advising on their viability as well as on the optimal response to those submissions;



- 7) Experience working with a government body or corporation on revisions of policies and guidelines within the context of government legislation;
- 8) Ability to attend CER meetings and hearings upon request, whether in person or remotely, upon reasonable notice;

4 Applicability of the trade agreement(s) to the procurement

This procurement is not subject to trade agreement(s)

5 Justification for the Pre-Identified Supplier

Nicole Kiss, partner at Tingle Merrett LLP, possesses the required legal expertise and has experience with providing both legal and policy advice. Ms. Kiss has written 6 memoranda since the beginning of the first retainer on 17 June 2017. Most of the memoranda analyzed financial instruments submitted by companies in order to assess whether those instruments were capable of meeting the CER's financial resources requirements. CER staff relied heavily on Ms. Kiss's advice.

Ms. Kiss also is contributing to the CER's ongoing project of improving its policies on financial resources requirements and the Pipeline Financial Requirements Guidelines. She has identified, through her existing work and the memoranda she has provided to the CER to date, areas where some improvements could be made and efficiencies gained, both for industry and the CER. CER staff will work to incorporate her advice into their policy development, where appropriate.

6 Period of the proposed contract or delivery date

The period of this contract is from date of contract award to March 31, 2022 with the option to extend the term of the contract by one additional year period.

7 Cost estimate of the proposed contract

The estimated value of the contract, including option(s), is

\$100, 000.00 (GST/HST included).

8 Name and address of the pre-identified supplier

Nicole Kiss
Tingle Merret LLP
Suite 1250, 639 -5th Avenue S.W
Calgary, AB
T2P 0M9



9 Suppliers' right to submit a statement of capabilities

Suppliers who consider themselves fully qualified and available to provide the services described in the ACAN may submit a statement of capabilities in writing to the contact person identified in this notice on or before the closing date of this notice. The statement of capabilities must clearly demonstrate how the supplier meets the advertised requirements.

10 Closing date for a submission of a statement of capabilities

The closing date and time for accepting statements of capabilities is

March 2, 2020 at 2:00 p.m. MST

11 Inquiries and statements of capabilities are to be directed to:

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