

RFSA-000137

FOR
LEGAL SERVICES

Addendum #1

Questions and Answers:

1. Under R.1 on page 28, we note that we are requested to provide a response to R.1.1 and R.1.2 only once in submission – is it acceptable to only include this in the response to Category A and then note that we have responded to those questions already in any additional categories?

Answer: Rated Criteria R.1, with all sub-criteria R.1.1 – R.1.9, must only be provided once. The evaluation team will score R.1 only once and the same score will be applied to R.1 in all the categories the respondent is applying for. Therefore, if you have provided R.1 under Category A, it is acceptable to state with your submission under Category B: R.1 is provided under Category A.

2. For questions R.1.3 through to R.2.3 on page 29, we are requested to provide our answers for each legal service category to which we are responding. Responses to some of the questions, notably R.1.5, R.1.6, R.1.7, R.1.8 and R.1.9, will not vary between the legal service categories – do you require this information duplicated for each category submission?

Answer: Rated Criteria R.1, with all sub-criteria R.1.1 – R.1.9, must only be provided once.

3. Please confirm that we are required to submit a separate document for each category we are responding for. Each category document should contain responses to R1, R2, R3 and R4 (with the exception of R.1.1 and R.1.2 which should only be submitted once)?

Answer:

- a. R.1 submission: Please refer to our answers given above in questions 1 and 2.
 - b. Files: Please refer to *Section 1.6.2 Responses to be submitted at the prescribed location*. CMHC's EBID has a size limited of 10 MB. Respondents may submit their response in multiple smaller files.
4. Under 1.3.2 on page 29, we are asked to provide one category-specific project example for each category. Some of the categories cover multiple and diverse legal areas, such as Category A covering data privacy, IP, commercial agreements, competition, indigenous law and corporate governance. Where this is the case should we include a project example for each sub-category bullet or select one area to focus our single project example on?

Answer: Please select one (1) project example per overall Category (not one per each bullet point) which will highlight your firm's capabilities the best.

5. Are we able to use CMHC work as a project example and reference at R.1.3.2 on page 29?

Answer: Please select the project example which will highlight your firm's capabilities the best.

6. Are we permitted to disclose our participation in this process with our references in order to obtain their consent to be included?

Answer: Yes. CMHC would assume that firms require consent from their client references. CMHC also assumes that firms will not require to divulge CMHC confidential information to do so.

7. At R.2.2 on page 29, where we are asked to describe the 'logic of firm organization and adequacy of labour commitment', can you clarify whether this is asking firms to explain their team structure and confirm team members' availability for CMHC matters?

Answer: Yes. CMHC is expecting respondents to describe the various departments/groups that make up the firm, explain the proposed team structure and demonstrate that they have the depth of resources and expertise to effectively support CMHC matters.

8. At R.4 on page 23, does the one page limit apply for each category or is it one page in total across all categories?

Answer: The one (1) single page limit applies to the respondent's answer to the alternative rate model offered per category (not in total).

9. At R.4 on page 23, where we are asked to describe any alternative rate models – does CMHC require specific figures for any discounts or models put forward or just a general description at this stage?

Answer: R.4 is scored by using the scoring matrix outlined in *2.4 Scoring by the Evaluation Team*. If no specifics are provided, meaning little or limited information, the evaluation team will score accordingly.

10. At R.4 on page 23, if CMHC requires the actual details and figures for alternative rate models at this stage, are we correct in understanding those detailed models will be in addition to the one page limit?

Answer: Respondents must describe their specific rate models within the one (1) page limit per category. For example, if respondents are responding to all seven (7) categories, R. 4 would have a total of seven (7) single-sided pages.

11. Section 7 in Appendix A requires a declaration of any conflict of interest. Likewise, Item 9 in Appendix D provides for a confirmation of the absence of any conflict of interest. As our firm works with a variety of clients whose legal interests are directly adverse to CMHC, we are unable to declare the absence of any conflict of interest. Nor are we necessarily at liberty to disclose the nature of all matters on which we act for clients adverse to CMHC. Would CMHC be willing to agree to include in the Master Retainer Agreement a provision allowing our firm, without notice to or consent of CMHC, to act opposite CMHC on matters which are unrelated to matters on which we represent CMHC, provided that we protect CMHC's confidential information by way of a customary confidentiality screen?

Answer: CMHC expects law firms to conduct their affairs to avoid legal conflicts of interest. When a particular mandate is given pursuant to this RFSA and the Master Retainer Agreement, the law firm will be representing that it is not aware of any circumstances that do or might cause the law firm to be in a conflict of interest in providing the legal services in the context of that mandate.

CMHC would be open to considering a provision in the Master Retainer Agreement that would recognize that law firms represent a diverse base of clients on a variety of legal matters, and that, subject to the law firm acting in conformity with applicable rules of professional conduct, including with respect to the protection of confidential information obtained in the course of representing CMHC, CMHC would consent to the law firm's representation of other parties on matters adverse to CMHC, but only if such matters are not substantively related to the specific matters for which the law firm is now engaged or in the future becomes engaged by CMHC. As and to the extent it is able to do so in accordance with its professional obligations, the law firm will notify CMHC of any engagement on an unrelated matter that is adverse to CMHC.

12. Page 28 under K. Rated Criteria – the Note states that page limitations are per single sided pages. Does this mean that each R.1.1, R.1.2, R.1.3, etc. section can only be 1 page in length?

Answer: No. The note means, i. if there is a page limitation, it must be applied as single-sided (for example in R.4); and ii) the minimum response font size is 11.

13. Page 28, Section R.1 Note states "You must provide the following information only once, regardless of the number of Legal Services categories to which you are submitting a response to."

Page 29, Section R.1.3: the top of the page states “Please provide the following information pertaining to your organization’s demonstrated expertise for each Legal Services category to which you are responding.”

Put together, does this mean that CMHC is expecting to receive a submission as follows:

- One separate file that includes everything with the exception of section R.1.3?
- Separate files submitted as Category X respondent name which only includes section R.1.3 as described in Item 1.6.4 on Page 5?

Answer: R.1, with all sub-criteria R.1.1 – R.1.9, must only be submitted once. Respondents must submit R.1.3 per each category within their collective R.1 response. Please also refer to the answer given under question 1 above.

14. Can a SA Holder procure and maintain or cause to be procured and maintained in force for the duration of the Master Retainer Agreement (Appendix D) a policy coverage for professional errors and omissions liability insurance less than \$10 million per claim?

Answer: While it is CMHC’s requirement for SA Holders to comply with the insurance requirements set out in *Appendix C, Section G. Insurance*, CMHC may consider negotiating such insurance amount with law firms carrying out smaller mandates (such as over the phone consultation) on behalf of CMHC.

15. Under the heading “Appendix A – Submission Form” number 7, we have two questions.
- o With respect to Section 7(a), a respondent may have confidential information of CMHC’s which it obtained in the course of its previous legal representation of CMHC, which is not available to the other respondents at large. Possession of such information is not typically construed as a “Conflict of Interest”, but is a result of the prior representation and knowledge of CMHC and the work product. However, a respondent with such information will have insight into such work that other firms who have not represented CMHC would not have. Was it the intent of this section to ask respondents to list the prior engagements with CMHC and related work product as part of this disclosure?
 - o With respect to Section 7(b) (ii), given a respondent cannot foresee which of its clients may be adverse to CMHC, it would appear to be prudent to disclose such potential in the declaration, but will the process of such “Conflicts of Interest” be negotiated separately between CMHC and the respondent in the customary process and as further required by the Rules of the respective Law Societies? Does CMHC have any expectations in this regard?

Answer:

7. (a) – No. The intent of this section is not for respondents to disclose prior engagements. This section 7. (a) is reminding respondents to not engage into any activities that may be considered as a conflict of interest, as defined in Section 7, in relation to the RFSA process.

7. (b) – If a respondent to this RFSA is aware of any existing conflicts or potential conflicts, respondents are reminded to disclose such with this Submission Form. If a respondent is not aware of any potential conflicts, there is nothing to disclose at the time. Please refer to Appendix D, Section 9 (Master Retainer Agreement) which will require the selected SA Holder to disclose any conflicts when a specific mandate is being given pursuant to the Master Retainer Agreement. Any conflicts disclosed at that time would be addressed by the parties in accordance with the usual process and as required by the applicable Rules of the respective Law Societies.

16. Under the heading “Appendix B – Pricing Form” number 1(a), respondents are asked to provide ceiling rates for each resource. Given the broad scope of work under each category, we anticipate it will be acceptable to provide such rates for each proposed team member for the category of work, in particular to demonstrate that team members have the Specific Expertise (required by CMHC and described in R.1.3). Is CMHC requesting a full list of the proposed team members for each category or an average rate for each of the “Resource Titles” listed in each category?

Answer: CMHC is asking for ceiling rates per resource level and resource title, not per resource name. It will be up to the respondent to provide the ceiling rates (e.g. averaging out could be one way of arriving at a ceiling rate). It is up to the respondent to decide whether the ceiling rates per resource level and resource title are different for each category, separate tables were provided by CMHC in Appendix B, Section 3. Keep in mind, resources may leave organizations or receive promotions etc. over the term of the Master Retainer Agreement, therefore, ceiling rates must not be tight to an individual name.

17. Under the heading "Appendix B – Pricing Form" number 3 R.4, respondents are asked to describe any alternative rate models within one (1) single page limit. Does this limit apply as one page per Category (to which the respondent submits a response) or one page in its entirety?

Answer: Please refer to the answer provided in question 10 above.

18. For respondents with existing engagements with CMHC and where there are specific considerations for the deliverables to be completed that is not contemplated by the Master Retainer Agreement, how should the law firm identify these considerations (noting that all such communications are to be sent to the RFSA Contact, but that existing arrangements may contain information that is privileged and confidential)?

Answer: Contacting the RFSA Contact is limited to all matters concerning this RFSA-000137. Please refer to RFSA *Section 1.2 RFSA Contact*.

Respondents with existing contracts should continue to work with the assigned CMHC Legal Counsel on the active file. However, the respondent is not permitted to discuss any RFSA matters with the CMHC Legal Counsel (which would be a conflict of interest) during the execution of the existing contract deliverables. Please refer to RFSA *Section 3.2.1 Respondents* to review RFSA for further details.

19. Re: Appendix C, Section B. Deliverables.

If our specialized expertise allows us to provide some but not all services in a defined category, may we still submit for that category?

Answer: Yes.

20. Re: Section R.1.3.2.

We note that in Part 1, section 1.2, contact any employees of CMHC may result in disqualification from the RFSA process. We would like to identify an employee as a reference in section R.1.3.2. May we reach out to this employee to ask if s/he would be willing to be a reference without jeopardizing our candidacy?

Answer: Yes, ensuring you will limit your conversation for reference purposes only.

21. Re: Appendix B, Pricing Form.

Regarding the scoring formula on the top of page 20, "Lowest Overall Weighted Average Hourly Rate/the Respondents Overall Weighted Average Hourly Rate x the Overall Weighting 25%," is the Lowest Overall Weighted Average Hourly Rate based on all Stage III respondents for that category? And should we read Respondents Overall Weighted Average Hourly Rate as Respondent's Overall Weighted Average Hourly Rate?

Answer: The "Lowest Overall Weighted Average Hourly Rate" received from a respondent (out of all respondents) will be the measure. It will be divided by the "Respondent's Overall Weighted Average Hourly Rate", from each and all respondents. Each respondent will receive their score relative to the "Lowest Overall Weighted Average Hourly Rate".

22. Can you provide the percent breakdown of legal spend in each of the categories of legal services listed on page 3 of the RFSA?

Are you able to provide a breakdown of the volume of legal work required by province? What percentage of legal services listed in Categories A through F are required per province?

Is there a limit with respect to additional services of value to CMHC that we can include in Category G? Or can Category G only include one additional service?

Answer: Legal spend per category and work volumes are not disclosed at this stage since this RFSA serves the purpose of establishing an eligibility list of qualified law firms and does not provide a guarantee for volume of work awarded. Category G may consist of multiple additional services.

23. Do responses to questions that are not category-specific (example, see the questions among section R.1 "Experience and Qualifications of the Firm" on page 28), or the required Appendix A - Submission Form need to follow this file naming convention? If not, how would you like these responses to be named?

As per page 3, section 1.1 Objective of this RFSA, legal services categories are listed as Category A, Category B, etc. Therefore, should files be named, for example, as "Category 1 respondent name" or "Category A respondent name?"

Answer: Please use the naming convention applicable to the Deliverables. For example: Category A respondent name.

24. Category C. Litigation and Dispute Resolution. Does this category include employment litigation and mediations?

Answer: Yes.

25. Category E. Real Estate. Does this category include real estate transactions for the CMHC employees' pension fund?

Answer: Yes.

26. Category F. Capital Markets. What is the role of outside counsel/scope of work of outside counsel in the Covered Bonds, National Housing Act Mortgage-Backed Securities and Canada Mortgage Bonds programs?

Answer: External legal counsel mandates may include the full range of advisory support in relation to CMHC securitization, capital markets and investment transactions, CMHC's role as administrator of the Canadian Covered Bonds program, and CMHC's capital markets-based mortgage funding programs (Canada Mortgage Bonds and National Housing Act Mortgage Backed Securities).

27. Should the pricing forms be submitted as separate files for each category, or can they be submitted together as one file?

Answer: Either is acceptable.

28. In regards to the mention of "page limitations," are there page number limitations for each response? If so, what are the maximum number of pages allowed for each response?

Answer: Any page limitation is stated for each rated criteria. For example in R.4. If not limitation is stated, no limitation applies.

29. Does the sentence "you must provide the following information only once" apply to the entire section of R.1 "Experience and Qualifications of the Firm" or to specific questions only? If so, to which questions does this sentence apply?

Answer: It applies to the entire rated criteria R.1 – Please refer to the answer provided for question 1 above.

30. If we are bidding on multiple legal services categories, where should we submit responses to section R.1 "Experience and Qualifications of the Firm," since as stated in the RFSA, we only need to provide this information once? Do we provide our responses to this section in our submission for Category 1, and then leave them out of our submissions for subsequent categories?

Answer: Please refer to the answer provided for question 1 above.

31. Does the sentence "you must provide the following information only once" apply to the following section R.2 "Experience and Qualifications of the Team" as well?

Answer: No. Only to rated criteria R.1.

32. Please clarify what kinds of reports or documents would qualify as sufficient "proof" that our firm's systems meet CMHC's security standards?

Answer: Please refer to the list provided under R.1.7 and further described in *Appendix C - Section J Pre-Conditions of Award – 1 Security Measure Assessment*.

33. Do we need to provide this security proof as part of our bid submission? Or, can we do so at a later date/stage in this RFSA process?

Answer: If a security proof is not provided under R.1.7, firms must comply with *Appendix C - Section J Pre-Conditions of Award – 1 Security Measure Assessment* prior to the award of a Master Retainer Agreement.

34. CMHC is the mortgage insurer for many financial institutions. If a firm represents these financial institutions in CMHC-insured mortgage enforcement proceedings against the borrowers, it is our view that does not itself cause a conflict of interest that would prevent that firm from acting for CMHC in the areas outlined in this RFSA. Can you confirm that CMHC takes the same view?

Answer: The fact that a firm represents financial institutions in CMHC-insured mortgage enforcement proceedings would not disqualify the firm from being considered for work in this area, noting that in each case, the existence, nature and extent of any potential conflict of interest would turn on the circumstances.

35. CMHC does not make any guarantee of the value or volume of Deliverables. Can you provide a non-binding historical range for value or volume?

Answer: Please refer to the answer provided for question 22.

36. Page 28 - Is a proponent required to offer services nationally, or are regional or local firms equally eligible? Is there any preference based on regionality?

Answer: Firms are equally eligible. CMHC has no preference.

37. Can AFA model proposals be limited to a particular category in the Deliverables, or are they required to apply to all categories applied for?

Answer: It is assumed this question refers to rated criteria R.4. Respondents may propose different alternative rate models per category or the same model for all categories.

38. Page 23 – Does this mean each AFA model is limited to a single page, or do all AFA models need to be outlined within a single page?

Answer: Please refer to the answer provided for questions 8 and 10.

39. Page 27 – “Provide proof that physical security requirements are in place to meet RCMP standards for the safeguarding of Protected B data.” What proof do you require us to provide?

Answer: Please refer to the answer provided for question 32.

40. Page 28 – There is a note regarding page limitations, but no limitations are stated. Are there any limitations on the length of our response (other than for AFAs)?

Answer: Please refer to the answer provided under question 28.

41. Page 29 – Please can you clarify what is meant by “logic of firm organization and adequacy of labour commitment”?

Answer: Please refer to question 7.

42. In question 1.3.1, is a federal Crown corporation or a financial institution considered a similar entity to CMHC?

Answer: Yes.

43. In question 2.2, are the key personnel identified in question 2.1? Does related work refer to the work in question 1.3.1 or 1.3.2?

Answer: Information of key personnel is required to be provided in both, R.2.1 and R.2.2. In R.2.2, "related work" refers to *any* work experience a respondent has performed and demonstrated in its response under rated criteria R.1 (including all sub-criteria R.1.1 - R.1.9).

44. Section 1.6.4 asks to provide individual files for each category. Section R.1 states that the company experience and qualification information should only be provided once regardless of the number of categories for which we submit a response. Should the information referred to in R.1 be presented in an individual file as well? If not, how should it be presented?

Answer: Please refer to the answers provided under questions 1, 2, 3, 23 and 45.

45. Section 1.6.4 (page 5) provides that “Individual files are to be submitted in Microsoft Word, Excel or pdf format and named as follows, depending on which category the respondent is submitting a response to:

For example (if various categories):

Category 1 respondent name

Category 2 respondent name

Category 3 respondent name”

Does this mean that for each category of deliverables (Categories A to G, Appendix C, Section B - page 24) which we respond to, that we must submit an individual file, or can all the categories of deliverables that we respond to be contained in a single file?

Answer: Either is acceptable. However, respondents must ensure their file size does not exceed CMHC’s system limitations identified in *Section 1.6.2 Responses to be submitted at the prescribed location*.

46. Appendix B, Section 2 (Evaluation of Pricing) (page 19) states that the respondent must provide hourly rates for various “resource levels”. With respect to “Associates”, in light of the experience brackets set forth in both the French and English versions of the RFSA, we understand that an associate with 5 years’ experience should be included in the category of “Mid-Level Associate (3-5 years’ experience)”. Is this correct?

Answer: Correct. A Senior Associate would be considered someone with more than 5 years’ experience (5+).

47. Regarding Appendix B, Section 3 (Pricing Form(s)) (pages 20-23), we understand that the respondent is required to provide hourly rates for each “Resource Title” and not for lawyers individually. Is this correct?

Answer: Correct. Please refer to the answer provided under question 16.

48. Regarding Appendix B, Section 3 (Pricing Form(s)) (pages 20-23), we understand that it is not required to list the names of the lawyers in the Pricing Form(s). Is this correct?

Answer: Correct. Please refer to the answer provided under question 16.

49. Appendix C, Section E (Security) (page 26) provides that the respondent’s employees (and subcontractors, as applicable) may be required to undergo a criminal records check and/or hold a valid personnel security screening. We understand that we do not need to meet this requirement when we file our response and will only need to do so in the event that we are selected and will be signing the Master Retainer Agreement. Is this correct?

Answer: The selected SA Holder must comply with an applicable security screening in the event any work to be performed under the Master Retainer Agreement requires security clearances.

50. Appendix C, Section H (Mandatory Submission Requirements) (page 26) states that each response must include the completed Submission Form (Appendix A) and Pricing Form (Appendix B). Can you please provide Appendix A and Appendix B in Word format.

Answer: Respondents are responsible for creating their own forms within their responses.

51. Appendix C, Section K (Rated Criteria) (page 28) contains a note to the effect that “Page limitations are per single-sided pages, minimum font size 11”. Could you please pinpoint all the “page limitations” that you are referring to in the RFSA.

Answer: Please refer to answers provided for questions 12 and 28.

52. Appendix C, Section K, Subsection R.1 (Experience and Qualifications of the Firm) (page 28) contains a note indicating that the respondent “must provide the following information only once, regardless of the number of Legal Services categories to which [the respondent is] submitting a response to.” We understand that this note applies to Subsections R.1.1 to R.1.9 inclusively. Is this correct?

Answer: Correct. Please refer to the answer provided for question 1.

53. Appendix C, Section K, Subsection R.1.3.2 (page 29) states that the respondent must provide one (1) category-specific project example, per category to which the respondent is responding, for work done by the respondent in the past three (3) years “that is similar in nature, complexity and size to the requirements specified in this RFSA.” Can you please pinpoint the said “requirements” in the RFSA.

Answer: This refers to the categories described in *Appendix C – Section B. The Deliverables*.

54. Might it be possible to provide us with a Word version of the Submission Form (Appendix A) and the Pricing Form (Appendix B)? Or do you prefer that we incorporate such documents in our corporate template?

Answer: Please refer to the answer provided for question 50 above.

[End of questions]