

**INSTRUCTIONS TO PROPONENTS – CONSULTANT SERVICES**

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## 1. DEFINITIONS

- 1.1 In this Request for Proposal (RFP), the following words or phrases have the corresponding meaning:
  - 1.1.1 'Consultant' means the party that will be identified in the resulting notice of SO establishment/Articles of Agreement.
  - 1.1.2 'Consultant Team' means the team of consultant firms, including the Proponent, proposed to perform the required services.
  - 1.1.3 'Corporation/NAC' means the National Arts Centre Corporation.
  - 1.1.4 'Key Personnel' means Consultant Team personnel whose roles and responsibilities are critical to the completion of the scope of work. They are individuals who have a direct and substantive involvement in the execution of the work.
  - 1.1.5 'Proponent' means the person or entity (or, in the case of a joint venture, the persons or entities) which submits a proposal.
  - 1.1.6 'Request for Proposal (RFP)' means Request for Proposal (RFP).

## 2. MANDATORY AND ADVISORY CLAUSES

- 2.1 Mandatory clauses during the procurement are those containing the words 'must', 'will' or 'shall'. These clauses must be observed at all times. Proponents not respecting these clauses will be disqualified and their proposals will not receive any further consideration.
- 2.2 Advisory clauses are those containing the words 'may' or 'should'. Proponents not respecting these clauses may be scored lower.

## 3. COMMUNICATION – SOLICITATION PERIOD

- 3.1 It is the responsibility of the Proponent to obtain clarification of any terms, conditions or technical requirements contained in the RFP.
- 3.2 Any questions or requests for clarification during the solicitation period must be submitted in writing to the NAC Representative identified on the front page of the RFP document (individual leading the procurement). Inquiries relating to this solicitation are to be directed ONLY to this individual. Non-compliance with this condition during the solicitation period may, for that reason alone, result in the disqualification of the Proponent.
- 3.3 Questions and request for clarifications will be answered if received in writing by the NAC Representative leading the procurement no later than **5:00pm local time, April 5, 2022**. Answers will be provided to the Proponent no later than **5:00pm local time, April 11, 2022**.
- 3.4 NAC reserves the right to request clarifications and/or confirmations from any or all Proponents regarding any aspect of their proposal. In the event such clarifications and/or confirmations are requested, the NAC Representative leading the procurement will make the request. The request for clarification and/or confirmation will be directed to the

individual named as the Proponent’s contact in the Proponent’s proposal. A written response to each such communication is required from the Proponent.

**4. AMENDMENTS TO THE RFP**

- 4.1 Items that may impact the procurement or the scope of the contract such as answers to significant questions, clarifications, corrections to documents, etc., will be issued by Amendment.
- 4.2 Proponents are advised that only the written information issued by NAC in the RFP document, any appended documents and any associated Amendments shall be contractually binding.

**5. LIMITATION OF PROPOSALS**

- 5.1 A Proponent shall not submit more than one proposal. This limitation also applies to the persons or entities in the case of a joint venture. If more than one proposal is received from a Proponent (or, in the case of a joint venture, from the persons or entities), all such proposals shall be rejected and no further consideration shall be given.
- 5.2 An arrangement whereby the Corporation contracts directly with a prime consultant who may retain sub-consultants or specialist consultants to perform portions of the services is not a joint venture arrangement. A sub-consultant or specialist consultant may, therefore, be proposed as part of the Consultant Team by more than one Proponent.
- 5.3 Notwithstanding 5.2 above, in order to avoid any conflict of interest, or any perception of conflict of interest, no person or entity acting as an individual Proponent or as part of a joint venture Proponent, shall be proposed as a member of another Proponent’s Consultant Team, either as a sub-consultant or specialist consultant or as part of another joint venture Proponent. Failure to comply with this limitation will result in all proposals so involved being rejected.

**6. LICENCING REQUIREMENTS**

- 6.1 Consultant Team member and Key Personnel shall be, or be eligible to be licensed, certified or otherwise authorized to provide the necessary professional services to the full extent that may be required by provincial law in the Province of Ontario.
- 6.2 By virtue of submitting a proposal, the Proponent certifies that the Proponent’s Consultant Team and Key Personnel are in compliance with the requirements of 6.1 above. The Proponent acknowledges that the NAC reserves the right to verify any information in this regard and that false or erroneous certification may result in the proposal being rejected.

**7. ACCEPTANCE OR REJECTION OF PROPOSAL**

- 7.1 The NAC may accept any proposal, reject any or all proposals or cancel the RFP at any time at its sole discretion.

- 7.2 Without limiting the generality of 7.1, the NAC may reject a proposal, or parts of a proposal if:
- 7.2.1 A Proponent has been declared ineligible or has been suspended as determined by the Minister of Public Services and Procurement under the Ineligibility and Suspension Policy and the period of ineligibility or suspension has not expired; or
  - 7.2.2 The Proponent or sub-consultant included as part of the proposal has been declared ineligible for selection, following unsatisfactory performance in a previous contract as determined in accordance with the Consultant Performance Evaluation Review Form (CPEPF); or
  - 7.2.3 With respect to current or prior transaction with the Government of Canada,
    - 7.2.3.1 the Proponent is bankrupt or where, for whatever reason, its activities are rendered inoperable for an extended period.
    - 7.2.3.2 evidence, satisfactory to NAC, of failure to comply with any law protecting individuals against any manner of discrimination, has been received with respect to the Proponent, any of its employees, any sub-consultant or any specialist consultant included as part of its proposal.
    - 7.2.3.3 NAC has exercised, or intends to exercise, the contractual remedy of taking the work out of the Proponent's hands with respect to a contract with the Proponent, any of its employees or any sub-consultant included as part of its proposal.
    - 7.2.3.4 NAC determined that the Proponent's performance on other contracts is sufficiently poor to jeopardize the successful completion of the requirement under this RFP; or
  - 7.2.4 With respect to conflict of interest,
    - 7.2.4.1 the Proponent, any of its sub-consultants, or any of their respective employees were involved in the preparation of documents related to this RFP, or
    - 7.2.4.2 the Proponent, any of its sub-consultants, or any of their respective employees had access to information related to the RFP that was not available to other Proponents and that would, in NAC's opinion, give or appear to give the Proponent an unfair advantage, or
    - 7.2.4.3 the Proponent, any of its sub-consultants, or any of their respective employees is in any situation of conflict of interest or appearance of conflict of interest; or
    - 7.2.4.4 the Proponent does not have the legal capacity to enter into a binding contract.

- 7.3 Where NAC intends to reject a proposal, it will do so by informing the Proponent and provide the Proponent two (2) business days for their response, before making a final decision on the proposal rejection.

## **8. COMPOSITION OF THE CONSULTANT TEAM**

- 8.1 By submitting a proposal, the Proponent represents and warrants that the consultants, sub-consultants and Key Personnel proposed to perform the required services will be the ones that will perform the services under any contractual arrangement arising from this solicitation.
- 8.2 If the Proponent has proposed any person who is not an employee of the Proponent, the Proponent warrants that it has written permission from such person (or the employer of such person) to propose the services of such person in relation to the services to be performed.

## **9. ELECTRONIC SUBMISSION OF PROPOSAL**

- 9.1 Only electronic proposals shall be accepted for this procurement. Proponents are to submit their proposal in a locked pdf. format to [NACProcurement@nac-cna.ca](mailto:NACProcurement@nac-cna.ca), prior to the stipulated closing date and time.
- 9.2 It is the sole responsibility of the Proponent to ensure the NAC receives their entire proposal submission, prior to the stipulated closing date and time. All risks and consequences of incorrect submission of proposals are the sole responsibility of the Proponent.
- 9.3 Proposals received after the stipulated closing date and time will not be considered.

## **10. PROPOSAL SUBMISSION EVALUATION**

- 10.1 For the purpose of evaluation, a read only with no download capability approach will be applied to all submitted proposals. This approach will be manage using SharePoint.

## **11. REVISION OF PROPOSAL**

- 11.1 A proposal submitted may be amended provided the revision is received at [NACProcurement@nac-cna.ca](mailto:NACProcurement@nac-cna.ca), on or before the date and time set for the receipt of proposals. The revision is to clearly make reference to the procurement, and should clearly identify the change(s) to be applied to the original proposal.

## **12. LEGAL CAPACITY**

- 12.1 The Proponent must have the legal capacity to enter into a binding contract. If the Proponent is a sole proprietorship, a partnership or a corporate body, the Proponent must provide, if requested by NAC, a statement and any requested supporting documentation indicating the laws which it is registered or incorporated together with the registered or

corporate name and place of business. This also applies to Proponents submitting a proposal as a joint venture.

### **13. DEBRIEFING**

13.1 A debriefing will be provided to the Proponent only if the Proponent has made the written request within thirty (30) calendar days of the notification of contract award. The written request is to be sent to the NAC Representative named on the title page of the RFP document. The debriefing will include an outline of the reasons the Proponent's proposal was not successful, making reference to the evaluation criteria. No information relating to other proposals will be provided. The confidentiality of information relating to other submission will be protected.

### **14. ACCESS TO INFORMATION ACT**

14.1 Proponents are advised that NAC is subject to the provisions of the Access to Information Act. Information submitted may be eligible for disclosure in accordance with the requirement of the Act.

14.2 Information is not released without consultation with the Proponent, unless there is an order made under the Act.

### **15. PROPOSAL COSTS**

15.1 Unless otherwise stated elsewhere, no payment will be made for costs incurred in the preparation and submission of a proposal in response to the RFP. Costs associated with preparing and submitting a proposal, as well as any costs incurred by the Proponent associated with the evaluation of the proposal, are the sole responsibility of the Proponent.

### **16. CONFLICT OF INTEREST – UNFAIR ADVANTAGE**

16.1 By submitting a proposal, the Proponent represents that it does not consider itself to be in conflict of interest nor to have an unfair advantage. The Proponent acknowledges that it is within NAC's sole discretion to determine whether a conflict of interest, unfair advantage or an appearance of conflict of interest or unfair advantage exists.

### **17. COST BREAKDOWN**

17.1 When and if requested by NAC, the Proponent with the highest total score shall provide a cost breakdown with the required level of details.

17.2 The cost breakdown may be used for the purposes of negotiations, if needed, and to assess progress and payments during the contract.

### **18. CONFIDENTIALITY**

18.1 NAC reserves all rights in respect of this RFP. Recipients of this RFP may not reproduce, modify, disclose, distribute or publish any portion of this RFP or any information about NAC

- or its affiliate(s) without the prior written approval of NAC, save and except for the strict purpose of preparing a submission. Any such reproduction, modification, disclosure, distribution, or publication of this RFP shall only be made to or for recipient's employees or advisors on a strict need-to-know basis, each of whom the recipient agrees to bind to these same confidentiality obligations.
- 18.2 Proponents or other RFP recipients may not use the name of NAC and or NAC affiliates, or refer to this RFP in any advertisement or other promotional messages without the prior written consent of NAC or NAC affiliates, as applicable.
- 18.3 Information pertaining to NAC obtained by the Proponent as a result of participation in this RFP is confidential and must not be disclosed without prior written authorization from NAC.

**19. NO COLLUSION**

- 19.1 By submitting a submission, the Proponent, and each company, corporation or individual member of the Proponent, confirms to NAC, with the knowledge and intention that NAC may rely on such representation and confirmation, that its submission has been prepared without collusion or fraud. The Proponent also confirms that the submission is in fair competition with the other Proponents and their submissions