

1 RFP Administration Terms and Conditions

.1 Enquiries

To contact the City in relation to this opportunity, submitters must register with the City's public procurement portal at <https://kelowna.bonfirehub.ca/portal/> (the "City's Bonfire Portal") and initiate the communication electronically through the Messages>Opportunity Q&A function. The City may not accept any submitter's communications by any other means, except as specifically stated in this opportunity.

For the purposes of this procurement process, the "Opportunity Contact" is the City's Procurement Branch as additionally noted on the title page of this opportunity.

Submitters should only contact the Opportunity Contact where specifically instructed to in this opportunity. All other communication in relation to this opportunity is requested to be through the City's Bonfire Portal, as described above.

Submitters and their representatives are not permitted to contact any employees, officers, agents, elected officials, or other representatives of the City, other than the Opportunity Contact, concerning matters regarding this opportunity. Failure to adhere to this rule may result in the disqualification of the submitter and the rejection of the submitter's submission.

.2 Submissions

Please follow these instructions to submit via our Public Portal. For assistance on how to use the Bonfire software, please follow the link below:

<https://customer.eunasolutions.com/public/s/article/creating-and-uploading-a-submission>

.3 Submissions to the Prescribed Location

Submissions must be submitted through the City's online portal at:

<https://kelowna.bonfirehub.ca/portal/>

Submissions by other methods will not be accepted.

All correspondence through Bonfire will go to the individual who provided the submission. If the project manager wishes to receive notifications, all submissions for the opportunity will need to be made under that account.

Minimum system requirements are Google Chrome or Mozilla Firefox. JavaScript must be enabled.

Uploading large documents may take significant time, depending on the size of the file(s) and your Internet connection speed.

You will receive an email confirmation receipt with a unique confirmation number once you finalize your submission.

Submitters should contact Bonfire at Support@GoBonfire.com for technical questions related to submissions or visit Bonfire's help forum at

<https://customer.eunasolutions.com/public/s/contactsupport>.

.4 Submitted on Time

Submissions must be submitted at the location set out above on or before the Submission Closing Date. Submissions provided after the Submission Closing Date will be rejected.

The Submission will only be visible by the City after the Closing Date and Time.

.5 Submissions to be in the Prescribed Format

Submitters should submit one electronic copy in the file formats listed under Requested Information for this opportunity in the City's portal.

The maximum upload file size is 1000 MB.

Documents should not be embedded within uploaded files, as the embedded files will not be accessible or evaluated

.6 Amendment of Submissions

Submitters may amend their submissions prior to the Submission Closing Date by un-submitting the submission and re-submitting a revised submission through the City's portal.

.7 Withdrawal of Submissions

At any time throughout the opportunity process until the execution of a written contract for provision of the Deliverables, a submitter may withdraw a submission. To withdraw a submission prior to the Submission Closing Date, a submitter should un-submit the submission through the City's portal. Following the Submission Closing Date, a notice of withdrawal must be sent to the opportunity contact and must be signed by an authorized representative of the submitter. The City is under no obligation to return withdrawn submissions.

2 EVALUATION, NEGOTIATION AND AWARD

.1 Stages of Evaluation and Negotiation

The City will conduct the evaluation of submissions and negotiations in the following stages:

.2 Stage I – Mandatory Submission Requirements

Stage I will consist of a review to determine which submissions comply with all the mandatory submission requirements. If a submission fails to satisfy all the mandatory submission requirements, the City will issue the submitter a rectification notice identifying the deficiencies and providing the submitter an opportunity to rectify the deficiencies. Rectifications provided, within the timeframe allotted, will form part of the submission and be used in Stage II. If the submitter fails to satisfy the mandatory submission requirements within the Rectification Period, its submission will be rejected. The Rectification Period will begin to run from the date and time that the City issues a rectification notice to the submitter.

.3 Stage II – Evaluation

Stage II will consist of the following two sub-stages:

a) Mandatory Technical Requirements

The City will review the submissions to determine whether the mandatory technical requirements as set have been met. Questions or queries on the part of the City as to whether a submission has met the mandatory technical requirements will be subject to the verification and clarification process set out in the opportunity Section 3.2.c.

b) Rated Criteria

The City will evaluate each qualified submission based on the non-price rated criteria as set out in the RFP. The City may, but is not required to, during the evaluation process request additional clarification, an interview, demonstration, or a presentation in relation to a submission. The City will use any understanding gained to inform its evaluation of that submission.

Submitters who do not meet a minimum threshold score for a category will not proceed to the next stage of the evaluation process.

.4 Stage III – Pricing (N/A if pricing is not in RFP)

Stage III will consist of a scoring of the submitted pricing of each qualified submission in accordance with the price evaluation method set out in Pricing section of the RFP.

.5 Stage IV – Ranking and Contract Negotiations

a) Ranking of Submitters

After the completion of Stage III, all scores from Stage II and Stage III will be added together and the submitters will be ranked based on their total scores. The top-ranked submitter will receive a written invitation to enter direct contract negotiations to finalize the Contract with the City. In the event of a tie, the selected submitter will be a non foreign Submitter (when permissible by regulation). If a tie continues, the choice will be made by way of coin toss.

b) Contract Negotiation Process

Any negotiations will be subject to the process rules contained in the Terms and Conditions of the Opportunity Process (Opportunity Section 3) and will not constitute a legally binding offer to enter into a contract on the part of the City or the submitter and there will be no legally binding relationship created with any submitter prior to the execution of a written contract. The terms and conditions found in the RFP are to form the basis for commencing negotiations between the City and the selected submitter. Negotiations may include requests by the City for supplementary information from the submitter to verify, clarify or supplement the information provided in its submission or to confirm the conclusions reached in the evaluation, and may include requests by the City for improved pricing or performance terms from the submitter.

c) Time Period for Negotiations

The City intends to conclude negotiations and finalize the Contract with the top-ranked submitter during the Contract Negotiation Period, commencing from the date the City invites the top-ranked submitter to enter negotiations. A submitter invited to enter direct contract negotiations should therefore be prepared to satisfy the pre-conditions of award listed in provide requested information in a timely fashion and conduct its negotiations expeditiously.

d) Failure to Enter into Contract

If the pre-conditions of award are not satisfied or if the parties cannot conclude negotiations and finalize the Contract for the Deliverables within the Contract Negotiation Period, the City may discontinue negotiations with the top-ranked submitter and may invite the next-best-ranked submitter to enter into negotiations. This process will continue until a contract is finalized, until there are no more submitters remaining that are eligible for negotiations or until the City elects to cancel the Opportunity process.

e) Notification of Negotiation Status

Other submitters that may become eligible for contract negotiations may be notified at the commencement of the negotiation process with the top-ranked submitter.

3 TERMS AND CONDITIONS OF THE OPPORTUNITY PROCESS

.1 General Information and Instructions

a) Submitters to Follow Instructions

Submitters should structure their submissions in accordance with the instructions in this opportunity. Where information is requested in this opportunity, any response made in a submission should reference the applicable section numbers of this opportunity.

b) Submissions in English

All submissions are to be in English only.

c) No Incorporation by Reference

The entire content of a submission should be submitted in a fixed form, and the content of websites or other external documents referred to in a submission but not attached will not be considered to form part of its submission.

d) Past Performance

In the evaluation process, the City may consider the submitter's past performance or conduct on previous contracts with the City or other institutions.

e) Information in Opportunity Only an Estimate

The City and its advisers make no representation, warranty, or guarantee as to the accuracy of the information contained in this opportunity or issued by way of addenda. Any quantities shown or data contained in this opportunity or provided by way of addenda are estimates only and are for the sole purpose of indicating to submitters the general scale and scope of the Deliverables. It is the submitter's responsibility to obtain all the information necessary to prepare a submission in response to this opportunity.

Submitters are encouraged to view any publicly assessable work location(s) if a formal site visit is not provided as part of this opportunity. This is to familiarize themselves with the physical characteristics of the area where the Works are to be performed to help inform their submission development.

f) Submitters to Bear Their Own Costs

The submitter will bear all costs associated with or incurred in this procurement process, including, without limitation, the preparation and presentation of its submission, including, if applicable, costs incurred for interviews or demonstrations, or any subsequent negotiations.

g) Submission to be Retained by the City

The City will not return the submission, or any accompanying documentation submitted by a submitter.

h) No Guarantee of Volume of Work or Exclusivity of Contract

The City makes no guarantee of the value or volume of work to be assigned to the successful submitter. The contract to be negotiated with the selected submitter will not be an exclusive contract for the provision of the described Deliverables. The City may contract with others for goods and services the same as or like the Deliverables or may obtain such goods and services internally.

.2 Communication after Issuance of Opportunity

a) Submitters to Review Opportunity

Submitters shall promptly examine all the documents comprising this opportunity, and

- i) shall report any errors, omissions, or ambiguities; and
- ii) may direct questions or seek additional information in writing to the opportunity Contact through the City's Bonfire Portal Question and Answer function on or before the Closing Date for Questions. All questions or comments created by submitters to the Opportunity Contact through the City's Bonfire Portal Question and Answer function shall be deemed to be received once submitted into the City's Bonfire Portal. No such communications are to be directed to anyone other than the Opportunity Contact or by any other means than submission through the Bonfire Portal, and the City shall not be responsible for any information provided by or obtained from any source other than the Opportunity Contact or the City's Bonfire Portal. The City is under no obligation to respond questions or to provide additional information but will take reasonable efforts to do so as appropriate. It is the responsibility of the submitter to seek clarification from the

Opportunity Contact through the City's Bonfire Portal on any matter it considers to be unclear. The City shall not be responsible for any misunderstanding on the part of the submitter concerning this opportunity or its process,

- iii) Submitters may designate some questions or requests for additional information as Commercially Confidential. The City shall review the request and the response to determine, at its sole and unfettered discretion, which of the following apply:
 - i if general in nature and not Commercially Confidential where all Submitters would benefit from the same information, may issue a public question and answer response;
 - ii if resulting in a change to the Opportunity, the City shall advise the Submitter that a public response is needed. The Submitter may then accept to have the response shared publicly or it may withdraw its questions or requests for additional information; or
 - iii if Commercially Confidentially and specific to a Submitter, the City may respond to the Submitter directly.

b) All New Information to Submitters by Way of Addenda

This opportunity may be amended only by addendum in accordance with this section. If the City, for any reason, determines that it is necessary to provide additional information relating to this opportunity, such information will be communicated to all submitters by addenda posted through the City's Bonfire Portal. Each addendum forms an integral part of this opportunity and may contain important information, including significant changes to this opportunity. Submitters are responsible for obtaining all addenda issued by the City through the City's Bonfire Portal.

c) Verify, Clarify and Supplement

When evaluating submissions, the City may request further information from the submitter or third parties in order to verify, clarify or supplement the information provided in a submission, including but not limited to clarification with respect to whether a submission meets the mandatory technical requirements set out in Appendix C Section 4. The City may revisit, re-evaluate, and rescore the submitter's response or ranking based on any such information.

.3 Notification and Debriefing

a) Notification to Other Submitters

Once a Contract is executed by the City and a submitter, the other submitters will be notified by public posting in the same manner that this opportunity was originally posted of the outcome of the procurement process.

b) Debriefing

Submitters may request a debriefing after receipt of a notification of the outcome of the procurement process. All requests must be in writing to the Opportunity Contact and must be made within thirty (30) days of such notification.

c) Procurement Protest Procedure

If a submitter wishes to challenge the Opportunity process, it should provide written notice to the Opportunity Contact in accordance with the City's procurement protest procedures and any applicable trade agreement or other applicable bid protest procedures. The notice must provide a detailed explanation of the submitter's concerns with the procurement process or its outcome.

.4 Conflict of Interest and Prohibited Conduct

a) Conflict of Interest

For the purposes of this opportunity, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

- i) in relation to the Opportunity process, the submitter has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of the City in the preparation of its submission that is not available to other submitters, (ii) communicating with any person with a view to influencing preferred treatment in the Opportunity process (including but not limited to the lobbying of decision makers involved in the Opportunity process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive opportunity process or render that process non-competitive or unfair; or
- ii) in relation to the performance of its contractual obligations under a Contract for the Deliverables, the submitter's other commitments, relationships, or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

b) Disqualification for Conflict of Interest

The City may disqualify a submitter for any conduct, situation, or circumstances, determined by the City, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.

c) Disqualification for Prohibited Conduct

The City may disqualify a submitter, rescind an invitation to negotiate or terminate the Contract subsequently entered if the City determines that the submitter has engaged in any conduct prohibited by this opportunity.

d) Prohibited Submitter Communications

Submitters must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict-of-Interest declaration set out in the Submission Form.

e) Submitter Not to Communicate with Media

Submitters must not at any time directly or indirectly communicate with the media in relation to this opportunity or any contract entered pursuant to this opportunity without first obtaining the written permission of the Opportunity Contact.

f) No Lobbying

Submitters must not, in relation to this opportunity or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the successful submitter(s).

g) Illegal or Unethical Conduct

Submitters must not engage in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion, or collusion. Submitters must not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, elected officials, or other representatives of the City; deceitfulness; creating submissions containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this opportunity.

h) Past Performance or Past Conduct

The City may prohibit a supplier from participating in a procurement process based on past performance or based on inappropriate conduct in a prior procurement process, including but not limited to the following:

- i) illegal or unethical conduct as described above;
- ii) the refusal of the supplier to honour its submitted pricing or other commitments; or
- iii) any conduct, situation or circumstance determined by the City, in its sole and absolute discretion, to have constituted an undisclosed Conflict of Interest.

.5 Confidential Information

a) Confidential Information of the City

All information provided by or obtained from the City in any form in connection with this opportunity either before or after the issuance of this opportunity

- i) is the sole property of the City and must be treated as confidential;
- ii) is not to be used for any purpose other than replying to this opportunity and the performance of any subsequent Contract for the Deliverables;
- iii) must not be disclosed without prior written authorization from the City; and
- iv) must be returned by the submitter to the City immediately upon the request of the City.

b) Confidential Information of Submitter

A submitter should identify any information in its submission, or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the City. The confidentiality of such information will be maintained by the City, except as otherwise required by law (including the Freedom of Information and Protection of Privacy Act), or by order of a court or tribunal. Submitters are advised that their submissions will, as necessary, be disclosed, on a confidential basis, to advisers retained by the City to advise or assist with the Opportunity process, including the evaluation of submissions. If a submitter has any questions about the collection and use of personal information pursuant to this opportunity, questions are to be submitted to the Opportunity Contact.

.6 Procurement Process Non-Binding

a) No Contract A and No Claims

This procurement process is not intended to create and will not create a formal, legally binding bidding process and will instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- this opportunity will not give rise to any Contract A–based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- neither the submitter nor the City will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a submission submitted in response to this opportunity.

b) No Contract until Execution of Written Contract

This opportunity process is intended to identify prospective suppliers for the purposes of negotiating potential contracts. No legal relationship or obligation regarding the procurement of any good or service will be created between the submitter and the City by this opportunity process until the successful negotiation and execution of a written contract for the acquisition of such goods and/or services.

c) Non-Binding Price Estimates

While the pricing information provided in submissions will be non-binding prior to the execution of a written contract, such information will be assessed during the evaluation of the submissions and the ranking of the submitters. Any inaccurate, misleading, or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the City to enter into a Contract for the Deliverables.

d) Cancellation

The City may cancel or amend the Opportunity process without liability at any time.

.7 Governing Law and Interpretation

These Terms and Conditions of the Opportunity Process (Opportunity Section 3):

- a)** are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision).
- b)** are non-exhaustive and will not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and
- c)** are to be governed by and construed in accordance with the laws of the province of British