

September 25, 2024**Addendum No. 04****File Reference Number: RFP 2024 020****Title: Rail Infrastructure Engineering and Consulting Services****RE: Clarifications/Questions**

Please refer to the following information/clarification:

Item 1: Will ONTC compensate the Consulting Engineer for overtime rate increases (e.g. time and a half, double time)?**Answer:** ONTC will not compensate the Consulting Engineer for overtime rate increases.**Item 2:** Will ONTC allow the Consulting Engineer to add markups on subcontractor/subconsultant fees?**Answer:** ONTC will not allow markup on subcontractor fees.**Item 3:** Can ONTC confirm if the hourly rates in Part 4 – Form of Proposal, Proposal Form 7, Pricing should include reimbursable expenses or be limited to “*overhead costs, including the firm’s day-to-day operations and employer expenses*” as noted in Part 3 Article 3.2.2 of the RFP material. It is our understanding that allowable reimbursable expenses should be considered separately according to Part 3 Article 3.2.3 however Proposal Form 7 notes “*prices stipulated on this Form of Proposal shall be the final cost to ONTC and represent the full inclusive value of the goods or services described, including labour, all materials, transport and vehicles, supplies, equipment, supervision, administration fees, profits, together with all general risks, liabilities and obligations set forth or implied in this document*”.**Answer:** The hourly rates in Part 4 – Form of Proposal, Proposal Form 7, Pricing shall be the final cost to ONTC and represent the full inclusive value of the goods or services described, including labour, all materials, transport and vehicles, supplies, equipment, supervision, administration fees, profits, together with all general risks, liabilities and obligations set forth or implied in this document.

Item 4: We are working on our rates, but we would need to have some clarification regarding your terms:

- Expert
- Specialist
- Principal

Could you define what you mean by those classifications?

Answer: ONTC cannot provide definition for these roles. The intent is the respondent shall provide a rate for each role listed and/or describe equivalent. Respondent may include additional roles/rates, but these may not be considered for evaluation purposes.

Item 5: We understand that we will provide a snooper truck, but how we need to price it ? We would intend to add a line on the rates sheet. Also, we would intend to add a line for GPS as an important equipment for inspections. We consider that the Hy-rail supplied by ONTC. Are we doing it the right way or do you expect from us to do it another way?

Answer: Costs for snooper truck or other subcontractor services shall be included as part of work order proposal from the successful respondent. Hourly rates provided shall be inclusive of GPS or other similar inspection equipment and supplies required. Hi-rail vehicles will be supplied by ONTC.

Item 6: In the Draft Agreement at Part 5 of the RFP package, Clause 65 - General Indemnity does not reflect a comparative fault standard, which is typical for agreements of this nature. Should a loss occur, each responsible party should be liable to the extent of their own fault. This clause describes fault for situations where only one party is fault. Our experience with claims in this industry is such that rarely a single entity is wholly at fault. We request that this clause is reworded to reflect this principle. Additionally, we request the defense requirement is removed from losses generated from professional liability. This is because professional liability policies do not begin paying out for defense costs until concluded. In the event of a claim, a due claim's defense costs would be reimbursed upon conclusion. Last, we request language that the specific indemnities are subject to, and not in addition to the General Indemnity.

Answer: ONTC will not amend this clause. ONTC is to be indemnified for all losses attributable to the acts or omissions of the Engineering Consultant, Engineering Consultant Parties and those for whom the Engineering Consultant is at law responsible. There is a clear exception for losses caused by the negligent act or omission of ONTC, ONTC Parties or those for whom it is at law responsible. The timing of payment under professional liability insurance policies does not justify removing the defence provision. The specific indemnities are in addition to the General Indemnity.

Item 7: In the Draft Agreement at Part 5 of the RFP package, Clause 70, Limitation of Liability does not provide an overall cap for liability for either ONTC or Consultant.

Answer: ONTC will not accept an overall cap for liability.

Item 8: In the Draft Agreement at Part 5 of the RFP package, Clause 81 Early Termination does not provide Consultant with an opportunity to cure any alleged default or breach that ONTC has determined. It would be far more equitable to restrict this clause to only material breaches and allow a 30-day opportunity to cure. This would be especially relevant in circumstances where a simple misunderstanding or minor default could be remedied swiftly. In concert, the termination for convenience subclause (c), should likewise be extended beyond 30 days to allow Consultant to properly and cost effectively demobilize its work force should ONTC invoke that subclause.

Answer: ONTC is willing to amend 81(b) to provide for a 30-day opportunity to cure a breach and to amend 81(c) to 30 days for the reasons noted.

This Addendum hereby forms part of the RFP.

Regards,

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