

Commission for Environmental Cooperation

Consultant Services Procurement Manual

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Introduction

Purpose of Manual

This manual has been developed to provide a framework and process for the procurement of external consultant services through professional service contracts to be let by the Commission for Environmental Cooperation (CEC).

The procurement of consultant services and the subsequent relationships with consultants are to be undertaken in compliance with the general principles, policies and responsibilities that underlie such procurement and form the directives contained in this manual (see Part I, section 1.2, below).

The procedures and standard formats in this manual reflect these directives and are intended as guidelines to simplify and facilitate the procurement process. They should be used to promote fairness, prudence and probity in contracting, without incurring the costs and delays of attempting to eliminate all of the risks inherent in normal commercial relationships.

These guidelines should be used to the maximum extent possible in managing the procurement of consultant services in as appropriate, timely and cost-effective a way as possible.

Questions

Any questions regarding the contents of this manual and any suggestions for modification should be communicated to Administration and Finances.

Definitions

The following definitions have been provided to promote better understanding and consistent interpretation of CEC procurement principles, policies and related procedures for contracted professional services. Definitions are presented in alphabetical order.

The following definitions shall be used for contractual purposes and shall take precedence unless expressly defined otherwise within this document.

1. The Organization

Commission: The Commission for Environmental Cooperation (CEC).

Council: the Council of the Commission.

Joint Public Advisory Committee:(JPAC), a Committee of 15 individuals, appointed by the member states to advise the Commission.

Member States: Canada, the United Mexican States, and the United States of America.

Secretariat: the Secretariat of the Commission.

2. The Process

Consultant: one or more individuals, partnerships, public or privately owned corporate bodies, non-profit organizations and universities, offering one or more professional services to and on behalf of the Commission in exchange for a fee or other valuable consideration.

Contract: a written agreement, including any mutually agreed upon amendments thereto, governed by the laws of the Province of Quebec and by the laws of Canada applicable therein, between the Commission and one or more consultants, signed by authorized officials of the parties thereto, offering to provide professional services on the basis of a fee for service or other valuable consideration.

Contract Coordinator: a member of the Secretariat staff, assigned to undertake day-to-day responsibility for assisting in the administrative aspects of establishing and managing consultant contracts.

Delegated Authority: a staff member to whom overall responsibility for an individual project/activity has been delegated by the Executive Director.

Fee for Service: normally payment for the provision of professional services and reimbursement of bona fide expenses agreed upon under the terms and conditions of a contract with the Commission, made in monetary form.

Intellectual Property Rights: the proprietary and legal rights of ownership of, including that of copyright to, all reports, documentation, data and related working papers, whether in paper or electronic formats, collected, assembled, developed or otherwise created in the course of providing professional services in fulfilling obligations undertaken in the course of conducting one or more contracts between a consultant and the Commission (See also section 2.8 of the standard contract format).

Procurement: that group of activities, processes and related systems undertaken or used to identify and specify the Commission's requirement for services to obtain these from bona fide consultants, and all aspects of entering into, administration and settlement of contractual agreements for services.

Professional Services: those activities that require the application of any of a broad range of skills, experience and expertise in order to contribute to or meet the needs of the Commission and that are provided through the Operational Plan on behalf of the Commission by subject specialists engaged under contract, though not employed, by the Commission for such purposes.

Project/Activity: any set of tasks, advice or results sought that are identified, documented and approved, either as part of the Operational Plan or otherwise, by the Council.

Program Manager: a member of the Secretariat staff, or a person engaged by the Commission, reporting to the Executive Director or to the designated Delegated Authority, responsible for ensuring that, on a day-to-day basis, the project/activity to which he/she is assigned is established, conducted and managed in an effective, fair, efficient and financially responsible manner.

Request for Proposal (RFP): means by which the Commission's requirements for Consulting services, and the basis for responding to such requirements, are communicated to prospective consultants.

Terms of Reference (ToRs): the documented statement of requirements for professional services to conduct some or all parts of a project/activity in support of the Commission's Operational Plan.

Part 1 – Guiding Principles

1.1 Application and Authority

The requirements contained in this manual, which sets forth procurement principles and procedures, and its appendixes, shall apply to the procurement of all professional services that are to be provided by consultants contracted to assist in the implementation of the Operational Plan of the Commission.

Authority to enter into contracts with consultants for the provision of professional services to or on behalf of the Commission is delegated to the Executive Director, under the North American Agreement for Environmental Cooperation (NAAEC).

1.2 General Principles

The following general principles represent the basis upon which the processes and responsibilities for consultant procurement, as described in this manual, have been prepared. The objectives of these principles is to ensure that consultant services provided are consistent with and appropriate for the assignment, that consultants are treated equitably, and that required services are obtained in a manner that will be of benefit to the Commission and will stand the test of public scrutiny in ensuring that:

- i) the mandate, jurisdiction and objectives of the Commission stated in the NAAEC are paramount and upheld in all aspects of the planning, procurement, management and administration of contracts for consultant services;
- ii) due consideration shall be given to the terms and spirit of the North American Free Trade Agreement (NAFTA);
- iii) all consultants from the member states (Canada, the United Mexican States, and the United States of America) are eligible to compete for and undertake contracts for services; consultants from non-member states will be eligible on an exception basis where so approved by the Executive Director;
- iv) access to, and competition for, all opportunities is fair, open and reasonable in each circumstance, having regard to the nature, value and time constraints of each requirement for assistance;
- v) the Commission shall endeavor to maintain a reasonable balance in the allocation of consulting contract work amongst the nationals of the three member states;
- vi) the procurement and administration of all professional service contracts will be conducted in a consistent, fair and equitable manner and without conflict of interest between the parties thereto;

- vii) use of the Commission's three official languages will be reflected in and supported by, its consultant procurement practices (see section 2.20, herein);
- viii) no contract for consultant services shall be let, under which any individual who is currently a member of the government or of any national, state, regional or provincial legislature, or of the public service, of any country would receive a personal benefit or compensation;
- ix) consultants act as independent contractors and nothing contained in their consultant services contracts with the Commission will create an employer-employee relationship;
- x) value for money is obtained, both in terms of the quality and contribution of the services provided and in the prudence and probity with which services are engaged, accepted and paid for;
- xi) the work produced as a result of consultant contracts shall be treated as advice to the Commission and such advice shall not be treated as nor held out by any party to be the official position of the Commission nor a reflection of its views, unless the Commission formally accepts and adopts such advice;
- xii) the Commission shall endeavor to keep its process for the procurement of contracted services as simple as possible, and to ensure that the process used is both efficient and cost-effective to administer, as well as fair and equitable to the Commission, all potential contractors, and any third parties affected.

The procurement process, practices and definitions contained in this manual reflect these general guiding principles and describe the manner in which they will be applied.

Part 2 – Consultant Procurement Process

The following process, procedures, and practices, as expanded upon in the guidelines and standard formats provided in the Appendices, have been developed to assist those involved in the procurement of consultant services to carry out their duties. In combination with the roles and responsibilities for such procurement, described in Part 3, these directives and guidelines reflect the guiding principles described in Part 1.

The process described below embodies the requirements for fairness and equality of opportunity in the selection and treatment of consultants, and for exercising prudence and probity in managing the affairs and resources of the Commission as efficiently and cost-effectively as possible, as per the general principles described in section 1.2 above.

A simple process using standard formats will be used to the maximum extent possible for Terms of Reference, Requests for Proposal, and managing consultant contracts. Most steps in the process apply to all projects/activities regardless of their value or scope. Adjustments to the basic process will be kept to the minimum extent possible, given variations in project/activity circumstances, the availability of qualified consultants, and project/activity timing. At all times, the emphasis will be on providing an effective, fair and efficient procurement process.

The steps described in the following sections will be undertaken in the normal course of obtaining and managing consultant contracts. Each main step is described and variations explained, along with the circumstances giving rise to them and any limitations that apply.

2.1 Approval of Projects/Activities

Before any action is taken to procure consultant services, each project/activity must have been formally approved as part of the Operational Plan or otherwise, by the Council.

2.2 Assignment of the Program Manager and Contract Coordinator

Once a project/activity has been approved to proceed, the Delegated Authority will assign to it an individual to act as the Program Manager.

Normally, the same individual will act as Program Manager for all stages of a project/activity, up to and including its final disposition and the completion of all project/activity-related administrative matters. The same will normally apply to the individual acting as Contract Coordinator.

The roles and responsibilities of a Program Manager and the Contract Coordinator, with respect to services procurement, are provided in Part 3 herein.

2.3 Terms of Reference

Terms of Reference (ToRs) shall be prepared in writing for all types of projects/activities for which consulting services are to be used.

Normally, ToRs will be prepared by the Program Manager assigned to the project/activity. ToRs must be approved by the Delegated Authority responsible for the project/activity prior to issuing Requests for Proposal (RFPs). ToRs will be included as part of the RFPs.

Full ToRs shall include, but not be limited to:

- i) precise statement(s) of the objective(s) and purpose(s) of the project/activity to be undertaken;
- ii) an informative statement of the background to the project/activity, its scope, and the context and circumstances in which it will be undertaken, to the extent that such information will provide prospective consultants with a complete appreciation of the material aspects of the project/activity and a clear understanding of the context in which the professional services are being sought and will be provided; and
- iii) a clear statement of the professional services being requested. This statement of work will set out, as clearly and concisely as possible, what results are required and any ways in which the Commission wants the work to be conducted. This includes defining clear milestones for deliverables as well as any other required specifications as appropriate.

A standard format for ToRs is provided in Appendix A.

2.4 Types of Contracts and Contingency Allowances

Before proceeding with the procurement process, a decision is required as to what type of contract is to be used. A recommendation will normally be made by the Program Manager, with the decision being made by the Delegated Authority for the project/activity.

Contracts for consultant services will normally be either time-based or lump-sum, as described below.

- a) Time-based contracts are based on estimated ceiling prices for the expected level of effort and corresponding professional fees and for the recovery of out-of-pocket expenses such as travel, subsistence and communications (usually at cost and without mark-up).

Time-based contracts require particularly clear statements of the work and results expected and, from the consultants, clear proposals of what work will be conducted by whom, with what level of effort, and what deliverables will be provided. These fee rates and estimated total costs for fees and expenses establish the basis for negotiating fair contract amendments for any additional time and/or expenses should the scope and/or nature of the work or deliverables require change.

(Note: this form of contract requires a decision to be made as to how much of a contingency allowance, if any, to provide in setting the project/activity budget.)

- b) Lump-sum contracts are based on firm, or fixed, price bids for the cost of both professional fees and (normally, though not necessarily) expenses.

Lump-sum contracts may be used in cases where the nature of the services and the time and expenses needed to provide them can be predicted with a high level of certainty by the Commission and prospective consultants. This type of contract is normally best suited to services that are relatively narrow in scope and limited as to the number of work components, and/or participants, and/or level of coordination and extent of travel.

All contracts shall include, but not necessarily be limited to, a clear description of: the services to be provided; the individuals who will provide the services; the timetable for completion of the services; and the terms and conditions pertaining to the provision of such services and to the amount and basis of payment for, or other valuable consideration to be accepted in settlement of, such services.

(Note: neither *percentage-based* nor *cost-plus-fixed-fee* types of contracts are suited to the consultant services required by the Commission. The former would have little basis for applying a percentage, and tend to discourage innovation and cost minimization; while the latter require extensive administrative effort by all parties in terms of disclosure, negotiation and verification of “costs.”)

2.5 Basis for Selecting Consultants

Consultants will be selected on the basis of a competitive process. In cases where the value of the contract is relatively high, its nature is particularly complex, or its results are particularly critical, additional steps will be taken to ensure that the search for the most suitable consultant is the most wide-ranging within the bounds of reasonable cost-effectiveness.

In keeping with the above intent, consulting opportunities will be announced as per section 2.6.

Any exemption to these procedures will be authorized by the Executive Director.

2.6 Notification of Consulting Opportunities

It is the responsibility of each Program Manager to develop the Commission's requirements for consultants on specific projects/activities, and to arrange, as appropriate, for public notification of these requirements. The notices relating to each consulting opportunity and the plan for their publication will be reviewed and approved by the Delegated Authority before the notices are made public on the Commission's website.

The Secretariat will publish RFPs for up-coming consulting opportunities. Such RFPs shall be prepared as per section 2.8, below, and shall be published on the Commission's website.

The following approaches will be used to invite prospective consultants to submit proposals in response to RFPs:

- a) For consulting opportunities not to exceed C\$25,000, a short RFP will be posted on the Commission's website. Interested consultants will submit proposals of no more than three (3) pages within a minimum of five (5) working days from the publication of the RFP and as per its specifications. These proposals will be used by the Program Manager to identify those consultants deemed best qualified, giving full and fair consideration to consultants from each member state.
- b) For consulting opportunities expected to cost more than C\$25,000, a long-format RFP will be posted on the Commission's website.

Interested consultants will submit proposals of no more than six (6) pages within a minimum of ten (10) working days from the publication of the RFP and as per its specifications. These proposals will be used by the Program Manager to identify those consultants deemed best qualified, giving full and fair consideration to consultants from each member state.

Any consultant that has submitted a proposal but is not awarded a contract will be notified of the eventual decision.

2.7 Bid-evaluation Criteria and Process

A proposal or bid evaluation process, including the criteria to be used, will be developed by the Program Manager, and be approved by the responsible Delegated Authority. The evaluation process will be used in assessing and ranking consultants' proposals for all competitive contracts.

Wherever possible, such criteria, the corresponding point score or weighting assigned to each, and any minimum score required for bids to be considered valid shall be provided to prospective bidders with the RFP.

Such criteria shall reflect generic and/or project-specific indicators, as appropriate (to be determined and provided by each Program Manager). Proposal evaluation criteria and the evaluation/scoring system will be used objectively and consistently in assessing each proposal received.

Guidelines, along with generic evaluation criteria and range of maximum-point ratings (scoring) for each, are provided in Appendix B.

2.8 Requests for Proposal

RFPs will be prepared for all projects/activities for which consultants will be retained.

RFPs will contain, at the minimum, the full ToRs (see section 2.3, above) for the project/activity, and the terms and conditions of any contract that may result from the selection process, as well as the format(s) in which, the time by when, and the place where proposals for the services required are to be submitted. RFPs are also to include any specific obligations of or affecting the Commission or the consultant (such as the requirement to provide reports in specified electronic format as well as in hard copy; details of any late delivery penalties; insurance requirements; and treatment of currencies and the basis for their conversion).

All RFPs shall specify that the consultant must sign and comply with the Consultant's Declaration of Acceptance and Impartiality and Independence (Schedule D).

All RFPs must be approved by the Delegated Authority prior to being issued to prospective consultants.

A standard format for a Request for Proposal is provided in Appendix C.

2.9 Contract Negotiation and Document Preparation

Following receipt and evaluation of proposals (as described in Appendix B), the Program Manager shall obtain the approval of the responsible Delegated Authority as to the consultant selected, and clarify and/or negotiate contract terms and conditions with that consultant.

If terms and conditions that are satisfactory to both the Commission and the consultant cannot be agreed upon, the Program Manager will document such circumstance and will seek approval from the Delegated Authority to negotiate a contract with the next-highest-rated consultant that satisfies the minimum requirements to be considered responsive to the RFP, and, if authorized, will so negotiate. If no other acceptable consultant can be identified, the Program Manager will recommend to the Delegated Authority: to re-initiate the consultant selection process; to implement a different approach in terms of

scope definition, elements or components of the task; to seek some other means of procuring the services; or to abandon the search for a consultant.

No fees for preparation of bids will be accepted.

Once contractual agreement is reached with the consultant, the Program Manager will prepare a draft contract reflecting the project/activity, and the agreed-upon terms and conditions applying to the consultant's work, using as its basis the contract standard format outlined in Appendix D.

Any expenditure must be specified in a contract agreed upon and signed by both parties. Should any consultant waive the right to a fee for service, or to reimbursement of any bona fide expenses incurred in providing agreed-upon services, the contract shall specify this agreement and establish the nature of the consideration to be provided in establishing the contractual basis for the services to be delivered. Considerations other than a fee-for-service may include honoraria, reimbursement of bona fide expenses incurred, some sharing or retention of intellectual property rights, public acknowledgment of the services provided, or other form of acknowledgment not involving financial or equivalent compensation, as deemed appropriate in the circumstances.

2.10 Contract Documentation

All professional services provided on behalf of the Commission require and are to be conducted and administered pursuant to a formal written contract between the Commission and the consultant(s).

For standard contract format, see Appendix D.

The draft contract will be reviewed and approved by the Delegated Authority and, based on the authorization schedule below (sections 2.11 and 2.12), either be signed by that person or be forwarded for review and signature by the Executive Director.

2.11 Contract Authorization and Signatories.

To be valid, all contracts shall be signed by bone fide representatives of both the contractor and the Commission. The following representatives of parties to contracts for consultant services shall authorize such contracts:

For the contractor: the contract will be signed by the consultant personally if acting as an individual, or by an individual authorized to commit the consultant organization if the contractor is a commercial or non-profit organization. In cases where the contractor is a consortium, the contract shall be signed by an authorized Coordinator of each member of the consortium. Where the contractor is acting as a lead consultant (i.e. the prime contractor), that contractor will be responsible for the quality and timeliness of the

services provided by all sub-contractors working under the terms of the prime contract and for payment of such sub-contractors.

For the Commission: contracts for consultant services shall be signed on its behalf by an authorized individual in accordance with the following table:

<u>Any contract with a total value</u>	<u>To be authorized and signed on behalf of the Commission by:</u>
a) up to, but not exceeding, C\$25,000	A Director of the Secretariat
b) exceeding C\$25,000	the Executive Director

2.12 Authorization to Proceed

No consultant services are to be provided without written authorization for the work to proceed. Any interim authorization before a contract is finalized must be done in writing by the Delegated Authority. Prior to completion of formal contract documentation, any such authorization to proceed shall be limited to a value of professional and expenses not exceeding C\$10,000, and this limitation shall be identified to the consultant as part of the interim authorization to proceed.

2.13 Contract Amendments

Any amendment to the scope, timing, amount or basis of costs (as appropriate), or other significant terms or conditions of work contracted for, will require a formal, documented amendment to the original contract. Such amendments will be recommended and documented by the Program Manager, and approved by the Delegated Authority.

Amendments shall be authorized in writing by a bone fide representative of the Commission and the consultant, and will be subject to the same authorization levels that would have been applicable had the value of the contract including any proposed amendment been the original contract value.

2.14 Payment for Services and Reimbursement of Expenses

In general, and unless otherwise specified, payment for consultant services shall be made in the same manner and use the same processes and controls applied to other expenditures made by the Commission.

Payment shall only be made for bone fide consultant fees and legitimate expenses incurred in accordance with the contract for professional services, and only upon receipt and documented acceptance by the Secretariat of statement(s) of account /invoice(s) from the consultant, as specified below.

Progress and final payments for professional services will be made only in accordance with the basis of payment provisions specified in valid contracts. Such payments will normally be upon the completion, submission and acceptance of interim and final results of work and deliverables agreed upon, and for approved expenses. The application of provisions for late delivery penalties will also be reflected in the first payment to which they can be applied.

Expenses: only bona fide expenses identified in the contract for services, and invoiced at cost, will be eligible for reimbursement by the Commission.

2.15 Terms and Timing of Payment

- i) Payment prerequisites: payment for professional fees or expenses will not be made until:
 - a) a valid invoice has been received;
 - b) acceptance of work has been provided, in writing, by the assigned Program Manager, to signify that the work and/or expenses being invoiced have been completed/incurred as contracted for; and
 - c) authorization for payment, in writing, has been provided by the Program Manager and, for the final payment, by the Delegated Authority. The Contract Coordinator will confirm that the required information and any supporting receipts or other documents have been provided, that these are accurately recorded, and that corresponding contract terms and conditions relating to invoicing and payment have been fulfilled.
- ii) Pre-payment for fees and expenses: usually for the start-up costs of projects/activities, will only be made if, and as, specifically provided for in the contract.
- iii) Original receipts: for expense items other than those specified in the contract as being payable on a fixed allowance basis (e.g., per diem-meal and incidental allowance; mileage rates) are required to support claims for the reimbursement for out-of-pocket expenses of more than C\$10, or the equivalent in other currencies, per item.
- iv) Method of payment and payee: all payments will normally be made by check or bank transfer and will be issued payable only to the consultant identified as the payee in the contract (see section 2.19, regarding currency to be used).
- v) Timing: statements of account /invoices from consultants shall be submitted and processed promptly. Settlement of invoices that are acceptable for payment will

normally be made 30 days from the date of receipt by the Commission. If only part of an invoice is disputed, only that part shall be withheld from payment.

- vi) Late delivery penalties: may be included as part of RFPs and contract conditions. If they are included and late delivery occurs that gives rise to invoking such penalties, these amounts shall be deducted from the next invoice payable. No final invoice shall be paid without ensuring that such penalties are no longer outstanding.

OTHER PROCEDURAL MATTERS TO BE ADDRESSED

The following matters apply to all types of contract, regardless of the basis of consultant selection used. They relate to selecting, negotiating and contracting with consultants and are to be addressed as an integral part of the overall consultant procurement process. As applicable, statements giving effect to these matters shall be included in consultant contracts.

2.16 Legal Jurisdiction

All contracts for consultant services shall be drawn up, administered and, unless otherwise provided for, subject to the laws of the Province of Quebec and of Canada, as applicable. This is specified in section 7.2 of the standard form of contract, and should be distinguished from law governing services, as per section 2.4.

All exclusions to this provision will necessitate the authorization of the Executive Director.

2.17 Independence and Avoidance of Conflict of Interest

No contract for consultant services shall be let, under which any individual who is currently a member of the government or of any national, state or provincial legislature or of the public service of any country would receive a personal benefit or compensation.

A specific statement giving effect to this policy, in the form of the Consultant's Declaration of Acceptance and Impartiality and Independence (Schedule D), shall be included in all RFPs issued to consultants and in all consultant contracts.

Within the Secretariat, contract authorization and related administration of each consultant contract shall be under the direction of an individual other than, and independent of, the individual(s) requesting or managing the work provided under the contract. In effect, this requirement will normally be fulfilled by distinguishing the role of the Program Manager from that of the Delegated Authority, who carries overall responsibility for the project/activity, and that of the Contract Coordinator, for some administrative functions, such as payment preparation.

2.18 Documentation Disclaimer

The work produced as a result of consultant contracts shall be treated as advice to the Commission and shall not be, nor be treated or held out by any party to be, the official position of the Commission, nor a reflection of its views, unless and until the Commission formally so adopts such position.

For the purposes of this policy, the acceptance of any report or advice received from consultants, and any payment for the work carried out by consultants to produce such work and advice, shall not constitute the formal adoption by the Commission of such views, conclusions or recommendations so provided.

2.19 Currency to be Used and Basis of Conversion

- i) For contract authorization and related administrative matters, Canadian dollars will be the currency used.
- ii) When identifying expected or maximum project/activity costs, or ranges thereof, the Commission will express these in Canadian dollars.
- iii) In submitting their proposals, consultants may quote both fees and expenses in the currency of their resident country, or they may quote expenses in the currency of the country in which such expenses are expected to be incurred.
- iv) For the purposes of evaluating and comparing consultants' proposals (in cases when "price" will be a comparable item) or for negotiation of fee rates, expenses or other costs, any amounts expressed in the currencies of member states (or of other countries, for consultants from non-member states) will be converted into Canadian dollars, using the exchange rate(s) in effect at the time the RFP is issued.
- v) For negotiation and payment, the professional fee portion of contracts can be expressed as follows:
 - a) in the currency of the consultant's country of residence, or country of residence of the lead consultant if the contract involves consultants from more than one country;

or

 - b) in the currency of any of the member states at the choice of the consultant;

or

- c) in the currency of any of the member states at the choice of the Commission.
- vi) For negotiation and repayment of expenses, there are several options regarding currency to be used that need to be considered and a decision made:
 - a) reimbursement in the currency(ies) of the country(ies) in which the expenses are incurred;
or
 - b) reimbursement in the currency of the country of residence of the consultant, regardless of in which currency expenses were incurred;
or
 - c) the same option as selected in v), above.
- vii) This process shall apply to both initial contracts and any amendments to them. A specific statement of the currency conversion rates to be used in any evaluation of proposals shall be included in all RFPs. (See standard form of contract, sections 4.3 and 4.4, as referenced in Appendix D.).

2.20 Language

The Commission has three official languages, English, French and Spanish. Documentation, including contracts, relating to consultant procurement will be provided in the language of choice requested by potential contractors.

Prospective consultants to the Commission may communicate with the Commission, and submit proposals and related documents to it, in any of these three languages. Likewise, consultants are to submit all documents, including their reports, in one of the Commission's three official languages.

Unless otherwise specifically provided for in consultant contracts, translation of any reports and other documentation, and their subsequent publication or distribution, will be the sole prerogative and responsibility of the Commission.

2.21 Performance Bonds, Guarantees and Insurance

While consultants will not normally be required to post performance bonds, or guarantees, they will normally be expected to demonstrate that they have the financial as well as human resources necessary to undertake the proposed services.

Consultants will, however, normally be expected to carry professional liability insurance and insurance coverage for third-party, employer and worker compensation, and for

relevant physical and intellectual property relating to, and adequate for, providing the services requested. (For specifics, see clause 2.12 of the standard form of contract, as referenced in Appendix D.)

2.22 Contract Dispute Resolution

The parties to any contract shall use their best efforts to settle any disputes amicably.

Any dispute between the consultant and the Secretariat, regarding any aspect of the contracted consultant services or expenses that cannot be settled amicably shall be submitted, for binding arbitration, to an independent third party acceptable to both parties. (For details, see clause 6.1 of the standard form of contract, as referenced in Appendix D.)

Part 3 – Procurement Roles and Responsibilities

3.1 Overall Management Accountabilities

Administration and Finances, of the Commission, is responsible for maintaining this manual, for identifying and recommending changes to the general principles for procuring consultant services, and for improving the related process, procedures, roles and responsibilities and standard formats.

Delegated Authorities: in addition to their other duties, overall direction of and accountability for each project/activity shall be assigned to a senior member of the Secretariat (as defined under “Delegated Authority”). In general, the responsibilities of the Delegated Authority include: assigning, to the extent deemed appropriate, an individual to act as its Program Manager; and directing, reviewing and approving the work of project/activity-related documents prepared by, and consultant contract management activities performed by, the Program Managers assigned to projects/activities for which each Delegated Authority is responsible.

3.2 The Program Manager

The Program Manager will report to the assigned Delegated Authority, and have the primary responsibility for: undertaking the day-to-day management of the project/activity, including the planning, staffing, contract management, status reporting, technical quality assurance, and general administration required to successfully complete assigned projects/activities that are approved in principle by the Commission; safeguarding the related interests of the Commission; ensuring the equitable treatment of contractors; and working with the corresponding Contract Coordinator to fulfill such responsibilities.

The Program Manager will have the primary role in and be accountable for:

- i) defining and documenting the nature of the project/activity and the requirement for professional services from consultants, and for establishing and maintaining contract management practices, including liaison with the corresponding Contract Authority throughout the project/activity, to ensure that any related contracted services are obtained and managed in accordance with the procurement principles and procedures of the Commission and that the best interests of the Commission are reasonably and demonstrably protected;
- ii) recommending the type of contract to be used, preparing the ToRs and RFPs packages, including any subsequent amendments, the consultant selection criteria and obtaining approvals thereof;
- iii) obtaining the requisite approvals of ToRs, and identifying the timing and manner in which any notice of consulting opportunities and the issuance of Requests for Proposal will be made;

- iv) acting as chairperson for the consultant selection committee for the assigned project/activity, forming the selection committee, and leading the assessment of proposals received from consultants;
- v) obtaining confirmation of the selection committee's recommendation from the responsible Delegated Authority, and advising the successful and unsuccessful consultants of the Commission's decision and the reasons for it;
- vi) leading any negotiations with the selected consultant, identifying and negotiating with other consultants if such negotiations cannot be concluded successfully, and preparing the resultant contract for signature by the appropriate Delegated Authority; and thereafter,
- vii) monitoring the provision of professional services and interacting with the consultants from technical and professional standpoints, as appropriate, in order to ensure that the services are delivered as, how, and when contracted for, having due regard to the nature, intent and evolving circumstances of the project/activity and in keeping with the terms and conditions of the contract(s);
- viii) preparing, presenting and reporting to senior management of the Secretariat, as appropriate, succinct, timely and informative interim status and completion reports on each project/activity for which the Program Manager is responsible;
- ix) reviewing, obtaining requisite additional opinions regarding, and signing off on both interim and final reports, documents and any other applicable deliverables required under the contract(s) in place, and ensuring all other technical and professional consultations, reviews, adjustments and sign-offs that are appropriate in each circumstance are carried out and otherwise provided for; and
- x) reviewing and approving invoices for fees and expenses for correctness in terms of completeness and reasonableness from the perspective of the services contracted for and delivered, for ensuring approved invoices are settled; and participating in any contract dispute resolution process from the perspective of the technical and professional services aspects of the contract.

3.3 The Contract Coordinator

The Contract Coordinator will have day-to-day responsibility for ensuring that the consultant registry, contracts for professional services, and contract-related documentation are appropriately recorded and maintained in an orderly manner through each stage of the project/activity; and for helping the corresponding Program Manager to fulfill his or her responsibilities.

The Contract Coordinator will have the primary role and be accountable for:

- i) assisting and maintaining liaison with the corresponding Program Manager throughout the project/activity to help ensure that timely contracted services are obtained and contracts are administered in accordance with the procurement procedures of the Commission;
- ii) monitoring and interacting with the Program Manager and, as necessary, consultants, from a contract administration standpoint, in order to ensure that the invoices and other contract documents are completed as, how, and when required, in keeping with the terms and conditions of the contract(s);
- iii) ensuring that the appropriate Program Manager has signed to signify his or her approval and acceptance of any interim and final reports, documents and any other applicable deliverables required under the contract(s), and ensuring that all other contract administrative requirements have been satisfied;
- iv) ensuring that, as appropriate, the Program Manager and/or responsible Delegated Authority has reviewed and approved interim and final consultant invoices for fees and expenses, in terms of completeness and reasonableness from the perspective of the services contracted for and delivered, and ensuring that such invoices are in accordance with the contractual terms of payment and that bona fide invoices are settled when due; and
- v) providing administrative support to the Program Manager in any contract dispute resolution process from the perspective of contract administration.

3.4 Approvals Checklist

To facilitate the processing, an “Approvals Checklist” has been developed and can be found as Appendix E. This running list of approvals is to be part of the documentation whenever an approval is sought.

Appendix A – Terms of Reference: Guidelines and Standard Format

1. Guidelines

Terms of Reference (ToRs) are the statement of the objectives and nature of the project/activity and of the specific purpose and work required of the selected consultant. They form a critical part of the information upon which consultants will prepare their proposals and, with the possibility for some modifications agreeable to the Commission and the selected consultant, will be an integral part of the contract for services. Thus, the ToRs should be as complete, clear and precise as the nature of the project/activity will allow.

ToRs are used for four purposes:

1. as an aid to obtaining internal agreement and approval within the Commission for proceeding with an RFP to consultants, by presenting a project/activity that is fully and well articulated in terms of its objectives, scope, and expected outputs;
2. to inform the prospective consultants of the objectives, scope and work requirements of the project/activity and its expected outputs so that they can adequately assess their credentials and prospects and prepare appropriate responses accordingly;
3. to provide the consultant selection committee with a clear basis for evaluating the extent to which each consultant has a sound understanding of the requirement and has provided a comprehensive and realistic proposal for conducting and staffing the work; and
4. to facilitate negotiations with the selected consultant as to the work to be performed and, subsequently, to so specify the nature of such work in the contract for services to be provided.

Clear ToRs, with as sharply defined parameters and definitions as possible, are particularly important for exploratory or investigative—and other “front-end”—type—assignments where the scope, level of detail and form of the requirement is most open to different interpretations.

The need for sound ToRs can be important for the purposes of internal assessments of projects/activities, as these approvals must be obtained first. It is therefore strongly recommended that an early start be made to documenting ToRs as soon as there is a clear indication of consulting services being required. ToRs development is almost always an interactive process, with changes often being made up to, and even following,

contracting. Often the availability of even quite preliminary ToRs (that address the standard contents summarized below) can of themselves facilitate a more rapid and problem-free transition to approved status than would otherwise be possible.

2. Standard Format

Normally ToRs should, at the minimum, clearly indicate the following:

- a) **Project/Activity Objectives and Specific Purpose of Services Required:** as clear and precise a statement as possible of the objectives of the overall project/activity and the specific purpose of the consultant services required, and their fit with other elements of the overall project/activity (if any).
- b) **Nature, Scope and Timing of the Requirement:** as well-defined a statement of the scope and timing (start and completion dates, and any key milestones and major review points) of the requirement as is possible, along with the best possible description of the nature of the services to be performed and any significant considerations, limitations or caveats that are applicable to the work.
- c) **Inputs, Roles and Responsibilities Expected of the Contracting Parties:** the clearest possible statement of what the Commission, the consultant and any third parties involved in the contract are required to contribute, both in terms of their primary responsibilities and for any other roles or types of supporting activities that they are expected to provide and to whom.
- d) **Outputs Required:** best available particulars of the main interim and final outputs to be provided by the consultant, and by any other party, and details of any particular formats, language, presentations or other aspects of contract performance to be achieved by the consultant.

Once the ToRs for a particular assignment have received the requisite approvals to proceed from within the Commission, they will be consolidated within a corresponding RFP for distribution (see Appendix C).

Appendix B – Proposal Evaluation Criteria and Consultant Selection Process: Guidelines and Standard Evaluation Format

1. Purpose

The process for evaluating each proposal received from consultants centers on the criteria and method-rating used. These play an important role in ensuring that fair and effective steps are both applied and seen to be applied in selecting the consultant to be retained.

The following purposes are served by providing and applying such criteria and maximum-point ratings:

- i) **Simplifying the selection process and increasing its efficiency and effectiveness**, by clearly identifying which proposals can be considered either “non-responsive” or “ineligible” (i.e., proposals that do not satisfy the mandatory or essential requirements or do not achieve the minimum scores), or which are not deemed to be of sufficient quality relative to others and thus can be eliminated from further consideration.
- ii) **Increasing the likelihood of receiving comparable proposals**, by clearly identifying what attributes will be assessed and the value placed on each, thus directly encouraging all consultants to address the same issues and requirements in proportionate detail.
- iii) **Providing a comprehensive and consistent basis for preparing feedback on proposals received**, as this is usually of particular interest to the unsuccessful consultants in any competitive situation.
- iv) **Selecting the best consultant**, by identifying and ranking those consultants who have demonstrated that they are qualified to undertake the work and, from these, selecting the one deemed best suited.
- v) **Identifying any changes required in negotiating a contract with the top-rated consultant**, by systematically highlighting any unclear or inappropriate aspects of the winning proposal; adequate responses can be provided to unsuccessful consultants..

2. Requirement to Use

Evaluation criteria should be used to assess proposals received. It is essential to ensure that proposals adequately address the ToRs and other contractual requirements.

3. Establishing Appropriate Evaluation Criteria and Maximum Ratings

The evaluation process and schedule to be followed, including the evaluation criteria, the maximum-point rating applicable to each of them, and any minimum scores required (in total and/or by criteria or group of them) to be deemed eligible for further consideration, should be established when developing the Request for Proposal. This information should be included in the RFP so that consultants can understand the Commission's priorities and ensure they respond appropriately.

Criteria, and the maximum-point rating assigned to each, should reflect those attributes of the particular project/activity deemed most critical to its successful completion, particularly in terms of the prospective quality of work and results. In practice, the following list of generic evaluation criteria may require little if any modification, as the specific attributes of a particular project/activity will be taken into account in assessing how well each has been addressed by the different proposals received. Variations in deemed suitability and quality of responses can then be recognized and reflected in the point ratings (scores) assigned each in relation to the corresponding criteria.

4. Including Price as an Evaluation Criterion

The inclusion of price as an evaluation criterion is an important decision that can either result in lower costs without affecting the quality or subsequent outcomes resulting from a project/activity, or can result in an inappropriate favoring of lower price at the expense of quality, with the result that additional costs downstream may be far greater than any savings.

The extent to which price should be used as a criterion depends primarily on three variables: i) the technical complexity of the project/activity, ii) the impact of the project/activity on the intended outcome or end product to which it contributes, and iii) the comparability of proposals. The more complex the assignment, the more significant the outcome or end product; and the less comparable the proposals, the less should be the influence that price has on the selection decision.

A firm decision on whether or not price will be used as a criterion in consultant selection is required for each contract before the RFP is issued. If price is to be a factor, this fact must be made clear in the RFP, with the best possible indication of the weighting to be given it or the means by which it will be factored into the evaluation process.

The following generic evaluation criteria and typical maximum-point ratings (normally adding up to a total of 100) can be used as presented or can be modified, expanded upon or supplemented as project/activity circumstances dictate:

Generic Evaluation Criteria

Typical Range of Maximum-Point

	<u>Rating</u>	
	<u>Excluding Price</u>	<u>Including Price</u>
1. Understanding of Project/Activity Requirements	5 to 15	5 to 10
2. Consultant's General Experience in Subject	5 to 15	5 to 10
3. Suitability & Innovativeness in Approach, and Adequacy of Workplan	25 to 40	25 to 40
4. Qualifications & Competence of Key Staff	40 to 60	40 to 60
5. Price	N/A	10 to 20
Total	<u>100</u>	<u>100</u>

For the policy on the conversion of currencies for the purpose of evaluation and negotiation, see section 2.20, above.

Unless personal interviews are possible, the qualifications of key staff can only be assessed by reviewing CVs and by requesting, taking up and assessing personal references concerning the work of the firm and/or key individual consultants provided directly to the Commission by previous clients.

Team members proposed should be assessed in relation to three categories of suitability: i) general qualifications (education and training, length and extent of experience, positions held); ii) adequacy for the project/activity and for the role proposed (suitability and match to experience and qualifications); and iii) language and experience suitable for the region(s) and conditions in which project/activity will be undertaken.

5. Conducting the Evaluation

5.1 Who evaluates proposals

The evaluation process should be undertaken by an ad hoc evaluation committee, comprising at least two and normally not more than five members, with at least one from each country, selected by and including the Program Manager, who shall act as chairperson of the committee.

5.2 The Evaluation Process

The evaluation process should start as soon as possible after the official closing time for receipt of proposals.

- i) Each member of the evaluation committee is provided with a copy of each proposal received, along with the corresponding RFP. They then assess and individually score/rate each proposal, using the evaluation criteria and maximum-point ratings established for each. The Program Manager will make available a grid to evaluate proposals.
- ii) The chairperson will call a meeting of the committee as shortly thereafter as is reasonable given the number of proposals received and the complexity of the project/activity.
- iii) The committee meets, in order to aggregate their ratings/scores, to discuss the reasons for these, with particular emphasis on any proposals in which their scores vary widely as regards the same criteria, and to arrive at final ratings and thus a ranking of all proposals.
- iv) Having ensured that at least one proposal achieves the minimum rating requirement established, the committee will debate the quality and other appropriate considerations concerning each proposal (e.g., consultant track-record, past distribution of work to member states), and re-score proposals until a consensus is achieved. If no proposal receives a minimal rating or acceptable results, the Program Manager, in conjunction with the Delegated Authority, will determine the next steps.
- v) For each proposal, a brief summary of any notable strengths and relative weaknesses in terms of evaluation criteria should be agreed upon, and summarized in point-form.
- vi) Members should confirm in writing the name of the consultant selected. This confirmation, the aggregated scores awarded to each proposal, and the summaries of the strengths and shortcomings of each proposal are provided to the Program Manager (so that feedback can be provided to each consultant).
- vii) Once feedback has been provided, only the documentation confirming the winner and the summary of aggregate scores are maintained in the contract file for the project/activity.

Appendix C – Requests for Proposal: Guidelines and Standard Format

1. Guidelines

The Request for Proposal (RFP) is a document inviting prospective consultants to submit proposals to undertake a specific project/activity, the overall description of which is contained in the RFP. RFPs also contain other information that consultants will require in order to determine whether and, if so, how to respond with a formal offer by means of a formal proposal.

As the RFP is normally the primary basis upon which consultants form their responses, it is important that the information provided in an RFP be as complete and accurate as possible. In addition to enabling consultants to prepare fully responsive proposals, complete and accurate information also helps to ensure that the proposals submitted to the Commission will be comparable.

RFPs require inputs from a number of different sources and thus can require a significant level of effort to coordinate and considerable elapsed time to have ready for internal approval and issuance. Accordingly, work on assembling each RFP should normally be started as soon as the corresponding Program Manager and Contract Coordinator for the project/activity have been appointed and the ToRs for the work have been approved.

Once responses to an RFP have been received, as strict as possible an adherence should be made to the stated process and timing of subsequent actions by the Commission (e.g., the consultant selection process).

2. Standard Format

Normally RFPs should, at the minimum, either identify or provide the following information:

- a) **A description of the project/activity or services required:** A descriptive title and very brief outline of the assignment should be the first item documented, with reference to the ToRs being provided as an attachment;
- b) **A statement of any mandatory requirements** (i.e., those that must be fulfilled in order for any consultant to be eligible for further consideration);
- c) **The ToRs for the assignment** (see Appendix A);
- d) **A list of other information to be provided, including client references;**

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- e) **Either** a draft of the contract, including terms and conditions, that would be used (i.e., the standard contract outlined in Appendix D, **tailored to the specific project/activity**); **or** identification of the type of contract that will be used (see section 2.4 of this manual);
- f) *Consultant's Declaration of Acceptance and Impartiality and Independence* (Schedule D);
- g) **Potential Contacts:** the names and contact numbers/addresses of:
- i) those, if any, from the Commission or from other organizations, that the consultants might usefully contact in order to better understand the context and/or nature of the requirement;
 - ii) the Program Manager for the work, to whom requests for clarification of requirements can be addressed; and
 - iii) the Contract Authority for the proposed contract, to whom requests regarding contractual matters can to be addressed;
- h) **The Selection Procedure to Be Used:** a brief description of the selection process, including i) a clear statement of the evaluation criteria that will be used in assessing proposals and selecting the successful bidder, including whether or not price will be taken into account, ii) the maximum-point scores and any weighting for each criterion, and iii) any minimum scores required to qualify for further consideration;
- i) **The Estimated Level of Resources Required:** a statement of the estimated and/or maximum level of effort in total person-months of professional time as being required to provide the services requested, and/or maximum budget;
- j) **Basis of Payment Required:** details about any requirements or preferences of the Commission regarding basis for payment for services (e.g., against delivery and acceptance of any interim and the final deliverables);
- k) **Financial and Other Confidential Information:** the information or certifications (e.g., regarding insurance, financial status, ownership and independence, etc.) that will or may be required of a consultant either as part of its proposal or during any pre-contract negotiations, and details of any late-delivery penalties applicable to the contract;

- l) The Deadlines for Proposal Submission and Decision:** the time and date of the deadline beyond which proposals will not be accepted for consideration, and the anticipated date by which a selection decision will be made; and

- m) Proposal Addressee and Acceptable Modes of Submission:** the name and address and electronic access numbers of the person to whom proposals are to be sent, and the acceptable means by which proposals may be transmitted to the Commission, including any restrictions thereon.

The RFP format can vary, depending on the expected amount of the contract (e.g., a short format for the contracts under C\$25,000 and a long format for contracts above this amount). Administration and Finances will provide the appropriate templates to the Program Manager.

Appendix D—Contract for Consultant Services: Guidelines and Standard Format

Guidelines

The CEC standard contract format for consultant services will be found as a template on the Intranet. The list of articles is found on the following pages. To assist in adapting the standard contract format a checklist (following page) has been prepared and should be presented to the delegated authority when approvals are sought. When using the standard contract format the following observations should be noted:

- a) Specific details, such as the names of the parties to and dates of the contract, should be inserted in the spaces provided.
- b) Where options and alternatives are provided (in square brackets in the standard text), all others than those required should be deleted. A check should be made to ensure no such notations are included in formal contracts.
- c) Following the signature page a sample “List of Schedules” is provided. **These identify attachments that are to be included as part of the contract**, but are too lengthy to be included within the main text. Details provided in the successful consultants’ proposal should provide some of these descriptions and, if acceptable, these can be attached, in whole or in part, with the addition of appropriate letters/numbers to match references in the main text.

Queries concerning consultant contracts, suggestions for modification should be addressed to Administration and Finances.

CHECKLIST			
STANDARD FORM OF CONTRACT			
CONSULTANT SERVICES			
Section	Subject	Action	Done [✓]
Description of Parties	For Commission	Select and complete as indicated	
	For Consultant	Select and complete as indicated	
2.12	Insurance	Optional: If section does not apply, specify as “Not Applicable”	
4.3, 4.4	Currency of Billing and Payment	Specify American or Canadian dollars or Mexican pesos	
4.5.2	Fees	Select option (a) or (b)	
4.5.3	(e)	Optional: leave or delete	
4.5.3	(f)	Optional: leave or delete	
4.5.3	(g)	Optional: leave or delete	
4.5.3	(h)	Optional: leave or delete	
4.6.1	Billing procedure	Select option (twice)	
6.1	Dispute	Select one or three arbitrators	
7.3	Notices	Complete	
Signature Block		Complete	
Schedule A	Terms of Reference	Prepare as indicated	
Schedule B	Consultant’s Personnel	Prepare as indicated	
Schedule C	Fees and Expenses	Prepare as indicated	
Schedule D	<i>Consultant’s Declaration of Acceptance and Impartiality and Independence</i>	Attach document	

Appendix E—Procurement Of Consultant Services: Approvals Checklist

PROJECT/ACTIVITY TITLE: _____ BUDGET #: _____

Step	Manual	Approval Required	Approved by Delegated Authority	Date # Approved
1.	2.3	Terms of Reference		
2.	2.4	Type of contract to be used		
3.	2.5	Basis of selecting consultant		
4.	2.6	Notification of consulting opportunities		
5.	2.7	Bid evaluation criteria and process		
6.	2.8	Requests for Proposal		
7.	2.9	Confirmation of consultant selected		
8.	2.9	Negotiate with next-ranked bidder (if needed)		
9.	2.9	Repeat or abandon selection process (if needed)		
10.	2.10	Acceptability of draft contract		
11.	2.11	Signing of contract (per authorization table)		
12.	2.12	Written authorization to proceed subject to contract (to max C\$10,000)		
13.	2.13	Contract amendments		
14.	2.15	Authorization of final payment		

