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ENVIRONMENTAL
COOPERATION

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Consultant Services Procurement Manual

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Introduction

1. 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 awarded 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 as appropriately, timely and cost-effectively as possible.

2. Questions

Any questions regarding the contents of this manual and related processes, and any suggestions for modification should be communicated to the Director of Administration.

Questions related to contract negotiation, interpretation and enforcement should be addressed to the Legal Affairs and SEM staff.

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

1. Organization and Constitutive Instruments

Commission: the Commission for Environmental Cooperation (CEC), as referred to in Article 5 of the Agreement on Environmental Cooperation (ECA—see below).

Council: the Council of the Commission, referred to in Article 3 of the ECA.

ECA: the Agreement on Environmental Cooperation (ECA) among the Governments of Canada, the United Mexican States, and the United States of America, which entered into force on 1 July 2020, and superseded the North American Agreement on Environmental Cooperation (“NAAEC”).

ECA Parties: Canada, the United Mexican States, and the United States of America.

Joint Public Advisory Committee (JPAC): a committee of nine citizens, three from each Party, appointed to advise the Commission on a wide array of environmental issues, as referred to in Article 6(1) of the ECA.

Operational Plan: the document outlining the work that the Commission implements each year.

Secretariat: the Secretariat of the Commission.

USMCA/CUSMA: the Agreement between Canada, the United Mexican States, and the United States of America, commonly referred to as USMCA, CUSMA, T-MEC or ACEUM, and in force as of 1 July 2020.

2. Definitions

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.

Consultant: one or more individuals, partnerships, public or privately owned corporate bodies, nonprofit organizations, or universities, offering one or more professional services

to and on behalf of the Commission in exchange for a fee, which operate independently as contractors and are not employees of the Commission.

Contract: an enforceable 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 representatives, offering to provide professional services on the basis of a fee.

Contract Coordinator: a member of the Secretariat staff, such as the Project Lead or the Administrative Assistant of the Unit, assigned to undertake day-to-day responsibility for assisting in the administrative aspects of establishing and managing consultant contracts.

Fee: monetary 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.

Head of Unit/Director: a member of the Secretariat staff, reporting to the Executive Director, responsible for ensuring that, on a day-to-day basis, the activity that they are assigned is established, conducted, and managed in an effective, fair, efficient, and financially responsible manner, including through assignment to members of the Unit that they manage.

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, as arising under the contract's governing law. (*See also* clause 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 specialists engaged under contract, though not employed, by the Commission for such purposes.

Request for Proposal (RFP): a document outlining the Commission's requirements for consultant services and instructions for prospective consultants to respond to service requirements.

Terms of Reference (ToRs): the statement of requirements for professional services to conduct some or all parts of an activity to fulfill the Commission's mandate outlined in the 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 ECA.

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 are 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 ECA are paramount and upheld in all aspects of the planning, procurement, management, and administration of contracts for consultant services;
- ii) due consideration is given to the terms and spirit of the USMCA/CUSMA;
- iii) all consultants, who are nationals or are legally residing in or entities constituted under the laws of the ECA Parties, are eligible to compete for and undertake contracts for services; consultants who do not meet these requirements will be eligible when so approved by the Executive Director;
- iv) access to, and competition for, all opportunities is fair, open, and reasonable for consultants established in the ECA Parties, in light of the nature, value and time constraints of each need for consultant services;
- v) the procurement and administration of all professional service contracts is conducted in a consistent, fair, and equitable manner and without conflict of interest;
- vi) use of the Commission's three official languages is reflected in and supported by its consultant procurement practices (see section 2.20, herein);
- vii) no contract for consultant services is awarded that would provide a personal benefit or compensation to any individual who is currently a member of the public service

- or a member of any national, territorial, state, regional, provincial, or municipal government;
- viii) consultants act as independent contractors, and nothing contained in their consultant services contracts with the Commission creates an employer-employee relationship;
 - ix) value for money is obtained, both in terms of the quality and contribution of the services provided, and in the prudence and integrity with which services are engaged, accepted, and paid for;
 - x) the work produced as a result of consultant contracts is treated as advice to the Commission, but such advice is not treated as the official position of the Commission or a reflection of its views, unless the Commission formally accepts and adopts such advice;
 - xi) the Commission endeavors to keep its process for the procurement of consulting 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 for the Commission, all potential consultants, 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 have been developed to assist those involved in the procurement of consulting services.

Standard formats will be used for ToRs, RFPs, and consulting contracts as described below. Most steps in the process apply to all activities regardless of their value or scope. Adjustments to the basic process will be kept to a minimum, given variations in activity circumstances, the availability of qualified consultants, and activity timing. At all times, the emphasis will be on providing an effective, fair, and efficient procurement process.

2.1 Approval of Projects/Activities

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

2.2 Assignment of the Head of Unit/Director and Contract Coordinator

The Head of Unit/Director who is responsible for the activity, is responsible for managing the procurement process and contract completion.

The roles and responsibilities of a Head of Unit/Director and the Contract Coordinator, with respect to services procurement, are provided in Part 3.

2.3 Terms of Reference

ToRs shall be prepared in writing by the Head of Unit/Director assigned to the activity for all types of activities to be performed with consultant services. ToRs will be included as part of the RFPs (see section 2.6, below).

ToRs shall include, but not be limited to:

- i) precise statement(s) of the objective(s) and purpose(s) of the activity to be undertaken;
- ii) an informative statement of the background to the activity, its scope, and the context and circumstances in which it will be undertaken; and
- iii) a clear statement of the professional services being requested that sets out the required results and any ways in which the Commission wants the work to be conducted. This includes defining clear 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

Before proceeding with the procurement process, the Head of Unit/Director will decide which type of contract should be used.

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

- a) Milestone contracts have a fixed price, with disbursements made upon completion of deliverables, as scheduled in the ToRs. Milestones are deliverables or logical steps of work in the contract.

Milestones are set to manage the timing and quality of the contract results by tying payments to specific delivery or completion milestones. The consultant must successfully complete each milestone before they are paid. This also helps manage the risk of project delays and scope creep (i.e., where activity requirements increase over time).

- b) 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), and a contingency allowance, if needed.

Time-based contracts require clear statements of the work and results expected and, from the consultant, a clear proposal of what work will be conducted by whom, with what level of effort, and what deliverables will be provided. The 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. ToRs must clearly indicate whether the total amount of the contract will be paid or whether the total amount paid will be determined by time-based billing.

- c) Lump-sum contracts are based on firm or fixed price estimates for the cost of both professional fees and (possibly, 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 consultant. 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 level of coordination, and extent of travel, if any.

All contracts shall include 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 such services.

2.5 Basis for Selecting Consultants

Consultants will be retained based on a selection process where the cost of administering this process is reasonable in relation to the expected cost of the contract.

In keeping with the above intent, the selection of consultants for projects will be undertaken using the competitive process outlined in this manual. This recognizes that the work warrants an extended search to identify potentially suitable consultants that may not already have identified themselves to, or been identified by, the Commission.

In specific cases, a sole source contract may be awarded without a competitive process if specific requirements are met and where the value of the proposed contract does not exceed C\$100,000. A sole source contract can be awarded if:

- i. the suitably qualified consultant is identifiable because of a limited pool of experts with the required subject matter expertise and/or unique engagement in existing processes and/or outstanding credentials with CEC partners; or
- ii. the cost of a competitive process would be disproportionate to its value; or
- iii. due to unforeseen circumstances, the schedule to complete the work would not be met if a competitive process were to be undertaken.

The Head of Unit/Director will decide which approach will be taken for each consulting opportunity. If a sole source process is selected, the consultant will be required to submit a proposal for their services. The Head of Unit/Director must also write a memorandum detailing the reasons why the contract was not awarded through a competitive process (“sole source memorandum”) and submit the memorandum, information about the prospective consultant, and their proposal to the Executive Director for approval.

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

2.6 Requests for Proposal

RFPs will contain, at the minimum, the full ToRs (see section 2.3, above) for the 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 manner in which proposals for the services required are to be submitted. RFPs are also to include any specific obligations, such as the requirement to provide reports in a specified format; 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).

The Head of Unit/Director must share all RFPs with the Director of Administration for review and with the Executive Director for approval prior to issuing RFPs.

An RFP template is provided in Appendix B.

2.7 Notification of Consulting Opportunities

It is the responsibility of each Head of Unit/Director to develop the Commission's requirements for consultants on specific 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 Head of Unit/Director before the notices are made public on the Commission's website.

Under the competitive process, the Secretariat will publish an RFP on the Commission's website for upcoming projects for which consultant services are required. The notice will be promoted on the Secretariat's social media.

Any consultant that has submitted a proposal but is not awarded a contract will be notified that they were not selected.

2.8 Evaluation Criteria and Process

The Head of Unit/Director will develop the evaluation criteria and process. 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 as part of the RFP.

Such criteria shall reflect generic and/or project-specific indicators, as appropriate (to be determined and provided by each Head of Unit/Director). 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 C.

2.9 Contract Negotiation and Document Preparation

Following selection of the consultant (as described in Appendix C), the Head of Unit/Director shall 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 Head of Unit/Director will document the circumstances (through a note on file) and will seek approval from the Director of Administration to negotiate a contract with the next-highest-rated, available 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 Head of Unit/Director will either re-initiate the consultant selection process, implement a different approach to deliver the activity, seek some other means of procuring the services, or abandon the search for a consultant. The Head of Unit/Director will document the process in an information memorandum kept on file.

Once contractual agreement is reached with the consultant, the Head of Unit/Director will prepare a draft contract reflecting the activity, and the agreed-upon terms and conditions applying to the consultant's work, based on the contract standard outlined in Appendix D.

No reimbursement for proposal preparation will be provided to prospective or contracted consultants. Any expenditure must be specified in a contract agreed upon and signed by both parties.

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. A standard contract template is available on the intranet and outlined in Appendix D.

The draft contract will be reviewed and approved by the Head of Unit/Director and signed by the Executive Director.

2.11 Contract Authorization and Legal Representatives

To be valid, all contracts for consultant services shall be signed by bona fide representatives of both the consultant and the Commission. These legal representatives are as follows:

For the consultant: The contract will be signed by the consultant personally if acting as an individual, or by an individual authorized to legally bind the consultant organization. In cases where two or more consultants bid jointly, the contract shall be signed by an authorized representative on behalf of the group. In practice, due to issues related to contract responsibility, signing contracts with more than one consultant to jointly deliver a common set of the services is not advised. Where the consultant is acting as a lead consultant (i.e., with sub-contractors working on aspects of the project), that consultant will be responsible for the quality and timeliness of the services provided by all sub-contractors working under the terms of the contract with the CEC and for payment of such sub-contractors.

For the Commission: All contracts for consultant services shall be signed by 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 Head of Unit/Director. Prior to completion of formal contract documentation, any such authorization to proceed shall be limited to a value of professional services and expenses not exceeding C\$15,000, 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 Head of Unit/Director and approved by the Executive Director.

Amendments shall be authorized in writing by the legal representatives of both parties.

2.14 Payment for Services and Reimbursement of Expenses

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

Payments for professional services and expenses will be made according to the payment provisions specified in the contract. The application of provisions for late delivery penalties will also be reflected in the first payment to which they can be applied.

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 Head of Unit/Director, 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 Head of Unit/Director and, for the final payment, by the Executive Director. The Head of Unit/Director will confirm that the required information and any supporting receipts or other documents have been provided and have been accurately recorded, and corresponding contract terms and conditions relating to invoicing and payment have been fulfilled.

- ii) 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.
- iii) Method of payment and payee: all payments will be made by check or bank transfer (see section 2.18 regarding currency to be used).
- iv) Timing: 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.
- v) Late delivery penalties: may be included in the contract ToRs. If late delivery occurs and meets the contract's penalty conditions, these amounts shall be deducted from the next payable invoice. The final invoice shall not be paid until it is ensured that there are no outstanding penalties.

OTHER PROCEDURAL MATTERS TO BE ADDRESSED

The following section relates 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 Jurisdiction

All contracts for consultant services shall be drafted, administered and, unless otherwise provided for, subject to the laws of the Province of Quebec and of Canada, as applicable. This is specified in clauses 2.4 and 7.2 of the standard contract.

2.17 Independence and Avoidance of Conflict of Interest

No contract for consultant services shall be awarded that would provide a personal benefit or compensation to any individual who is currently a member of the public service or a member of any national, territorial, state, regional, provincial, or municipal government.

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 consultant contracts.

Within the Secretariat, contract payments shall be managed by the accounting unit, which is separate from the Head of Unit/Director requesting and/or managing the work provided under the contract.

2.18 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 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) A specific statement of the currency conversion rates used by the CEC can be included in an RFP.
- v) For the purposes of evaluating and comparing consultants' proposals or for negotiation of fee rates, expenses or other costs, any amounts expressed in any Parties' currencies (or of other countries, for consultants from non-Parties) will be converted into Canadian dollars, using the exchange rate(s) set by the CEC for the year the RFP is issued.
- vi) The contract amounts shall be expressed in Canadian or US dollars.
- vii) For payment of expenses, reimbursement can only be made in Canadian or US dollars, as stipulated in the contract.
- viii) This process shall apply to both initial contracts and any amendments to them.

2.19 Language

The Commission has three official languages: English, French, and Spanish. All documentation, including contracts, relating to consultant procurement will be provided in the language requested by prospective consultants.

Prospective consultants to the Commission may communicate with the Commission, and submit proposals and related documents, in any of these three languages. However, consultants are to submit all documents, including their deliverables, in the language(s) specified for each deliverable in the contract ToRs.

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

2.20 Insurance

Consultants will 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 2.13 of the standard contract, as referenced in Appendix D.)

2.21 Contract Dispute Resolution

The parties to any contract shall employ 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 contract, as referenced in Appendix D.)

2.22 Privileges and Immunities

In accordance with the Headquarters Agreement with Canada, the property and assets of the Commission are immune from search, requisition, confiscation, expropriation, and any other form of interference, whether by executive, administrative, judicial, or legislative action.

All contracts shall contain the following clause:

Nothing in this Contract shall be deemed to be a waiver, express or implied, of any immunity from suit, legal process, or execution, or of any privilege, exemption, or other immunity, enjoyed or which may be enjoyed by the Commission pursuant to any applicable convention, agreement, law, or decree, whether international or domestic.

Part 3 – Procurement Roles and Responsibilities

3.1 Overall Management Accountabilities

The Director of Administration 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.

3.2 The Head of Unit/Director

The Head of Unit/Director will have primary responsibility for day-to-day management of the activity, including the planning, staffing, contract management, status reporting, technical quality assurance, and general administration required to successfully complete assigned activities that are approved by the Commission; safeguarding the related interests of the Commission; ensuring the equitable treatment of consultants; and working with the corresponding Project Lead, Unit Assistant and other staff, if applicable, to fulfill such responsibilities.

The Head of Unit/Director will be accountable for personally performing the following tasks or delegating such tasks to Project Leads or other staff, if applicable:

- i) defining and documenting the nature of the activity and the requirement for professional services from consultants, and establishing and maintaining contract management practices, including liaison with the consultant throughout the 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 RFP packages, including any subsequent amendments and the consultant selection criteria, and obtaining approvals, as needed;
- iii) identifying the timing and manner in which any notice of consulting opportunities and the issuance of RFPs will be made;
- iv) acting as chairperson for the consultant selection committee for the assigned activity, forming the selection committee, and leading the assessment of proposals received from prospective consultants;
- v) obtaining confirmation of the selection committee's recommendation, and informing the successful and unsuccessful consultants, whether or not they have been selected;

- 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 the Executive Director's signature; 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, according to the contract, having due regard to the nature, intent and evolving circumstances of the 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 activity for which the Head of Unit/Director 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 accuracy from the perspective of the services contracted for and delivered, ensuring approved invoices are paid; 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 activity; and for supporting the corresponding Head of Unit/Director to fulfill their responsibilities.

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

- i) assisting and maintaining liaison with the corresponding Head of Unit/Director throughout the 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 Head of Unit/Director 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 Head of Unit/Director 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 the Head of Unit/Director has reviewed and approved interim and final consultant invoices for fees and expenses, 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 Head of Unit/Director 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, nature of the activity, and 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 consultant contract. Thus, the ToRs should be as complete, clear, and precise as the nature of the 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, by presenting an activity that is fully and well described in terms of its objectives, scope, and expected outputs;
2. to inform the prospective consultants of the objectives, scope, and work requirements of the activity and its expected outputs so that they can adequately assess their credentials and prepare responses accordingly;
3. to provide the consultant selection committee with a clear basis for evaluating the extent to which each prospective consultant has a sound understanding of the requirements 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 specify the nature of such work in the contract for services to be provided.

ToRs should be clear, with sharply defined parameters and definitions. This is particularly important for exploratory, investigative, or other “front-end”-type assignments where the scope, level of detail, and form of the requirement is most often open to different interpretations.

ToRs should be developed as soon as there is a clear indication that consultant services will be required for a project. ToRs should take into account and match internal goals and milestones for projects and activities. Preliminary ToRs can be beneficial to developing the RFP and should be finalized in time for inclusion with the RFP itself.

2. Standard Format

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

- a) **Activity Objectives and Specific Purpose of Services Required:** as clear and precise a statement as possible, describing the objectives of the overall activity and the specific
-

purpose of the consultant services required and their relation to other elements of the overall activity (if any).

- b) Nature, Scope, and Timing of the Requirement(s):** as well-defined a statement as possible, describing the scope and timing (start and completion dates, and any key milestones and major review points) of the requirement(s), along with the best possible description of the nature of the services to be performed and any significant considerations, limitations, or caveats.
- c) Inputs, Roles, and Responsibilities Expected of the Consultant:** 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 description of the main interim and final outputs to be provided by the consultant, and by any other party, including 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 B).

Appendix B – Requests for Proposal: Guidelines and Standard Format

1. Guidelines

The Request for Proposal (RFP) is a document outlining the Commission's requirements for consultant services and instructions for prospective consultants to respond to service requirements.

As the RFP is the primary basis upon which consultants form their responses, it is important that the information it provides 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 time to have ready for internal approval and issuance. Accordingly, work on assembling each RFP should normally be started as soon as the corresponding Head of Unit/Director for the activity have been appointed and the ToRs for the work have been approved.

Once responses to an RFP have been received, the Commission should carry out the consultant procurement process, as set out in this manual, in accordance with the timelines established for the specific procurement process.

2. Standard Format

RFPs should, at the minimum, provide the following information:

- a) **A description of the 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;**
- 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 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 consultant might usefully contact in order to better understand the context and/or nature of the requirement;
 - ii) the Head of Unit/Director for the work, to whom requests for clarification of requirements can be addressed; and
- 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, if any;
- 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 email 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.

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

1. Purpose

The process for evaluating proposals centers on the criteria and rating method. 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 under a competitive process.

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

- i) **Simplifying the selection process and increasing its effectiveness**, by clearly identifying which proposals can be considered “ineligible” (i.e., proposals that do not satisfy the mandatory or essential requirements or do not achieve the minimum scores), or which are deemed to be not of sufficient quality relative to others and thus can be eliminated from further consideration.
- ii) **Increasing the likelihood of receiving satisfactorily comparable proposals**, by clearly identifying what attributes will be assessed and the value placed on each, thus directly encouraging all consultant applicants to address the same issues and requirements in comparable detail.
- iii) **Providing a comprehensive and consistent basis for preparing feedback on proposals received**, as this is essential for the selection committee and often of particular interest to the unsuccessful consultants in any competitive process.
- 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.

2. Requirement to Use

Evaluation criteria should be used to assess proposals received under a competitive process. 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 criteria group) to be deemed eligible for further consideration, should be established when developing the RFP. Such 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 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 some modification, since the activity's specific attributes will be taken into account when assessing how well each criterion has been addressed by the 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.

The qualifications of key staff can only be assessed by reviewing CVs and by assessing personnel references concerning the work of the firm and/or key individual consultants which have been provided directly to the Commission by previous clients.

The proposed consulting team should be evaluated as a whole in relation to its ability to jointly deliver the activity. Team members proposed should be assessed in relation to their: i) knowledge and expertise (adequacy of education, training, and professional abilities in relation to the activity proposed); ii) experience (length and range, and match of positions held with the role proposed); and iii) contextual suitability (language and experience with the geographical areas, culture, subgroup, and conditions in which the activity will be undertaken).

4. Including Price and Proposed Budget as Evaluation Criteria

It may be difficult to estimate the cost of some activities, particularly technically complex, exploratory, high-expertise or innovative work. In such cases, RFPs should not include a set price for the work and instead allow for bidders to propose a price. This, however, does not necessarily mean that the contract must be allocated to the lowest bidder, nor that price will be the main criterion in selecting the consultant, as a lower price may indicate insufficient effort or lower quality.

A 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 in the evaluation, this fact must be made clear in the RFP, with the best possible indication of the weighting to be given it or how it will be factored into the evaluation process. Alternatively, the dedicated budget can be included in the RFP, allowing the committee to evaluate how each proposal attributes the set budget instead on who charges the least.

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 activity circumstances dictate:

<u>Generic Evaluation Criteria</u>	<u>Typical Range of Maximum-Point Rating</u>
1. Understanding of Activity Requirements	5 to 10
2. Consultant's General Experience in Subject	5 to 10
3. Suitability of Approach, and Adequacy of Workplan	25 to 40
4. Qualifications & Competence of Key Staff	40 to 60
5. Price or Proposed Budget	10 to 20
Total	100

For the policy on the conversion of currencies for the purpose of evaluation and negotiation, see section 2.18, above.

5. Conducting the Evaluation

5.1 Who Evaluates Proposals

The Head of Unit/Director determines the evaluation process and establishes an ad hoc evaluation committee comprising of at least two members, including themselves and either Secretariat staff not reporting to them (if the request for proposal does not require subject matter expertise) or at least one and no more than three members not employed by the Secretariat. Efforts should be made so that Committee members reflect the diversity of the Commission. Committee members should be familiar with the context under which the activity will occur or offer specific expertise required to adequately evaluate the proposals. Exceptions to this should be justified and documented.

Each member from national governments may consult with other colleagues from their government when evaluating the proposals; however, each country shall provide only one evaluation per proposal and have only one voice in meetings. Any country may choose to opt out of the evaluation process (e.g., if the activity is limited to another country). The chairperson should keep records of committee membership and note any modifications to the typical committee composition or the evaluation process.

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 qualified (i.e., meeting basic submission requirements) proposal received, along with the corresponding RFP and a grid to evaluate proposals. Each member then assesses and scores each proposal, using the evaluation criteria and maximum-point ratings established for each, and provides the results of their proposal evaluations to the chairperson.
- ii) The chairperson schedules a meeting of the committee as soon thereafter as is reasonable, given the number of proposals received and the complexity of the activity, and aggregates the scores and comments provided by the committee members. In cases where a single proposal meets the minimum score but stands out as highest ranking across the committee, the chairperson can inform the committee, which may choose to proceed to confirm the selection through email, without meeting.
- iii) The evaluation committee members meet to discuss the reasons for their individual evaluations, with particular emphasis on any proposals for which their scores of the same criteria vary widely. To arrive at final ratings and thus a ranking of all proposals, the committee discusses proposal quality and other appropriate considerations and can re-score proposals, if needed, until a consensus is achieved. A brief point-form summary for each proposal should be drafted that includes any notable strengths or relative weaknesses revealed among the evaluation criteria.
- iv) The chairperson confirms in writing the name of the consultant selected. This confirmation, the aggregated evaluation scores and the summaries of the strengths and shortcomings of each proposal are saved in the contract file for the activity.
- v) If no proposal receives the minimum acceptable rating, the Head of Unit/Director will determine the next steps, which can include revising the RFP, the project task criteria or the potential consultant applicant pool.

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

Guidelines

The CEC standard contract for consultant services is available as a template on the Intranet. A checklist (on the following page) can be used to assist with adapting the standard contract. When using the standard contract, please note the following:

- 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 contract text), the applicable option should be selected, and the others deleted.
- c) Following the signature page, a sample “List of Schedules” is provided. **This list identifies attachments that are to be included as part of the contract.** 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.

Questions about consultant contracts and suggestions for modification should be addressed to the Director of Administration.

CHECKLIST			
STANDARD CONTRACT			
CONSULTANT SERVICES			
Clause	Subject	Action	Done [✓]
Description of Parties	For Commission	Select and complete as indicated	
	For Consultant	Select and complete as indicated	
2.13	Insurance	Optional: If clause does not apply, specify as “Not Applicable”	
4.3, 4.4	Currency of Billing and Payment/Valuation of Currencies	Specify Canadian or US dollars	
4.5.2	Fees	Select option (a), (b), or (c)	
4.5.3	Fees (e) – (h)	Optional: leave or delete	
4.6.1	Mode of Billing and Payment	Select option (twice)	
4.7.3	For Consultants from Mexico	Optional: leave or delete	
6.1	Disputes	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> (individuals and companies)	Attach document	

Appendix E—Procurement of Consultant Services: Approvals Checklist

ACTIVITY TITLE: _____ BUDGET LINE: _____

Step	Manual	Approval Required	Approved by Head of Unit/Director	Date Approved
1.	2.3	Terms of Reference		
2.	2.4	Type of contract to be used		
3.	2.5	Basis of selecting consultants		
4.	2.6	Request for Proposals		
5.	2.7	Notification of Consulting Opportunities.		
6.	2.8	Evaluation Criteria and Process		
7.	2.9	Contract Negotiation and Document Preparation		
8.	2.10	Contract Documentation		
9.	2.11	Contract Authorization and Legal Representatives		
10.	2.12	Authorization to proceed (if needed)		
11.	2.13	Contract amendments (if needed)		
12.	2.14	Payment for Services and Reimbursement of Expenses		
13.	2.15	Terms and Timing of Payment		
14.	2.16 - 2.22	Additional Procedural Considerations		