

PARKS, RECREATION & CULTURE

REQUEST FOR QUALIFICATIONS

New Aquatic Centre - Qualification of Design Team
RFQ50125

Release date: April 22, 2016

Proposals will be received up to
3:00:00 pm local time on Thursday, May 19, 2016

Contact: Michael Hatfield
Procurement Officer
Municipality of East Hants
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EAST HANTS
We live it!

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PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS

1.1 Invitation to Respondents

The Municipality of East Hants (“East Hants”) has determined that the existing municipal pool, located in Milford, NS, is nearing the end of its operational life. Municipal Council have approved a \$17,000,000 budget (\$16,300,000 once internal tax obligations are met) for the design, construction and commissioning of a new Aquatic Centre to be located in Elmsdale, NS, as described in the accompanying documents.

In developing the initial requirements for this pool, East Hants has set out to specify a modest but attractive building that is of good quality construction, is efficient to operate and manage, meets current and future programming needs, will be easy to monitor for safety, and that will have a long operational life.

The intent of the Request for Qualifications (“RFQ”) is to identify teams of consultants and designers (Respondents) who may be best qualified, in East Hants sole opinion, to provide design services (“Services”) that will allow us meet these basic requirements, on time and on budget. The Services are further described in the RFQ Particulars (Appendix B) (the “Deliverables”). East Hants will evaluate, score and rank the responses that are received as described in Part 2 (“Evaluation”). The top-ranked Respondents who achieve the minimum thresholds specified in the RFQ Particulars (Appendix B) would be eligible to participate in a subsequent second-stage selective procurement process, if one is held, to determine which qualified Respondent, if any, would be awarded the contract for the Services.

East Hants

The Municipality of East Hants is centrally located on mainland Nova Scotia. The south-eastern portion of the Municipality (generally referred to as the ‘Corridor’) has experienced significant residential growth over the previous two decades. This region, which includes the communities of Enfield, Elmsdale, Lantz, Milford and Shubenacadie is the most urbanized part of the Municipality. The most densely populated area is along two key transportation routes running from Halifax to Truro (Hwy 102 & Hwy 2) and from Halifax to Windsor (Hwy 101 & Hwy 1)

QUICK FACTS ON EAST HANTS

Approximately 466,426 acres (188,760 hectares) or 1790 square kilometers

Population of approximately 21,500 people in 8,755 households

Parks, Recreation and Culture

The Department has primarily operated a community development model, supporting local community recreation organizations in the delivery of sport and social activities. The Municipality has operated an indoor pool since 1967 and until recently been the only direct recreation service provided. Based on Community feedback there is a need for investment in additional program services, park development and a new Aquatic Centre designed to meet the needs of the growing community. Investment in these areas and tourism assets has had impact in the Municipality’s ability to increase residential, business and visitor interest.

1.2 RFQ Contact

For the purposes of this procurement process, the “RFQ Contact” will be:

Michael Hatfield
Procurement Officer
Municipality of East Hants



Telephone: (902) 883-7098, Ext 232

Email: mhatfield@easthants.ca

Respondents and their representatives are not permitted to contact any employees, officers, agents, elected or appointed officials or other representatives of East Hants, other than the RFQ Contact, concerning matters regarding this RFQ. Failure to adhere to this rule may result in the disqualification of the Respondent and the rejection of the Respondent's response.

1.3 Prequalification Process

Responses will be evaluated in accordance with the evaluation process set out in Part 2 of the RFQ. Based on the evaluation of responses, certain Respondents will be selected for inclusion on a prequalified supplier list of suppliers that are eligible to participate in a potential invitational second-stage competitive process for the potential provision of the Deliverables to East Hants.

1.4 RFQ Timetable

| | |
|-----------------------------------|--|
| Issue Date of RFQ | April 22, 2016 |
| Site Visit / Pre-Response Meeting | May 2, 2016 |
| Deadline for Questions | 3:00PM, local Halifax time, May11, 2016 |
| Deadline for Issuing Addenda | May 12, 2016 |
| Submission Deadline | 3:00PM, local Halifax time, May 19, 2016 |
| Rectification Period | 5 business days |

The RFQ timetable is tentative only, and may be changed by East Hants at any time.

East Hants will be hosting a non-mandatory pre-response meeting on Monday, May 2, 2016 at 9:00AM in the Lloyd E. Matheson Centre located at 15 Commerce Court in Elmsdale, Nova Scotia. Please confirm if your company will be attending by sending an email to procurement@easthants.ca.

1.5 Submission of Information

1.5.1 Responses to be submitted at Prescribed Location

Responses must be submitted at:

Civic: Municipality of East Hants
Lloyd E. Matheson Centre
15 Commerce Court
Elmsdale, NS B2S 3K5

Mail: Municipality of East Hants
230-15 Commerce Court
Elmsdale, NS B2S 3K5

Attention: Procurement Officer, RFQ50125

1.5.2 Responses to be submitted on Time

Responses must be submitted at the location set out above on or before the Submission Deadline. Subject to the process described below, responses submitted after the Submission Deadline will be rejected.

A Respondent may, at its option, email the RFQ Contact prior to the Submission Deadline with delivery details, including the anticipated arrival time of its response. If a response does not arrive on or before the Submission Deadline, East Hants may provide those Respondents who have given such prior notice one additional Business Day to effect the delivery of their responses. The Submission Deadline will be deemed to be adjusted accordingly for the purpose of accepting those responses. For the purposes of this Section, "Business Day" means any working day

between 8:30 a.m. and 4:30 p.m., local time at the Prescribed Location, Monday to Friday inclusive, but excluding statutory and other holidays on which East Hants is closed for business.

1.5.3 Responses to be submitted in Prescribed Format

Respondents should submit four hard copies of their response and one electronic copy in Portable Document Format (PDF), submitted on either a disk or USB key enclosed in a sealed package. Respondents should ensure that all copies they submit, including electronic copies, are identical in terms of content. If there is a conflict or inconsistency between the hard copy and the electronic copy of the response, the hard copy of the response will prevail. Responses should be prominently marked with the RFQ title and number (see RFQ cover), with the full legal name and return address of the Respondent.

1.5.4 Amendment of Responses

Respondents may amend their responses prior to the Submission Deadline by submitting the amendment in a sealed package prominently marked with the RFQ title and number and the full legal name and return address of the Respondent to the location set out above. Any amendment should clearly indicate which part of the response the amendment is intended to amend or replace.

1.5.5 Withdrawal of Responses

At any time throughout the RFQ process, a Respondent may withdraw a submitted response. To withdraw a response, a notice of withdrawal must be sent to the RFQ Contact and must be signed by an authorized representative of the Respondent. East Hants is under no obligation to return withdrawn responses.

[End of Part 1]



PART 2 - EVALUATION

2.1 Stages of Evaluation

East Hants will conduct the evaluation of the Qualifications provided by the Respondent in the following stages:

2.2 Stage I - Mandatory Submission Requirements

Stage I will consist of a review to determine which responses comply with all of the mandatory submission requirements. If a response fails to satisfy all of the mandatory submission requirements, East Hants will issue the Respondent a rectification notice identifying the deficiencies and providing the Respondent an opportunity to rectify the deficiencies. If the Respondent fails to satisfy the mandatory submission requirements within the Rectification Period, its response will be excluded from further consideration. The Rectification Period will begin to run from the date and time that East Hants issues a rectification notice to the Respondent. The mandatory submission requirements are as set out below.

2.2.1 Submission Form (Appendix A)

Each response must include a Submission Form (Appendix A) completed and signed by an authorized representative of the Respondent.

2.2.2 Other Mandatory Submission Requirements

The Respondent must include the following in their response:

- Proof of incorporation from the jurisdiction in which the Respondent is primarily incorporated
- Business Number with the Registry of Joint Stocks of Nova Scotia for the Respondent, if so registered

2.3 Stage II - Evaluation

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

2.3.1 Mandatory Technical Requirements

East Hants will review the responses to determine whether the mandatory technical requirements as set out in Section C of the RFQ Particulars (Appendix B) have been met. Questions or queries on the part of East Hants as to whether a response has met the mandatory technical requirements will be subject to the verification and clarification process set out in Part 3.

2.3.2 Rated Criteria

East Hants will evaluate each qualified response on the basis of the rated criteria as set out in Section D of the RFQ Particulars (Appendix B).

2.4 Ranking and Selection

2.4.1 Ranking of Respondents

Based on the evaluation of the responses in Stage II, East Hants intends to select the **three** highest scoring Respondents who meet the minimum threshold (Appendix B) for inclusion on a prequalified supplier list for eligibility to participate in a potential invitational second stage competitive process for the procurement of the Deliverables.



Although it is the intention of East Hants to include the **three** highest scoring Respondents on the prequalified supplier list, East Hants may choose to include additional Respondents if their total score is within twenty percent (20%) of the highest scoring proponent or may choose to include fewer Respondents by excluding any Respondent with a total score that is not within twenty percent (20%) of the highest scoring proponent.

In the event that there is only one Respondent that meets the minimum threshold or if there is a difference of greater than twenty percent (20%) between the total score of the highest scoring Respondent and the total score of the second-highest scoring Respondent, East Hants may proceed with negotiations to finalize the contract terms and pricing with the single prequalified Respondent. Whether this RFQ process results in an invitational second stage competitive process or the commencement of negotiations with a single prequalified Respondent, both alternatives will introduce at a minimum the terms and conditions specified in East Hants' Independent Contractor Agreement (Inclusion D) which would be expected to be applied wholly or substantively to any contract for the Deliverables.

[End of Part 2]



PART 3 - TERMS AND CONDITIONS OF THE RFQ PROCESS

3.1 General Information and Instructions

3.1.1 Respondents to Follow Instructions

Respondents should structure their responses in accordance with the instructions in this RFQ. Where information is requested in this RFQ, any response made in a response should reference the applicable section numbers of this RFQ.

3.1.2 Responses in English

All responses are to be in English only.

3.1.3 No Incorporation by Reference

The entire content of the Respondent's response should be submitted in a fixed form; the content of websites or other external documents referred to in the Respondent's response, but not attached in full, will not be considered to form part of its response.

3.1.4 References and Past Performance

In the evaluation process, East Hants may consider information provided by the Respondent's references and may also consider the Respondent's past performance or conduct on previous contracts with East Hants or other institutions.

3.1.5 Information in RFQ Only an Estimate

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

3.1.6 Respondents to Bear Their Own Costs

The Respondent will bear all costs associated with or incurred in the preparation and presentation of its response, including, if applicable, costs incurred for interviews or demonstrations.

3.1.7 Response to be Retained by East Hants

East Hants will not return the response or any accompanying documentation submitted by a Respondent.

3.1.8 Trade Agreements

Respondents should note that procurements falling within the scope of Chapter 5 of the Agreement on Internal Trade and/or other applicable trade agreements are subject to those trade agreements but that the rights and obligations of the parties will be governed by the specific terms of this RFQ.



3.1.9 No Guarantee of Volume of Work or Exclusivity of Contract

This RFQ process will not result in any commitment by East Hants to purchase any goods or services from any Respondent. Although East Hants plans to conduct an invitational second-stage competitive process for the procurement of the Deliverables, it is under no obligation to do so and East Hants may, in its sole and absolute discretion, choose not to proceed with a second-stage competitive process for the procurement of the Deliverables. East Hants makes no guarantee of the value or volume of Deliverables that may be required.

3.2 Communication after Issuance of RFQ

3.2.1 Respondents to Review RFQ

Respondents should promptly examine all of the documents comprising this RFQ, and may direct questions or seek additional information in writing by email to the RFQ Contact on or before the Deadline for Questions. No such communications are to be directed to anyone other than the RFQ Contact. East Hants is under no obligation to provide additional information, and East Hants is not responsible for any information provided by or obtained from any source other than the RFQ Contact. It is the responsibility of the Respondent to seek clarification from the RFQ Contact on any matter it considers to be unclear. East Hants is not responsible for any misunderstanding on the part of the Respondent concerning this RFQ or its process.

3.2.2 All New Information to Respondents by Way of Addenda

This RFQ may be amended only by addendum in accordance with this section. If East Hants, for any reason, determines that it is necessary to provide additional information relating to this RFQ, such information will be communicated to all Respondents by addendum, which will be issued in the same manner as this RFQ. Each addendum forms an integral part of this RFQ and may contain important information, including significant changes to this RFQ. Respondents are responsible for obtaining all addenda issued by East Hants. In the Submission Form (Appendix A), Respondents should confirm their receipt of all addenda by setting out the number of each addendum in the space provided.

3.2.3 Post-Deadline Addenda and Extension of Submission Deadline

If East Hants determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, East Hants may extend the Submission Deadline for a reasonable period of time.

3.2.4 Verify, Clarify and Supplement

When evaluating responses, East Hants may request further information from the Respondent or third parties in order to verify, clarify or supplement the information provided in the Respondent's response, including but not limited to clarification with respect to whether a response meets the mandatory technical requirements set out in Section C of the RFQ Particulars (Appendix B). East Hants may revisit and re-evaluate the Respondent's response or ranking on the basis of any such information.

3.3 Notification and Debriefing

3.3.1 Notification to Top-Ranked Respondents

The top-ranked Respondents selected by East Hants to be included in the prequalified supplier list in accordance with the process set out in the Evaluation (Part 2) will be notified by East Hants in writing.

3.3.2 Notification to Other Respondents

Once the selected Respondents have been notified by East Hants, the remaining Respondents will be notified and the outcome of the RFQ process will be posted on the Province of Nova Scotia's Procurement Web Portal.

3.3.2 Debriefing

Respondents may request a debriefing after receipt of a notification of the outcome of the RFQ process. All requests must be in writing to the RFQ Contact and must be made within thirty (30) days of such notification. The intent of the debriefing information session is to aid the Respondent in presenting a better response in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process or its outcome.

3.3.3 Supplier Complaint Process

If a Respondent wishes to file a complaint regarding the RFQ process, it should provide written notice to East Hants' Municipal Clerk in accordance with East Hants' Supplier Complaint Process as set out in East Hants' Procurement Policy.

3.4 Conflict of Interest and Prohibited Conduct

3.4.1 Conflict of Interest

East Hants may disqualify a Respondent for any conduct, situation or circumstances, determined by East Hants, in its sole and absolute discretion, to constitute a Conflict of Interest. For the purposes of this RFQ, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

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

3.4.2 Disqualification for Prohibited Conduct

East Hants may disqualify a Respondent, rescind an invitation to participate or terminate a contract subsequently entered into if East Hants determines that the Respondent has engaged in any conduct prohibited by this RFQ.

3.4.3 Prohibited Respondent Communications

Respondents must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Submission Form (Appendix A).



3.4.4 Respondent Not to Communicate with Media

Respondents must not at any time directly or indirectly communicate with the media in relation to this RFQ or any agreement entered into pursuant to this RFQ without first obtaining the written permission of the RFQ Contact.

3.4.5 No Lobbying

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

3.4.6 Illegal or Unethical Conduct

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

3.4.7 Past Performance or Past Conduct

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

- (a) illegal or unethical conduct as described above;
- (b) the refusal of the supplier to honour its submitted pricing or other commitments; or
- (c) any conduct, situation or circumstance determined by East Hants, in its sole and absolute discretion, to have constituted an undisclosed Conflict of Interest.

3.5 Confidential Information

3.5.1 Confidential Information of East Hants

All information provided by or obtained from East Hants in any form in connection with this RFQ either before or after the issuance of this RFQ

- (a) is the sole property of East Hants and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFQ and the performance of any subsequent contract for the Deliverables;
- (c) must not be disclosed without prior written authorization from East Hants; and
- (d) must be returned by the Respondent to East Hants immediately upon the request of East Hants.

3.5.2 Confidential Information of Respondent

Respondents are advised that East Hants is governed by Nova Scotia's *Freedom of Information and Protection of Privacy Act (FOIPOP)* and any information submitted to East Hants in response to this RFQ may be subject to disclosure under *FOIPOP*. Respondents may identify any confidential information in their responses or any accompanying documentation and are advised to consult with their own legal advisors regarding the appropriate way to identify

such information. East Hants will make reasonable efforts to safeguard confidential information, subject to its disclosure requirements under *FOIPOP* or any disclosure requirements imposed by law or by order of a court or tribunal. Respondents are advised that their responses will, as necessary, be disclosed, on a confidential basis, to advisers retained by East Hants to advise or assist with the RFQ process, including the evaluation of responses. Respondents are further advised that East Hants may make public the names of any or all Respondents to this RFQ process and intends to publish, should there be a second-stage competitive process for the Deliverables, the name of the successful Respondent and the total value of any contract entered into with the successful Respondent. If a Respondent has any questions about the collection and use of information pursuant to this RFQ, questions are to be submitted to the RFQ Contact.

3.6 Procurement Process Non-binding

3.6.1 No Contract A and No Claims

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

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

3.6.2 Cancellation

East Hants may cancel or amend the RFQ process without liability at any time.

3.7 Governing Law and Interpretation

These Terms and Conditions of the RFQ Process (Part 3):

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

[End of Part 3]

APPENDIX A – SUBMISSION FORM

1. Respondent Information

| | |
|---|--|
| Please fill out the following form, naming one person to be the Respondent's contact for the RFQ process and for any clarifications or communication that might be necessary. | |
| Full Legal Name of Respondent: | |
| Any Other Relevant Name under which Respondent Carries on Business: | |
| Street Address: | |
| City, Province/State: | |
| Postal Code: | |
| Phone Number: | |
| Fax Number: | |
| Company Website (if any): | |
| Respondent Contact Name and Title: | |
| Respondent Contact Phone: | |
| Respondent Contact Fax: | |
| Respondent Contact Email: | |

2. Acknowledgment of Non-binding Procurement Process

The Respondent acknowledges that the RFQ process will be governed by the terms and conditions of the RFQ, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal, legally binding bidding process (and for greater certainty, does not give rise to a Contract A bidding process contract), and that no legal relationship or obligation regarding the procurement of any good or service will be created between East Hants and the Respondent unless and until East Hants and the Respondent execute a written agreement for the Deliverables pursuant to a subsequent invitational second-stage procurement process.

3. Ability to Provide Deliverables

The Respondent has carefully examined the RFQ documents and has a clear and comprehensive knowledge of the Deliverables required. The Respondent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFQ.

4. Addenda

The Respondent is deemed to have read and taken into account all addenda issued by East Hants prior to the Deadline for Issuing Addenda. The Respondent is requested to confirm that it has received all addenda by listing the addenda numbers, or if no addenda were issued by writing the word "None", on the following line:

If this section is not completed, the Respondent will be deemed to have received all posted addenda.

5. No Prohibited Conduct

The Respondent declares that it has not engaged in any conduct prohibited by this RFQ.

6. Conflict of Interest

The Respondent has reviewed the definition of the term “Conflict of Interest” in section 3.4.1 of the RFQ. If the box below is left blank, the Respondent will be deemed to declare that (a) there was no Conflict of Interest in preparing its response; and (b) there is no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFQ.

Otherwise, if the statement below applies, check the box.

- ☐ The Respondent declares that there is an actual or potential Conflict of Interest relating to the preparation of its response, and/or the Respondent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFQ.

If the Respondent declares an actual or potential Conflict of Interest by marking the box above, the Respondent must set out below details of the actual or potential Conflict of Interest:

Respondents should disclose the names and all pertinent details of all individuals (employees, advisers, or individuals acting in any other capacity) who (a) participated in the preparation of the response; **AND** (b) were employees of East Hants within twelve (12) months prior to the Submission Deadline:



7. Disclosure of Information

The Respondent consents to the collection, use and disclosure of information as contemplated under the RFQ. The Respondent hereby agrees that any information provided in this response, even if it is identified as confidential, may be disclosed in accordance with *FOIPOP* or any disclosure requirements imposed by law or by order of a court or tribunal. The Respondent acknowledges that East Hants may make public the name of any and all Respondents and intends to publish the name of the successful Respondent and, if successful in the subsequent invitational second-stage procurement process, the total value of any contract entered into with the successful Respondent.

Signature of Witness

Signature of Respondent Representative

Name of Witness

Name of Respondent Representative

Title of Respondent Representative

Date

I have the authority to bind the respondent.



APPENDIX B - RFQ PARTICULARS

A. THE DELIVERABLES

East Hants plans to construct a new Aquatic Centre and will require the services of a qualified team of designers and consultants, collectively known as the Respondent, to provide Services which would be necessary to complete the design, construction, and commissioning of such a complicated facility. Such Services, without limitation, will include:

- Detailed Design and Engineering Services;
- Cost estimating and value engineering;
- Tendering Support Services;
- Construction Support, including Inspection, Payment Certification and Quantity Surveying;
- Commissioning Support Services; and
- Other Services performed by the role of *Consultant* in the Canadian Construction Documents Committee (CCDC) 2 (2008) Stipulated Price Contract or other such contract we may choose to use for construction.

East Hants believes that the design of an Aquatic Centre will require a diverse array of knowledge, expertise and experience in order to get the operational layout correct so that it supports current and future programming needs, to specify a quality tank and to design the appropriate pool mechanical system which will have long and problem-free life span and then to fit these within a modern, attractive and sustainable building envelope. This is the challenge to Respondents who may choose to respond to the RFQ; to show us that your team has what it takes to bring these elements together in a comprehensive design that can then be built for the what's left in the budget after your fees, other typical fees, and contingency are accounted for, and to demonstrate the professional accreditation, experience, expertise and competence of the proposed team.

East Hants has done considerable preliminary work which should demonstrate to potential Respondents where our design intentions are headed. We have tried to provide an overview of what the facility will look like (broad strokes of massing and orientation), what size and shape the main tank and any auxiliary tanks would be, the entry, circulation, access control and service access areas, some consideration of the palette of materials and transparency, and location of building systems and other primary spaces (locker rooms, viewing, staff areas) as a starting point for design. This document is labelled as Inclusion A.

We have also included room data sheets that speak to the function of areas, some design data, mechanical and electrical considerations, materials, furniture and finishes, access, and special requirements. We have established an internal steering committee to continue to talk through these early design decisions so that we are in a position to provide guidance to the successful Respondent.

Rated Criteria, Part D, describes the information which the Respondent is expected to include in their response and upon which their response will be evaluated to determine qualification. The Respondent is free to include other information about their team they feel is relevant.

The following documents are included for your consideration in developing your response:

Inclusion A, report entitled "Functional Program and Fit Test for a New Aquatic Facility in East Hants"

Inclusion B, supplemental comments by East Hants with respect to Inclusion A



Inclusion C, geotechnical reports prepared on behalf of the property owner, Choice Properties, which are provided for informational purposes only.

Inclusion D, Independent Contractor Agreement

B. MATERIAL DISCLOSURES

The material disclosures that apply to this RFQ are set out below.

The land on which construction of the new Aquatic Centre will occur belongs to Choice Properties and use of the land is expected to be provided under a ground lease between the land owner and East Hants, the terms of which have yet to be fully fleshed out. Any details of the lease agreement which might affect the design costs should be available in time for the request for proposals (RFP) process that may follow this RFQ.

The land owner has other development opportunities on the site which may occur concurrently with our project. We are unaware of any specific constraints or opportunities that this may present for designers or constructors, though the increased activity on the site may make certain logistical activities such as material deliveries more challenging.

East Hants' expectation is that, at the end of the design process, the construction work, including any civil or other work necessary to complete and commission the Aquatic Centre, will be publicly tendered as one package. East Hants may identify certain items through the design process which it may be in East Hants' best interests to deal with separately. This may require some modest support, specifications or sketches, to support a small number of separate competition packages.

The Respondent, as our *Consultant*, is to act as the Owner's representative and not as an agent of the Constructor. We expect that the consultant will have an experienced site superintendent on site during the entirety of the construction phase.

The design schedule will be driven, in part, by the needs of East Hants to advance construction and to be able to take advantage of market conditions and timing. This may include design activities which allow for sooner work on site or for the pre-order of long-lead items.

Respondents will be asked to consider market conditions when designing for the new Aquatic Centre. This may include, without limitation, consideration of exchange rates, labour availability, material and labour costs, and other factors which might affect our ability to meet budget or to achieve schedule.

The pre-conditions that will apply to any invitational second-stage competitive process are set out below:

Workers' Compensation Board of Nova Scotia (WCBNS) coverage is required by East Hants for any contractor or consultant it employs, regardless of the company's normal status under the *Workers' Compensation Act (Act)*. In order to qualify for award in any invitational second-stage competitive process, the Respondent will be required to provide either:

- proof that the Respondent is currently registered with the Workers' Compensation Board of Nova Scotia (the Respondent will be required to maintain good standing with WCBNS as specified in any resulting contract); or
- the Respondent must provide a declaration that the Respondent will register with WCBNS if awarded work as the result of the second-stage competitive process and that it will maintain good standing with WCBNS as specified in any resulting contract).

It is recommended, but not required unless the company would normally be required to obtain coverage under the *Act*, that the Respondent make similar provisions for WCB coverage in their agreements with the members of their team. East Hants will not be responsible in any way for employees of the Respondent's team members, subcontracted companies, or individual subcontractors or resources employed by the Respondent who may not be so covered. In

the case of a joint venture, the requirement for WCB coverage will extend to any legal entity with whom East Hants may potentially form a contract.

Any Respondent invited to compete in a subsequent invitational second-stage competitive process will be required to provide the following:

- Declaration that the Respondent can and will meet the insurance requirements specified in the RFP (the successful Respondent to the any subsequent second-stage RFP will be required to provide a Certificate of Insurance which provides proof of such coverage when requested to by East Hants)
- Declaration they can and, if successful, will obtain Errors and Omissions insurance in the amount specified in the RFP (a minimum of \$5,000,000 has been suggested by our insurer though higher limits, due to the value of the project would be preferred); and
- Declaration they can and, if successful, will obtain Commercial General Liability coverage to \$5,000,000 in minimum coverage.

Unless otherwise approved, the design team members and resources specified in the Respondent's response to this RFQ must be carried forward when responding to any invitational second-stage competitive process. A prequalified Respondent may request to make changes to their qualified team, but such changes must result in equal or better qualification, in East Hants' sole opinion, than was originally identified. If East Hants believes the changes proposed by the Respondent will affect the qualifications of the Respondent, East Hants may rescind their invitation to any second-stage competitive process, if one has been extended.

C. MANDATORY TECHNICAL REQUIREMENTS

The mandatory technical requirements that apply to this RFQ, if any, are set out below.

- Identification of the legal entity which will represent the Respondent in any future contract. Our preference is for Respondents to be represented by a single legal entity; however, if the Respondent's team is a joint venture, describe the proposed legal and working relationships of the joint venture and the benefits to be gained by the formation of the joint venture in your response to section D2
- Respondent's team must contain a component or components whose primary expertise includes the operation, mechanical design and implementation of integrated pool systems. We want to make sure that tanks, filtration systems, sanitization systems, pool heating systems and the HVAC systems of the building work together properly
- Respondent's team must contain an architect with experience with aquatic centres of this nature, the extent of that experience being a consideration for the rated criteria

D. RATED CRITERIA

The following is an overview of the categories and weighting for the rated criteria of the RFQ. Respondents who do not meet a minimum threshold score for any category will not proceed to the next stage of the evaluation process.

| Rated Criteria Category | Weighting (Points) | Minimum Threshold |
|--|--------------------|-------------------|
| D.1 Description of the Respondent's team and Methodology | 40 | 28 |
| a. Description of the Team | 5 | N/A |
| b. Description of Design Methodology | 10 | N/A |
| c. Tendering Support | 10 | N/A |
| d. Construction Support | 10 | N/A |

| | | |
|------------------------------------|------------|-----------|
| e. Commissioning | 5 | N/A |
| D.2 References and Examples | 25 | 17 |
| a. Responses of References | 5 | N/A |
| b. Examples | 20 | N/A |
| D.3 Key Qualifications | 35 | 25 |
| a. Pool Expertise | 15 | N/A |
| b. Architect | 15 | N/A |
| c. General Design Expertise | 5 | N/A |
| Total Points | 100 | 70 |

SUGGESTED RESPONSE CONTENT FOR THE EVALUATION OF RATED CRITERIA

D.2 Description of the Respondent's Team

It is anticipated that few companies will have, in house, all of the capabilities and expertise necessary to be able to design and support the construction of an Aquatic Centre. If a firm will have to obtain or subcontract additional resources from other consultants or experts, we need to understand what these relationships will look like and who will be involved.

Each Respondent should provide the following in its response:

- (a) A description of the Respondent's team, including:
 - a. A description of each company that will form part of the team, including their primary line of business, an overview of their resources (number and type of employees, specialized knowledge or database and technical equipment);
 - b. An organizational chart which describes the expected reporting structure within the Respondent's team;
 - c. Breakdown of the expertise or discipline for which each company will be providing their services (civil works, mechanical, electrical, pool mechanical, natatorium consultant, etc.);
 - d. List of the names, job titles, seniority level or experience level of personnel that each team member expects to commit to the design Services and to what degree. While we understand that at this time it is difficult to know exactly what resources will be available, it is equally important that we understand the quality of the team being brought forward for consideration; and
 - e. Location of each company including registered business address, primary telephone number and any location from which a company working on this project may dispatch personnel.
- (b) A description of the Respondent's design methodology when approaching such projects, including the following. The Respondent is free to address their comments specifically to this project, but they are not required to.

- a. Discussion of quality and sustainability of materials and methods, including comments on operational efficiency, lifespan of completed construction, finishes and fixtures, glazing and use of light, and other such topics which will indicate how the Respondent might approach our Aquatic Centre design and construction;
 - b. Discussion of design process, including expectations the Respondent has from their client during the process, the typical stages of design, the output of design (drawings and specifications), how collaboration occurs, especially if primary offices are not local to Nova Scotia (teleconferencing, file transfer, meetings, etc.);
 - c. Discussion of administration for the team, including work tracking and invoicing, safety administration, reporting and documentation, etc.;
 - d. Discussion of issue management and quality control. In particular, discuss internal design reviews, engineering sign-off and how you typically approach dispute resolution, client review and client acceptance;
 - e. Discuss energy modeling, in particular with respect to glazing, moisture, heating and cooling. We want to ensure that meet any applicable standards, but that we do so in a practical way, not just by simply specifying requirements well in excess of the standard;
 - f. Discuss sustainability. We are not looking for LEED certification or to win design awards; we want a practical, efficient and sustainable Aquatic Centre;
 - g. Discuss HVAC design, in particular with respect to the unique nature of natatoriums and integrated building systems. We want to verify that the Respondent's team recognizes the difficulties of designing this type of structure, in particular in cold weather climates;
 - h. Discussion of how the team will address budget, lifecycle, cost control, and value engineering, including how and when they would develop cost estimates (Class D to A); and
 - i. Any other topics with respect to design you may want East Hants to consider.
- (c) A discussion of how the Respondent typically approaches Tendering Support for a project, including the following. The Respondent is free to address their comments specifically to this project, but they are not required to.
- a. Capability to develop individual scopes of work to support East Hants tendering requirements. ;
 - b. Capability and capacity to respond to requests for technical clarification during tendering, including typical response time and scope of what is included in the clarification;
 - c. Approach, capability and capacity to evaluate and approve alternative products;
 - d. Capability and capacity to participate in evaluation of responses to Tenders; and
 - e. Any additional information about how the Respondent might approach Tendering Support of which they may wish East Hants to be aware.
- (d) A discussion of how the Respondent typically approaches Construction Support in projects of this size and scope. The Respondent is free to address their comments specifically to this project, but they are not required to. Note that we believe that the Respondent will have to have at least one representative on site each day during the construction process. Discuss, at minimum, the following:
- a. Schedule and coordination;



- b. Determining and recording final finishes (paint colour, textures, materials, etc.);
 - c. Change orders and change directives during construction;
 - d. Test and measurement, including verification of material quality, quantities and amounts;
 - e. Record drawings and specifications, including shop drawings, mark-ups, updates, clarifications, and red-lines;
 - f. Issue managements and dispute resolution on site;
 - g. Certifying payments;
 - h. Inspection;
 - i. Deficiencies; and
 - j. Determining substantial completion.
- (e) A discussion of how the Respondent typically approaches Commissioning in projects of this size and scope. The Respondent is free to address their comments specifically to this project, but they are not required to. Discuss, at minimum, the following:
- a. Verification that HVAC, plumbing controls, pool mechanical systems, electrical, lighting, building envelope and life safety systems are functioning as required, both from a design and operational efficiency perspective;
 - b. Specifications for testing, adjusting and balancing;
 - c. Verifying corrections are made to systems and equipment that are not operating as specified or as necessary to make the building operational;
 - d. Training of East Hants' staff on mechanical and other systems;
 - e. Cleaning and deficiencies list;
 - f. Review and acceptance of the operation manual for the Aquatic Centre and systems;
 - g. Finalizing record drawings;
 - h. Review and acceptance of warranty manual for building;
 - i. Coordination around preparing to open, if any;
 - j. Warranty support; and
 - k. Any additional topics related to Commissioning the Respondent would like to address.

D.3 References and Experience

The References and Experience identified in this section will help us understand what the likely outcome of a design process would be based upon what work the Respondent's team or Respondent's team members have completed in their past. It is critical that Respondents provide References and Experience which are as close to our project as possible and that the examples be current, modern and representative of the entire team.

- (a) Each Respondent is requested to provide at least three (3) references from clients who have obtained services similar to those requested in this RFQ from the Respondent in the last **four (4)** years. Our evaluation



will be based on the responses we receive from contacting one or more of the listed references. Our preference is to receive references who:

- a. Can speak to the quality, professionalism and capabilities of the team being put forward by the Respondent;
- b. Have completed commercial pool and aquatic centre projects using the services of the Respondent, preferably projects that are similar in size and scope to what East Hants is planning;
- c. Are located in Canada, preferably in Nova Scotia, or where the climate conditions are similar; and who
- d. Represent public institutions, preferably municipal government.

We recognize that the Respondent may be putting forward a team which, at least at this point, have never worked together before or where only certain members have previously worked together. We also recognize that it may be difficult to find references which respond to each of the preferences specified above. In such cases, Respondents should provide a reasonable number of references to support their team members in addition to three (3) references which support their own capabilities.

- (b) Each Respondent must provide examples, a selection of projects which demonstrate their team's capabilities to complete an aquatic centre of this size and scope. Our evaluation will be based on, in our sole opinion, the quality of the work as presented, the appropriateness of the examples to our requirements, how well the examples illustrate the capacity and capability of the team, and any other information provided with the example or that may be discovered by contacting the current facility manager. Our preference is to see examples of work which:
 - a. Showcase the design capabilities of the Respondent's team, in particular the legal entity representing the Respondent, the architect, the primary engineering resource(s), and the pool expert. Include, where possible, some examples where the team has previously worked together;
 - b. Are close in overall facility area to our building;
 - c. Contain similar amenities and support similar programs to what we are planning or currently offering;
 - d. Are located in Canada, preferably in Nova Scotia, or where the climate conditions are similar; and
 - e. Must include the following information for each example:
 - i. Name of the institution or owner;
 - ii. Current contact information (phone number and email address) for the current facility manager;
 - iii. Location of the facility (city, state/province);
 - iv. Total actual cost of the facility;
 - v. Estimated or budgeted cost;
 - vi. Cost or approximate percentage of total cost for Respondent's fees;
 - vii. Length of time project took; and
 - viii. Indicate whether project was on-time. If late, was there a reason?



Respondents may use projects provided as examples of experience as references as well.

D.4 Key Qualifications

East Hants recognizes that it is critical that the Respondent's team includes a qualified architect and an experienced pool expert. Where the "References and Examples" section tries to evaluate the team being brought forward, this section concentrates on trying to understand the specific skills that the architect and the pool expert would bring to the table for this project, as well as to identify the general design specifications which will be used to inform the design process.

(a) Architect

- a. Who is the principle architect(s) for the firm, will they be involved in our project and to what extent (what percentage of time allocated) will they be involved?
- b. How many certified architects are employed in the company? How many, if any, specialize in commercial structures, municipal buildings (pools in particular), and how many, if any, have specific pool experience in our region?
- c. Provide the résumé(s) of the architect(s) and other staff that would work on our project, highlighting examples of work similar to ours from the past four (4) years;
- d. Does your firm have policies for staff retention, pay equity, equal opportunity, work life balance that you would like to highlight?
- e. What is your reason for wanting to be part of this Respondent's team?

(b) Pool Expertise (if more than one expert is part of the team, provide responses for all experts)

- a. Who is the principle pool expert for the firm and what is their specialisation? Will they be involved in our project and to what extent (what percentage of time allocated) will they be involved?
- b. How many pool experts are employed in the company and what disciplines do they represent? How many, if any, have specific pool experience in our region?
- c. Provide the résumé(s) of the pool experts(s) and other staff that would work on our project, highlighting examples of work similar to ours from the past four (4) years;
- d. Does your firm have policies for staff retention, pay equity, equal opportunity, work life balance that you would like to highlight?
- e. What is your reason for wanting to be part of this Respondent's team?

- (a) General design expertise. The design will need to conform to appropriate Federal and Provincial codes and guidelines including those related to energy; however, LEED design is not anticipated. The Respondent's team will rely on their demonstrated experience and expertise in indoor pool design. Summarize the key design components (building envelope, mechanical, pool tank, etc.) and specify the codes and standards which will be considered during design. The list doesn't have to be exhaustive, but should be representative of the major building components.

REQUESTED RESPONSE CONTENT FOR INFORMATION PURPOSES ONLY

The following questions are for **informational use** and the responses will not impact the outcome of this process but will assist East Hants to determine next steps of the process:

E.1 Cost Model

East Hants would be looking for a lump sum price to complete the design, tendering support, construction support and commissioning support as part of any invitational second-stage competitive process. Is the information provided in this RFQ sufficient in order for the Respondent to cost this project effectively? If not, what additional information does the Respondent need? Does the Respondent have any comments on the budget specified for this project?

E.2 Contract

East Hants has included our standard contract form used for such work. Are there any comments on the terms of this contract which the Respondent would like to make?

The intent of the "Information Collected" clauses are to allow East Hants to use the information collected and developed by the Respondent's team in order to do the work of the Municipality. In particular, we want the right to use and modify drawings to facilitate extensions, renovations, repairs or other such work on the Aquatic Centre that may be required in the future without additional permissions. We expect to be able to rely on the work done by the Respondent and to be able use the work we paid for in the manner which we have specified, but we do not expect for the Respondent to be responsible for changes to their work over which they have no control.

East Hants will not accept any contract clauses which seek to limit the liability of the Respondent's team to anything less than the limits of the insurance coverage specified in the contract for the design services (currently requesting \$5,000,000 in minimum coverage). Comments?



INCLUSION A:

The report “Functional Program and Fit Test for a new Aquatic Facility in East Hants” is available separately for download.



INCLUSION B:

The report "Functional Program and Fit Test for a new Aquatic Facility in East Hants" (Report) provides a high-level overview of what the new Aquatic Centre may look like based on expertise provided by David Hewko and based on the public input we received. Subsequent discussions at East Hants have underscored some additional considerations for the end Aquatic Centre design. This document is to be read in conjunction with the Report and represents changes or additions in scope we are considering for the design:

Space allocation changes:

- Remove sauna requirement;
- Locate first aid room to location closer to where sauna is currently represented;
- Add office space for maintenance operator (14 m²), likely close to pool mechanical room;
- Access control point at reception;
- Janitor's closet on second floor (from undeveloped space footprint);
- Hallway to separate Multi-purpose / Lounge space from traffic going to Pool Viewing Gallery; and
- Sufficient space for all electrical, door access controls, internal communications, and some IT network equipment (to be confirmed during design).

Additional design considerations:

- Signage, both exterior signage and interior directional signage: Such signage may include active video terminals;
- Back-up power: The design will need to incorporate enough emergency power capacity to protect critical building systems until power is restored (not to remain operational). The extent of that protection will need to be developed in collaboration with East Hants staff;
- Privacy: Where many areas may be separated by glass or where areas are public areas are directly adjacent to operational areas, consideration must be given to sound deadening and line of sight;
- Dry areas may still come in contact with wet: Dry change areas should be constructed of materials suitable to a wet environment;
- All panels for washroom stalls and changing areas to be wall-hung (no supports in the floor);
- Transitions between floor and walls must be curved transitions wherever possible to prevent mould or other organic growth;
- Emergency access: There needs to be sufficient space to allow for emergency responders to access all areas with standard equipment such as gurneys. There will need to be an emergency access point to the pool deck, possibly through the lobby area;
- Security: Design will need to consider access controls, alarm controls, interior closed circuit camera coverage, security mirrors and other such controls:
 - Door access controls will need to be able to be controlled from the existing Keyscan system in Lloyd E. Matheson Centre and design will account for any upgrades to the existing system that may be required; and
 - Alarm systems will need to be integrated into existing system at Lloyd E. Matheson Centre (common programming).
- The waterslide will need to be insulated if it extends outside of the building envelop;

INCLUSION C:

Geotechnical Reports are available for download separately as Inclusion C, Item 1 and Inclusion C, Item 2.



INCLUSION D:

Independent Contractor Agreement

THIS AGREEMENT is effective <<date>>, 2016 ("Effective Date")

Between

THE MUNICIPALITY OF THE DISTRICT OF EAST HANTS, a body corporate pursuant to the *Municipal Government Act* (SNS 1998, c. 18), having its chief place of business at Elmsdale, in the District of East Hants, Nova Scotia, hereinafter called "East Hants"

~and~

<<LEGAL NAME>>, a body corporate under the laws of <<jurisdiction>> (the "Contractor")

BACKGROUND

East Hants wishes to retain the Contractor to provide the following Services <<Brief Description>>, more fully explained in Schedule A, Statement of Requirements.

IN CONSIDERATION of mutual obligations and agreements specified herein, the parties agree as follows:

DEFINED TERMS

- 1 Services means the services supplied by the Contractor as specified within this agreement.
- 2 East Hants Representative means the employee of the Municipality of East Hants, or their designate, assigned by East Hants to be responsible for managing this agreement.
- 3 Schedule means the timeline, including deadlines, review dates and any other milestones or dates established by East Hants for the delivery of the Services. The Schedule may only be modified with written permission from East Hants.
- 4 Contractor and Consultant mean the same under this Agreement.

CONTRACT DOCUMENTS

- 5 This Agreement consists of the following documents: (NTD: These are the documents that define the agreement. If accepting a proposal, be sure the proposal is included. If the requirements were modified by addenda, remember to include these.)
 - a. This Independent Contractor Agreement;
 - b. Schedule A, Statement of Requirements;
 - c. <<insert proposals, confidentiality agreements, etc. as applicable>>; and
 - d. <<insert additional documents as applicable>>.



INTENT

- 6 East Hants hereby engages the Contractor to supply the Services described herein and the Contractor agrees to provide these Services.
- 7 The Contractor warrants that it has the necessary resources to complete the Services in a competent and professional manner. Such resources shall include, without limitation, qualified, skilled, and sufficient personnel, adequate financial resources, and any other unique or general resources necessary to complete the Services.

TERM

- 8 This agreement shall commence on the Effective Date and shall end on the earlier of the following:
 - a. Full completion of the Services to the satisfaction of East Hants; or
 - b. Termination in accordance with the terms of this agreement (see TERMINATION).
- 9 Unless amended by the parties in writing, the Contractor agrees to complete Services to the satisfaction of East Hants on or before <<DATE>>.

REMUNERATION

- 10 East Hants shall remunerate the Contractor as follows:
 - a. The maximum amount payable under this agreement, including fees, expenses and disbursements, shall not exceed the aggregate sum specified below, exclusive of Harmonized Sales Tax (HST).

Maximum Lump Sum Fee: _____
 - b. The following fees, expenses and disbursements are included in the Maximum Lump Sum Fee and are deemed to be included in the Services. The Contractor is responsible to complete the Services for the stated Maximum Lump Sum Fee.

[Insert table from proposal where fees, expenses, and disbursements are itemised, if applicable]
 - c. The following rates will apply should East Hants wish the Contractor to provide any additional Services using such personnel as described in the table:

[Insert table from proposal showing personnel and associated rates per hours, if applicable]
 - d. Such fees, or part thereof, are only payable when the Contractor, as determined by East Hants, has satisfactorily delivered the Services or part thereof. Payment for any part of the Services shall not be deemed a waiver of East Hants' rights of set-off at law or under contract for costs or expenses arising from default or negligence of the Contractor.
 - e. Invoices must be submitted monthly by the Contractor and must be supported in such detail as East Hants may request. Invoices shall indicate individual personnel hours, their rate(s) and the total hourly expense for the individual; individual mileage, the rate(s) and the total mileage expense for the individual; and any expenses, listed by category. Mark-ups (if any) for recovery of administrative or incidental expenses are to be clearly identified on the invoice.



- f. East Hants will review each invoice for completeness in a timely manner and, if acceptable, will approve such invoice for payment. Where there is a discrepancy, error, or other anomaly, East Hants may reject an invoice, request clarification or additional information, or otherwise require the invoice to be made acceptable prior to approval.
- g. Payment will be made on a net thirty (30) days basis from receipt of an acceptable invoice.
- h. No payment made by East Hants under this Contract shall constitute acceptance of work or products that are not in accordance with the requirements of the agreement.
- i. East Hants may reject an invoice on the basis that the Services are, in its sole opinion, incomplete or unsatisfactory. In the case where the Services are deemed unsatisfactory, the Contractor will be required to make changes to the Services that are acceptable to East Hants at no additional cost. If the Services cannot be made satisfactory, in the East Hants's sole opinion, East Hants may terminate the agreement.
- j. The Contractor shall not be entitled to payment in respect of costs incurred by the Contractor in remedying errors and omissions in the Services that are attributable to the Contractor, the Contractor's employees, or persons for whom the Contractor had assumed responsibility in performing the Services.
- k. If, and to the extent that, the time for completion of the Services is exceeded or extended through no fault of the Contractor, payment for the Services required for such extended period of this agreement shall be subject to review and equitable adjustment.
- l. In the event the agreement is terminated before the satisfactory completion of the Services, East Hants shall only be liable to pay, and the Contractor shall accept in full settlement, an amount for Services satisfactorily performed up to the date of termination.
- m. Disbursements and expenses incurred by the Contractor in performing the Services, and not included as part thereof, shall be reimbursed to the Contractor at actual cost with no markup. All expenses and disbursements are considered to be included in the Maximum Lump Sum Fee unless authorized, in writing, by East Hants to be reimbursed separately.
- o. The Contractor shall be solely responsible to pay all costs and expenses arising out of this agreement, whether or not East Hants intends to reimburse the client for them.
- p. The Contractor is responsible to maintain a thorough cumulative record of all fees, expenses and disbursements over the term of the Contract. The Contractor must provide East Hants with an electronic copy of such record upon request.

INDEPENDENT STATUS

- 11 The Contractor will provide the Services to East Hants as an Independent Contractor and not as an employee.

Accordingly:

- a. The parties acknowledge that the Contractor and any subcontractor they may engage, and their respective employees, are not, nor are they deemed to be, employees of East Hants within the meaning set out in any employment legislation that may be applicable, or otherwise.
- b. The Contractor agrees that East Hants shall have no liability or responsibility for the withholding, collection, or payment of any payroll taxes, employment insurance premiums, or Canada Pension Plan contributions, or any other relevant payroll deductions on any amounts paid by East Hants to the Contractor or amounts paid by the Contractor to its employees or contractors.



- c. The Contractor also agrees to indemnify East Hants from any and all claims in respect to East Hants's failure to withhold and/or remit any payroll taxes, employment insurance premiums, Canada Pension Plan contributions, or similar payroll deductions.
- d. Further, the Contractor shall be solely and entirely responsible for all payments under the applicable Workers' Compensation legislation as it relates to their ability to provide service and receive payment.
- e. The Contractor agrees that as an Independent Contractor, the Contractor, and any person for whom it is legally responsible, will not be qualified to participate in or to receive any employee benefits that East Hants may extend to its employees.
- f. The Contractor shall not have any power to accept an obligation, incur any liability, promise any performance, and/or request or obtain any credit on behalf of East Hants.
- g. The Contractor is free to provide services to other clients, so long so long as there is no interference with the Contractor's contractual obligations to East Hants.

SCHEDULE AND DELAY

- 12 The Contractor shall contact the East Hants Representative weekly, or on such other frequency acceptable to East Hants, to provide an update on the progress of the Services. An updated Schedule indicating progress of the Services shall be provided to East Hants monthly, or more frequently if so requested.
- 13 Any circumstances that will result in changes to the agreed Schedule or delay in performance of the Services must be brought to attention of the East Hants Representative by the Contractor within 24 hours of the change or delay being identified. Changes to the Schedule must be approved by East Hants in writing.
- 14 In identifying a period of delay, the Contractor must make reasonable effort to quantify the expected period of delay and to minimize such delay.
- 15 Where the Contractor fails to perform the Services, in whole or in part, in a timely manner or on a continuous basis, in accordance with the established Schedule, East Hants may:
 - a. Terminate this Agreement; and
 - b. Engage another Contractor to perform the Services immediately; and
 - c. Recover, from the Contractor, and Contractor shall be liable to East Hants for, any and all costs and damages that East Hants incurs as a result of such delay.
- 16 Provided that the Contractor complies with subsections 12 and 13 of the SCHEDULE AND DELAY section above, the Contractor shall be excused of any delay ("excusable delay") that:
 - a. Is beyond the reasonable control of the Contractor;
 - b. Is not avoidable by the exercise of reasonable foresight; and
 - c. Occurred without the fault or neglect of the Contractor.
- 17 For greater clarity, any delay caused by the lack of financial resources, labour disputes/strikes, insolvency, any event that is a ground for termination provided for in this Agreement, or any delay in the Contractor fulfilling an obligation to deliver a bond, guarantee, letter of credit, insurance, WCB certificate or other security relating to the performance or the payment of money, shall not qualify as an excusable delay.
- 18 In the event of an excusable delay, any delivery date, schedule, or other date that is directly affected by the delay shall be postponed for a reasonable time not to exceed the duration of the excusable delay.



- 19 Where an excusable delay continues for 30 days or more, East Hants may, in East Hants's absolute discretion, choose to terminate this Agreement. In such a case, the parties agree that neither party will make any claim against the other for damages, costs, expected profits or any other loss arising as a result of the termination or the event that gave rise to the excusable delay.
- 20 Except to the extent that East Hants is responsible for the delay for reasons of failure to meet an obligation under the Agreement, East Hants shall not be liable for any costs or charges of any nature incurred by the Contractor or any of its sub-contractors as a result of an excusable delay.

PERSONNEL

- 21 The Contractor is advised that East Hants expects the personnel listed in the Contractor's duly signed proposal to perform the Services indicated. The Contractor must obtain written permission from East Hants before changing any member of the work team. In the case of personnel being changed, the new personnel being assigned must have a similar length and breadth of experience relevant to this project as the personnel being replaced and they must be acceptable to East Hants.

SUBCONTRACTOR

- 22 The Contractor is advised that the subcontractor listed in the Contractor's proposal (**NTD: include all relevant tables in a schedule and refer to it specifically**) and their work scope cannot be changed without the written permission of East Hants. Failure to comply with this provision will be considered a breach of contract and may result in termination of the agreement.
- 23 If the Contractor finds that a subcontractor named in this agreement cannot perform some or all of the Services for which they were named, the Contractor may request permission from East Hants to engage an alternative subcontractor for such Services. In making such a request, the Contractor must:
 - a. Identify the reasons why the named subcontractor cannot complete the Services;
 - b. Provide the name, qualifications and experience of the proposed replacement subcontractor;
 - c. Make such request in writing; and
 - d. Must select a replacement who is in all respects equal to the subcontractor being replaced.
- 24 Permission to replace a subcontractor will not be unreasonable withheld. However, East Hants reserves the right to, in its sole discretion, reject any proposed replacement subcontractor the Contractor may name. The rejection of a replacement subcontractor shall not relieve the Contractor of their obligation to perform the Services under this agreement.

CONFIDENTIALITY

- 25 In the course of discharging its duties under this Agreement, the Contractor, its agents and/or employees will hear, see and/or otherwise come to know, possess or have access to confidential information about and/or belonging to East Hants, its clients and/or third parties interacting with East Hants or the Contractor, including but not limited to contact lists, personal information about identifiable individuals, security information, and information about East Hants' clients, methods and processes (the "Confidential Information").
- 26 The Contractor agrees not use, disclose, reproduce or otherwise make available, Confidential Information to any person, firm or enterprise (other than to the Contractor's employees or agents who have a need to know such information for the purposes of this Agreement) unless specifically authorized in writing to do so by East Hants. The Contractor agrees that if an employee or agent will receive Confidential Information as contemplated in this section, it will obtain a confidentiality agreement from such employee or agent which provides equal or greater protection to the Confidential Information than set out in this section.



- 27 The Contractor agrees to exercise all due care and diligence and take all reasonable precautions to prevent any unauthorized collection, use, disclosure, retention, destruction or disposal of Confidential Information.
- 28 Upon termination of the Agreement for any reason, the Contractor will return to the East Hants any and all documents in its possession, electronic or otherwise, containing Confidential Information.
- 29 The Contractor recognizes that if any of the provisions of this section are violated, East Hants is entitled to an injunction to prevent it from disclosing Confidential Information and/or using Confidential Information for any purpose. The Contractor further recognizes that East Hants would be entitled to other legal remedies, including legal fees and costs in the event of such a violation.

INFORMATION COLLECTED

- 30 All information and material produced by the Contractor in the course of the Services, including, but not limited to, calculations, design notes, criteria, graphs, figures, maps, reports, drawings, analysis, profiles, and plans, will become the property of East Hants and an electronic copy of such information must be turned over to East Hants upon completion or termination of the Services.
 - a. The Contractor understands that East Hants intends to use such collected information to perform the business of the Municipality of East Hants; to that end, the Contractor agrees that East Hants may, without limitation, use, distribute, reproduce, and/or publish such information without penalty or exclusion; and
 - b. East Hants reserves the right to amend such collected information whenever and for whatever purposes it chooses to do so.

INDEMNIFICATION

- 31 The Contractor shall indemnify and hold harmless the Municipality of East Hants, its officers, members of municipal council, employees and volunteers from and against any liabilities, claims, expenses, demands, loss, cost, damages, actions, suits or other proceedings made, sustained, brought, prosecuted or threatened to brought or prosecuted that are based upon, occasioned by or attributed to any bodily injury to or death of a person or damage to or loss of property caused by any acts or omissions on the part of the Contractor, its officers, employees, students, agents, volunteers or those for whom you are responsible arising out of this Agreement.

CHANGES TO REQUIREMENTS

- 32 If the instructions provided by East Hants are interpreted by the Contractor as increasing or decreasing the scope of the Services, they must inform East Hants of the impact of such instructions prior to acting on them. At minimum, any change in scope that affects the Lump Sum Maximum Fee must be approved by East Hants in writing and the Contractor must provide, at minimum:
 - a. A description of the change in Services as a result of the instructions;
 - b. The amount, exclusive of HST, by which the Lump Sum Maximum Fee will either be increased or decreased accordingly; and
 - c. A summary of the fees, expenses and disbursements which make up the amount of increase or decrease.

INSURANCE

- 33 <<NTD: Clauses to be drafted in consideration of the final limits that are required so that the Respondent can price the insurance requirements appropriately. In general, the Respondent will be required to have Errors and Omissions insurance and Commercial General Liability insurance and to maintain such insurance for the extent of their involvement with the project, including the warranty period. East Hants must be listed as an additional insured on such insurance and the Respondent will be required to provide certificates of insurance to evidence the coverage. The



insurance requirements will also include automobile coverage, contractor's equipment, and may include a requirement to insure any premises the Respondent maintains on the site (to be determined)>>

REGULATIONS

- 34 The Contractor shall comply with all existing Federal, Provincial and Municipal laws and regulations and the regulations of any other authorities that may have jurisdiction. The Contractor shall also comply with any policies or other requirements related to occupational health and safety or security that may be in place or implemented during the course of the agreement.

TAXES

- 35 The Contractor shall pay all Federal and Provincial Taxes as required by the appropriate enactments.
- 36 The Contractor shall indicate on each application for payment, as a separate amount, the Harmonized Sales Taxes that East Hants is legally obligated to pay. This amount will be included in payments to the Contractor.
- 37 In the event of changes in applicable tax legislation to provide additional tax relief during the course of this agreement, it is the intent of the parties that any benefits therefrom shall accrue to the Municipality who shall deduct any overpayment of taxes from moneys due to the Contractor.
- 38 In the event of additional taxes being imposed during the course of the agreement, it is the intent of the parties that the additional amounts paid by the Contractor will be reimbursed by East Hants in accordance with the requirements of the applicable tax act.

WORKERS' COMPENSATION

- 39 The Contractor must be registered and in good standing with the Workers' Compensation Board of Nova Scotia (WCBNS) regardless of their jurisdiction of incorporation, location of premises, or typical status with WCBNS.
- 40 No payments will be made by East Hants to the Contractor unless their invoice is accompanied by a valid Clearance Letter confirming they are in good standing with WCBNS.

CONFLICT OF INTEREST

- 41 The Contractor must promptly bring to the attention of East Hants, in writing, any possible conflict of interest related to delivering these Services. For greater clarity, any business relationships between East Hants staff and Contractor, either direct or through a third party, which may appear to create an unfair advantage for the Contractor or where it may appear that an employee of East Hants may personally benefit from this agreement, must be identified. East Hants is currently developing a *Code of Business Conduct* which, when implemented, will also become the responsibility of the Contractor to follow, in as much as it affects the delivery of these Services.

PERFORMANCE

- 42 If any part of the Services is found to be deficient or not in accordance with the terms of this Contract or standards specified herein, East Hants may, at its sole discretion:
- a. Require the Contractor to re-perform the Services or make any required corrections to the work, at its own expense, to comply with the terms of the Contract; or
 - b. If the Contractor cannot or will not make such corrections or re-performance, or if the proposed delay in making such corrections or re-performance may compromise health, safety, or the ability of East Hants to perform the business of the Municipality in any way, East Hants may choose either to engage a third party to correct the work or to perform the Services or to perform such corrections or to perform such Services themselves. The cost of such action will be deducted from any monies

owing to the Contractor until the entire amount is offset or, where there is not amount to offset, the Contractor must pay any remaining cost back to East Hants in the form of credits of payments already made; or

- c. Where the deficiency is embedded in the work or Services, East Hants may deduct an amount from any monies owing, or the Contract value, that is equivalent to the difference between the value of the defective work and what was specified in the Contract. Such amount shall correspond to the costs that would reasonably be incurred to correct the deficiency; and
- d. East Hants may terminate the Contract in accordance with the Termination clauses herein.

TERMINATION

- 43 East Hants may terminate this agreement at any time, for any reason, by providing thirty days written notice to the Contractor. This notice period may be increased by written agreement between the parties. Agreement to extend this notice period does not release the Contractor of their duty to remedy and, under no circumstances will East Hants be responsible for interest or other charges or fees related to the process of remedy.
- 44 Notwithstanding the above, East Hants may terminate this agreement without notice if the Contractor makes changes to the approved list of Contractor's personnel tasked to complete the Services or to the subcontractor engaged to complete the Services without first obtaining the written permission of East Hants.
- 45 East Hants may terminate this agreement if the performance of the Services, or portion thereof, is found to be unacceptable. Both East Hants and Contractor agree that each will attempt to remedy the situation and to find a way to make the Services, or portion thereof, acceptable. Under no circumstances may such remedy represent additional cost to East Hants. If no remedy can be found within thirty days of the initial communication to the Contractor by East Hants that the performance of the Services is unacceptable, such notice shall be considered notice to terminate the agreement.
- 46 East Hants reserves the right to terminate this agreement, without penalty of any kind, if the Contractor is judged to be bankrupt or makes general assignment for the benefits of its creditors.
- 47 Termination of the Agreement by East Hants shall not relieve that Contractor of any obligations or liability it may have to East Hants except as provided for herein.

RECEIVERSHIP

- 48 In the event that a Receiver is appointed to manage the affairs of the Contractor, East Hants reserves the right to enter into a contract with another party to perform the Services. Under no circumstances shall East Hants be responsible for any losses suffered by the Contractor.

ASSIGNMENT

- 49 The Contractor may not transfer or assign this agreement without the express prior written permission of East Hants. Assignments or transfers with are attempted to be made to this agreement without such permission will be void.

ENTIRE AGREEMENT

- 50 The Agreement, together with the Schedules, form the complete agreement between the parties and shall supersede any and all previous communications, oral or written, express or implied, between the parties. This agreement may only be amended in writing, with such amendment being signed by authorized representatives for each party and clearly indicating this specific agreement.

INTERPRETATION

- 51 The headings introducing each paragraph or section are for reference only and shall not affect the interpretation of the agreement. Any numbers or changes of gender will be interpreted in context.



NOTIFICATION

52 Any notifications of a general nature related to this agreement may be provided by any written means, including email. It remains the responsibility of the sender to ensure the notification has been received and acknowledged by the intended recipient. Material notifications such as relate to clauses covering termination or changes to personnel shall be delivered by registered mail, courier requiring the signature of the person specified in this clause, or in person where the person specified in this clause may confirm acceptance in writing.

53 The Notifications shall be addressed as follows:

c. By mail to East Hants:

Municipality of East Hants
<<Project Number - Project Name>>
230-15 Commerce Court
Elmsdale, NS B2S 3K5

Attention: Procurement Officer

d. By email to East Hants:

Primary: procurement@easthants.ca
Cc: mhatfield@easthants.ca; email address of Project Manager

e. By courier or in person to East Hants:

Municipality of East Hants
<<Project Number - Project Name>>
15 Commerce Court
Elmsdale, NS B2S 3K5

Attention: Procurement Officer

Proceed to the Reception & Payments counter on the first floor of the Lloyd E. Matheson Centre

f. By mail to the Contractor:

<<Company Name>>
<<Project Number - Project Name>>
<<Address>>

Attention: <<Name>>

g. By email to Contractor:

Primary: <<email address>>
Cc: <<as requested by Contractor>>

GOVERNING LAW

54 The laws of Nova Scotia shall govern this Agreement. If any dispute should arise under the terms of this Agreement, the Courts of Nova Scotia shall have exclusive jurisdiction to such dispute.



ENUREMENT

- 55 This agreement shall ensure to the benefit of and be binding upon the parties and their lawful heirs, executors, administrators, successors and assigns.

SEVERABILITY

- 56 If a provision of this agreement is deemed void or invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

DISPUTE RESOLUTION

- 57 In the event of a disagreement regarding any aspect of the Services or any instructions given by East Hants to the Contractor under this agreement:
- a. The Contractor must promptly deliver written notice of disagreement to East Hants. Such notice must contain the particulars of the disagreement, any changes in time or amounts claimed, and reference to the applicable provisions of this agreement;
 - b. The Contractor shall continue to deliver the Services in accordance with East Hants' instructions; and
 - c. The Contractor and East Hants shall attempt to resolve the disagreement by negotiation conducted in good faith. The parties shall negotiate firstly at the level of the Contractor's project representative for each party. If such negotiations are unsuccessful, the parties may escalate the negotiations to the level of a principal of the Contractor firm and a Director at East Hants;
 - d. If both parties agree that East Hants gave instructions in error or contrary to this agreement, East Hants shall compensate the Contractor a reasonable fee for any extra work completed due to such instruction, together with those reasonable disbursements arising from the extra work.
 - e. The parties shall calculate those fees in accordance with this agreement;
 - f. If the parties cannot settle the disagreement, the Contractor may ask East Hants for a written decision regarding their dispute and, within 14 days of receiving that request, East Hants must deliver such decision to the Contractor, in which they shall set out the particulars of their response and any applicable clauses of this agreement upon which they base this decision;
 - g. If the Contractor rejects the decision, the parties may refer the matter to arbitration in accordance with *The Commercial Arbitration Act of Nova Scotia*.
 - h. Negotiations conducted under the dispute resolution provisions of this agreement are without prejudice to either party's other rights under this agreement or at law.



WAIVER

- 58 The waiver or breach of any provision of this agreement shall not form precedence for future breaches of that provision or any other provision of this agreement.

SIGNED hereunder by representatives of the parties with authority and capacity to do so:

| | |
|---|--|
| MUNICIPALITY OF THE DISTRICT OF EAST HANTS | <<CONTRACTOR LEGAL NAME>> |
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

| | |
|--------------|--------------|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

