



REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN
REQUEST FOR PROPOSALS
for the
APEX MOUNTAIN WASTE TRANSFER STATION MAINTENANCE

RDOS-19-PW-30

September 30, 2019

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN
REQUEST FOR PROPOSALS - APEX MOUNTAIN WASTE TRANSFER STATION MAINTENANCE

1.	INTRODUCTION	4
1.1.	PURPOSE.....	4
1.2.	BACKGROUND	4
2.	INSTRUCTIONS TO PROPONENTS	4
2.1.	SUBMISSION OF PROPOSALS.....	4
2.2.	INQUIRIES	5
3.	GENERAL TERMS OF PROPOSAL PROCESS	6
3.1.	DEFINITIONS	6
3.2.	ACCEPTANCE OF TERMS AND CONDITIONS	7
3.3.	PROPOSAL PREPARATION COSTS	7
3.4.	PROPOSAL EVALUATION	7
3.5.	PROPOSAL PRESENTATION.....	7
3.6.	NO CONTRACT	7
3.7.	NO OBLIGATION TO PROCEED.....	8
3.8.	NEGOTIATION WITH PREFERRED PROPONENT	8
3.9.	ACCEPTANCE OF PROPOSAL.....	8
3.10.	LIABILITY FOR ERRORS.....	8
3.11.	PROPOSAL CONFIDENTIALITY AND PROPRIETARY INFORMATION	9
3.12.	CONFLICT OF INTEREST	9
3.13.	NO COLLUSION	9
3.14.	NOT AN EMPLOYEE.....	9
3.15.	LITIGATION	10
4.	GENERAL PROPOSAL CONTENT	10
4.1.	CONTRACTOR INFORMATION	10
4.2.	SUBCONTRACTORS AND SUBCONSULTANTS	10
4.3.	METHODOLOGY.....	11
4.4.	SCHEDULING.....	11
4.5.	FEES AND DISBURSEMENTS.....	11
4.6.	PROPOSAL CONTENT & INNOVATION	11
4.7.	SAFETY REQUIREMENTS	11
4.8.	WORKERS COMPENSATION ACT	11
5.	WORK.....	11
5.1.	SCOPE OF WORK.....	12
5.2.	TERM OF WORK.....	13
5.3.	SCHEDULING.....	13
5.4.	COMMUNICATIONS.....	13
5.5.	REPORTING REQUIREMENTS.....	13
6.	FEES AND DISBURSEMENTS.....	14

APEX MOUNTAIN WASTE TRANSFER STATION MAINTENANCE
REQUEST FOR PROPOSALS - RDOS-19-PW-30
SEPTEMBER 30, 2019

APPENDIX A – REQUEST FOR PROPOSALS EVALUATION FORMAT
APPENDIX B – SAMPLE CONSULTING SERVICES AGREEMENT TERMS

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1. INTRODUCTION

1.1. PURPOSE

The Regional District of Okanagan Similkameen is requesting submission of Proposals from qualified Proponents to provide maintenance services for the Apex Mountain Waste Transfer Station.

1.2. BACKGROUND

The Apex Mountain Resort is a ski resort located about 35 kilometers west of Penticton, BC. The Apex ski hill is open from the end of November to the beginning of April. There are approximately 120,000 visitors to the resort each year with the vast majority coming in the winter months. There are about 580 residential homes and condo units at the resort. In addition, there are several restaurants, retail commercial shops and the Apex day use facility.

The Regional District has constructed a new waste transfer station at Apex Mountain Resort for all residential and commercial units to access. The Transfer Station is located at 220 Strayhorse Rd at the Apex Mountain Ski Resort. The transfer station will be open to the public at all times. The transfer station is slated for operation on or before December 1st, 2019.

2. INSTRUCTIONS TO PROPONENTS

2.1. SUBMISSION OF PROPOSALS

Proposals may be submitted by email and/or hardcopy until the Closing Time specified. It is the Proponent's sole responsibility to ensure its Proposal is received at the address or email set out below by the Closing Time.

The Proposals and any envelopes should be clearly marked with the name and address of the

Proponent, the RFP program title, and be addressed to the following:

**Cameron Baughen
Solid Waste Management Coordinator
Regional District of Okanagan-Similkameen
101 Martin Street
Penticton, B.C. V2A 5J9**

AND/OR

By e-mail: cbaughen@rdos.bc.ca

Proposals must be received on or before the **Closing Time** of:

TIME: 4:00 PM local time
DATE: Monday, October 21st, 2019

Proposals will not be opened publicly. The Proponent bears all risk associated with delivering its Proposal by electronic submission, including but not limited to delays in transmission between the Proponent's computer and the Regional District's mail system.

Proponents wishing to make changes to their Proposals after submission but prior to the Closing Time may do so by submitting the revisions by email or hard copy to the address above.

It also is the Proponent's sole responsibility to ensure their revisions were received, at the e-mail or address set out above, prior to the Closing Time.

Proposals received after the Closing Time will not be considered or evaluated

2.2. INQUIRIES

All inquiries related to this RFP are to be directed, in writing, to **Cameron Baughen, Solid Waste Management Coordinator, using the submission contact information** listed above. Information obtained from any other source is not official and should not be relied upon. Inquiries and responses will be recorded and may be distributed through an addendum at the Regional District's option.

Proponents shall carefully examine the RFP documents and shall fully inform themselves as to the intent, existing conditions and limitations, which may affect their Proposal submission. No consideration will be given after submission of a Proposal to any claim that there was any misunderstanding with respect to the conditions imposed.

Proponents finding discrepancies or omissions in the Contract or RFP, or having doubts as to the meaning or intent of any provision, should immediately notify the above listed project contact. If there are any changes, additions, or deletions to the Proposal scope, conditions, or closing date, Proponents

will be advised by means of an Addendum issued by the Regional District. All Addenda is to become part of the Proposal Documents and receipt of Addenda should be acknowledged by the Proponent in the submission.

Verbal discussion between the Regional District directors, trustees or staff and a Proponent shall not become a part of the RFP or modify the RFP unless confirmed by written Addendum. The Regional District shall not be responsible for Proponents adjusting their Proposals based only on oral instructions by any representative of the Regional District.

3. GENERAL TERMS OF PROPOSAL PROCESS

3.1. DEFINITIONS

“Addenda” means all additional information regarding this RFP including amendments to the RFP;

“Agreement” or **“Contract”** means a contract that is issued to formalize the Work with the successful Proponent based on the proposal submitted and incorporate by reference the Request for Proposal, any addenda issued, the Proponent’s response and acceptance by the Regional District.;

“Contractor” means the person(s), firm(s) or corporation(s) appointed by the Regional District to carry out all duties, obligations, work and services first contemplated in the Request for Proposal and all associated documentation, which may also include mutually agreed revisions subsequent to submission of a Proposal.;

“must” or **“mandatory”** or **“shall”** means a requirement that must be met in order for the proposal to receive consideration;

“Proponent” means the responder to this RFP with the legal capacity to contract;

“Proposal” means a written response to the RFP that is submitted by a Proponent;

“Regional District” means the Regional District of Okanagan-Similkameen;

“Request for Proposals” or **“RFP”** means the solicitation described in this document, including any attached or referenced appendices, schedules or exhibits and as may be modified in writing from time to time by the Regional District;

“Services” means and includes the provision by the successful Proponent of all services, duties and expectations as further described in this RFP.

“should” or **“may”** means a requirement having a significant degree of importance to the objectives of the RFP but is not a mandatory requirement

“Work” means and includes anything and everything required to accomplish the project in accordance with this RFP and Proposal.

3.2. ACCEPTANCE OF TERMS AND CONDITIONS

Submitting a Proposal indicates acceptance of all the terms and conditions set out in the RFP, including those that follow and that are included in all appendices and any Addenda.

A person authorized to sign on behalf of the Proponent must sign the Proposal.

3.3. PROPOSAL PREPARATION COSTS

All expenses incurred by the Proponent in preparation and submission of this Proposal are to be borne by the Proponent, with the express understanding that no claims for reimbursements against the Regional District, or any of its member municipalities, will be accepted. The Regional District shall not be responsible for any costs involved in or associated with any meetings, discussion or negotiation following submission that could lead to acceptance of the Proposal and award of a contract.

3.4. PROPOSAL EVALUATION

The Regional District recognizes that “Best Value” is the essential part of purchasing a product and/or service and therefore the Regional District may prefer a Proposal with a higher price, if it offers greater value and better serves the Regional District’s interests, as determined by the Regional District, over a Proposal with a lower price.

Appendix A contains the information regarding how Proposals will be evaluated.

The Regional District, at its sole discretion, reserves the right to:

- reject any or all Proposals whether complete or not,
- reject any Proposal it considers not in its best interests,
- waive any minor irregularity or insufficiency in the Proposal submitted,
- not be liable for misunderstandings or errors in the Request for Proposals,
- issue addenda to the Request for Proposals,
- contact references provided by the Proponents,
- retain independent persons or contractors for assistance in evaluating Proposals,
- request points of clarification to assist the Regional District in evaluating Proposals,
- negotiate changes with the successful Proponent,
- award separate contracts for separate work components, and
- withdraw the Request for Proposals.

3.5. PROPOSAL PRESENTATION

The Regional District reserves the right to request one or more of the Proponents whose submissions are of particular interest to the Regional District, to make an oral presentation to the Regional District.

3.6. NO CONTRACT

This RFP is not a tender and does not commit the Regional District in any way to select a preferred

Proponent. By submitting a Proposal and participating in the process as outlined in this RFP, Proponents expressly agree that no contractual, tort or other legal obligation of any kind is formed under or imposed on the Regional District by this RFP or submissions prior to the completed execution of a formal written Contract.

3.7. NO OBLIGATION TO PROCEED

The Regional District fully intends at this time to proceed with the proposed project, however the Regional District is under no obligation to proceed to award of the Contract. The receipt by the Regional District of any information (including any submissions, ideas, plans, drawings, models or other materials communicated or exhibited by any intended Proponent, or on its behalf) shall not impose any obligations on the Regional District.

There is no guarantee by the Regional District that the process initiated by the issuance of this RFP will continue, or that this RFP process or any RFP process will result in a Contract with the Regional District for the purchase of the equipment, service, or project.

3.8. NEGOTIATION WITH PREFERRED PROPONENT

The Proponent that submits the most advantageous Proposal may be awarded the Contract. The Regional District reserves the right to accept or reject all or parts of the Proposal, however, the Regional District is not precluded from negotiating with the preferred Proponent to modify its Proposal to best suit the needs of the Regional District.

The Regional District will enter into negotiations with a preferred Proponent to finalize any scope changes necessary to implement the project, as generally described in this RFP. If the Regional District considers that it is unlikely to settle such agreements with the preferred Proponent despite having negotiated with the preferred Proponent, the Regional District is entitled to cease negotiations with the preferred Proponent and to begin negotiations with another Proponent.

3.9. ACCEPTANCE OF PROPOSAL

Following acceptance of the Proposal, the agreement that the successful Proponent will be expected to execute with the Regional District will contain terms similar to those provided in Appendix B.

The expected attachments to the agreement will include the Request for Qualifications and the Proponent's submission, the Request for Proposal, the Proponent's Proposal submission and any mutually agreed upon modifications, changes or negotiated adjustments.

3.10. LIABILITY FOR ERRORS

While the Regional District has expended considerable efforts to ensure an accurate representation of information in this Request for Proposal, the information contained in this Request for Proposal is supplied solely as a guideline for Proponents. The information is not guaranteed or warranted to be accurate by the Regional District, nor is it comprehensive or exhaustive.

Nothing in this Request for Proposals is intended to relieve Proponents from forming their own opinions and conclusions with respect to the matters addressed in the Scope of Work

3.11. PROPOSAL CONFIDENTIALITY AND PROPRIETARY INFORMATION

All submissions become the property of the Regional District and will not be returned to the Proponent. The Regional District will consider all Proposals submitted as confidential but reserves the right to make copies of all Proposals received for its internal review and for review by its financial, accounting, legal, and technical consultants.

Proponents should be aware that the Regional District is a “public body” as defined in and subject to the provisions of the *Freedom of Information and Protection of Privacy Act*.

If the Proponent believes any of the information requested in this RFP and provided by them is confidential, then they should identify it as such and provide a rationale as to why it should not be released under “Freedom of Information” legislation.

3.12. CONFLICT OF INTEREST

A Proponent shall disclose in its Proposal any actual or potential conflicts of interest and existing business relationships it may have with the Regional District, its elected or appointed officials or employees, any property ownership direct or indirect in the project area. The Regional District may rely on such disclosure.

3.13. NO COLLUSION

Except as otherwise specified or as arising by reason of the provision of the contract documents, no person whether natural, or body corporate, other than the Proponent has or will have any interest or share in this Proposal or in the proposed contract which may be completed in respect thereof.

There is no collusion or arrangement between the Proponent and any other actual or prospective Proponents in connection with Proposals submitted for this project and the Proponent has no knowledge of the contents of other Proposals and has made no comparison of figures or agreement or arrangement, express or implied, with any other party in connection with the making of the Proposal.

3.14. NOT AN EMPLOYEE

The successful Proponent will acknowledge and agree that neither the Proponent nor any person employed by or associated with the successful Proponent in the performance of the services or otherwise, is an employee of, or has an employment relationship of any kind with the Regional District or is in any way entitled to terms or conditions of employment or employment benefits of any kind whatsoever from the Regional District under any collective agreement or otherwise including but not limited to private programs or coverages and statutory programs and coverages, whether under the *Employment Standards Act* of British Columbia (as amended from time to time), the *Workers Compensation Act* of British Columbia (as amended from time to time), the *Employment Insurance*

Act of Canada (as amended from time to time), health pay contributions or otherwise.

3.15. LITIGATION

Proponents who, either directly or indirectly through another corporation or entity, have been or are in litigation, or who have served notice with intent to proceed with court action against the Regional District in connection with any contract for works or services, may be considered ineligible Proponents. Receipt of Proposals from such Proponents may be disqualified from the evaluation process.

4. GENERAL PROPOSAL CONTENT

4.1. CONTRACTOR INFORMATION

- **COMPANY INFO:** Full name, address and telephone number of the submitting office of the Proponent and where applicable, the name, address and telephone number of any branch office, affiliate or sub-consultant(s) that will be involved in the project.
- **POINT OF CONTACT:** The Proposal shall confirm who will be the single point of contact, and responsible for direct interaction with the Regional District.
- **PROPOSED PROJECT TEAM:** The Proposal shall list key individuals who will have major responsibilities for the performance of the work. Describe the work to be performed by each listed individual and their qualifications, in terms of substantive experience directly related to the proposed Work. Capacity and ability of the Project Manager and Project Team to deliver the services within the defined timeframe must be discussed

The Proposal shall include the following endorsement:

"Identified individuals shall only be replaced with written approval of the Regional District."

- **REFERENCES:** The Proposal shall provide no less than two (2) references that are relevant to the proposed Work. The references should be from a third party who can provide information about the performance of the Proponent in delivering the works or services for the experience cited.
- **EXPERIENCE:** It is the Proponent's responsibility to demonstrate that they possess the required knowledge, understanding and capacity to carry out the Work as outlined in this RFP within the project schedule and budget.

4.2. SUBCONTRACTORS AND SUBCONSULTANTS

The Proposal shall include the company name of all subcontractors and subconsultants proposed to be used in the performance of the Work with a description of the work they would be performing.

The subcontractors and subconsultants listed in the Proposal may not be changed without the written consent of the Regional District. If the Regional District so requires, the Proponent shall be prepared to confirm to the Regional District the competence of subcontractors and subconsultants prior to

acceptance of the Proposal.

4.3. METHODOLOGY

The Proposal shall contain an outline of strategies and skills that will be used to manage the project's expectations, resources, budget and to ensure quality control. The methodology must discuss how the Work will be completed that is listed in Scope of Work. Include other items identified and what services or interaction is required from/ with the Regional District.

In their own words, the Proponent must show that they have an understanding of what the Work involves and what is required to complete the project, specifically an understanding of the project critical issues and fixed budget.

4.4. SCHEDULING

The Proposal should contain a proposed work schedule.

4.5. FEES AND DISBURSEMENTS

The Proposal shall contain a breakdown of fees as indicated in Section 6 below.

4.6. PROPOSAL CONTENT & INNOVATION

The Proponent shall address in the Proposal submission, all the information as requested in the RFP documentation. The Proponent is also encouraged to include innovative, alternative or unique solutions to the Proposal subject.

4.7. SAFETY REQUIREMENTS

During completion of the work, the Consultant is required to meet or exceed at all times, any requirements as detailed at the place of Work, which includes but not limited to all OHS regulations or standards. Prior to any onsite work, the successful Consultant will provide their Health and Safety Manual to the Regional District and participate in a site orientation with the Regional District.

4.8. WORKERS COMPENSATION ACT

The Proponent, and any proposed subcontractors and subconsultants, should provide a Work Safe BC (Workers Compensation Board) Registration Number in the Proposal and shall at the time of signing a contract agreement, provide proof of payment of claims in good standing with Work Safe BC.

5. WORK

While the Regional District has used considerable effort to ensure an accurate representation of information in this RFP, the information contained herein is given solely as a guideline for Proponents. The information is not guaranteed to be accurate, nor is it necessarily comprehensive or exhaustive.

The intent of the project is to hire an experienced Contractor capable of cleaning and maintaining the Apex Mountain Waste Transfer Station to help ensure the health and safety of using the site.

The Regional District has built an unheated building to house two compactor systems and bins. The Regional District will manage the collection of waste and recycling, and maintenance of the compaction equipment and garbage bins. The Regional District will be responsible for bulk snow removal from the parking lot/site entrance. A small, locked electrical/maintenance room is being built that will allow for placement of shovels and other equipment. The Regional District will pay for necessary materials such as shovels and bins for the maintenance of the Transfer Station as required.

The Regional District will be responsible for recovery of all fees for using the Transfer Station. The Regional District will be responsible for educating all users of the Transfer Station including providing flyers, posters, signage and direct mail outs. The Regional District will be responsible for dealing with all complaints related to the Transfer Station including those related to the Contractor's duties.

5.1. SCOPE OF WORK

Proposed Normal Duties of Maintenance Contractor

- Minimum daily visit during ski hill operation and three times a week outside of ski hill operations;
- Monitor building and grounds;
- After snow removal events of parking area remove snow blocking access by shovel;
- Remove snow blocking any man door;
- Ice management in walking areas inside and outside building;
- Report issues, damage, or vandalism immediately to Regional District;
- Monitor the garbage and recycling compaction system and bins;
- Notify the Regional district if transfer bins are full and require collection outside of normally scheduled pick ups;
- Maintain the Transfer Station property in a clean and tidy condition;
- Clean up of litter or misplaced recycling;
- Clean up of spills;
- Maintain recycling area including potentially bagging beverage containers and checking on recycling containers;
- Record all checks and maintenance done when visiting site;
- Monitor surveillance cameras and emergency lighting as required.

Special Duties of Maintenance Contractor that may be required by the Regional District from time to time:

- Respond to potential emergencies;
- Removal of oversized material from parking area or compactor bins;
- As possible, transfer heavy items from Apex to Campbell Mountain Landfill;
- Identify hazardous materials, ensure public safety and contact RDOS for removal or assistance as required.

Develop and Implement of Health and Safety Procedures:

- The Contractor will work with the Regional District to develop procedures to protect the health and safety of workers and the public at the Transfer Station.

5.2. TERM OF WORK

The Regional District will enter into contract with the Contractor for a maximum of two years. The date for commencement of work is November 1st, 2019 with the end of term for the contracted services October 31st, 2021.

5.3. SCHEDULING

The Contractor will be responsible for scheduling daily visits to the Transfer Station in keeping with the reasonable maintenance of the Transfer Station and site safety concerns.

In the event of complaints or Regional District concerns relating to site safety, the Regional District may require the Contractor be onsite at specific times. This may include required snow removal after a snow event or unsafe conditions.

As directed by the Regional District, the Contractor will schedule a time to meet with the Regional District in person or by phone to discuss site safety or the operations of the Transfer Station.

5.4. COMMUNICATIONS

At minimum, the Regional District expects the following:

- The Contractor will e-mail the Regional District representative as to any duties that will require Hourly Payment within 24 hours of completing the duties;
- The Contractor will work with the Regional District to pre-approve any Hourly Payments as possible;
- The Contractor will immediately inform the Regional District by phone and e-mail of any accidents, vandalism or serious safety concerns;
- As part of the Base Payment, and not subject to any Hourly Payment, the Contractor will meet with Regional District representatives to discuss site safety or the operations of the Transfer Station at the Transfer Station or at another location suitable for the Contractor.

5.5. REPORTING REQUIREMENTS

Safety Procedures

Prior to the commence of duties, the successful Proponent is work with the Regional District to develop a safety procedure manual. The Regional District will supply safety requirements from other sites and work to develop specific procedures and training with the Contractor. During meetings, safety issues must be discussed and addressed.

Recording of Site Visits, Work and Hours

The Contractor will log each visit to the Transfer Station including time spent on site, date and any additional notes required.

Monthly Report

All monthly invoices will include a summary of duties performed. Where Hourly Payment is claimed, the Contractors invoice will include a summary of the tasks required to complete during these hours.

Annual Report

The Contractor will submit annually an estimate of total volume and type of fuel and associated mileage to complete work for the Transfer Station.

6. FEES AND DISBURSEMENTS

Proponents are encouraged to display their pricing in the following format specifying a Base Payment per month and additional Hourly Payment.:

Base Payment (per month)	\$
Hourly Payment (per hour per employee)	\$

The purpose of Base Payment is to allow the Contractor claim a base monthly fee to cover all fixed costs such as insurance. The Base Payment will cover all Normal Duties identified within 1 hour per day to complete these duties. The Base Payment will also cover any and all site meetings with Regional District representatives and any administration or invoicing required by the Contractor.

Where the Contractor is required to work longer than 1 hour per day due to Normal Duties or Special Duties, the Contractor will record the hours and claim them monthly in keeping with their Hourly Payment. The intent of the Hourly Payment to reimburse the Contractor fairly for work required over and above normal checks and maintenance.

All invoices will include a summary of duties performed. Where Hourly Payment is claimed, the Contractors invoice will include a summary of the tasks required to complete during these hours. The Regional District may withhold or question payment for a portion of the Hourly Payment where the Regional District is not satisfied the work was necessary or the Contractor is misrepresenting their hours.

Where the Contractor is required to use their own vehicle in performance of a Special Duty, the Contractor shall record the mileage used. The Regional District will reimburse the Contractor based on the applicable month per kilometer reimbursement rate set by the Regional District. For example the September, 2019 the Regional District rate is \$0.55 per km. No reimbursement for mileage will be

APEX MOUNTAIN WASTE TRANSFER STATION MAINTENANCE
REQUEST FOR PROPOSALS - RDOS-19-PW-30
SEPTEMBER 30, 2019

accepted for Contractors getting to and from the Transfer Station or to a meeting with Regional District representatives.

Where the Contractor needs to purchase materials for the Transfer Station, the Contractor will receive authorization from the Regional District and place the costs with copies of receipts in the next monthly invoice.

APPENDIX "A"

REQUEST FOR PROPOSALS EVALUATION FORM

Proponent's Name: _____			
Project Title: APEX MOUNTAIN WASTE TRANSFER STATION MAINTENANCE			
Evaluation Date: _____			
Evaluator: _____			
Step 1:		YES	NO
Mandatories	Proposal received prior to closing		
	Subconsultant list submitted		
	Company Info identified		
	Reference List		
	Rates provided		
	Complete proposal as requested		
Step 2:		Assigned Points	Points
Proponent (15-30 points)	Qualifications of firm and project team members	10	
	Experience of firm and project team members	10	
	Past Performance / References	5	
	Resources	5	
Proposal (30-50 points)	Scope	5	
	Methodology	15	
	Environmental Performance	5	
	Scheduling	10	
	Project Team - Level of Effort	5	
	Clarity of Proposal	10	
Price (20-50 points)	Points for Price = (lowest cost Proposal divided by Proposal being evaluated) x (20% weight)	20	
Total Score	Proponent + Proposal + Price Scores	100	

1. Requests for Proposals (RFP's) shall be reviewed by an Evaluation Team, which shall consist of at least two staff members.
2. Each Evaluation Team member shall complete the RFP Evaluation Form for each Proposal.
3. Evaluation Team Members will use the following list of questions to complete the RFP Evaluation Form:

Proponent Evaluation

- (i) **Qualifications of Firm and Project Team Members**
Are the firm and project team members specialized and qualified in the nature of the project work?
- (ii) **Experience of Firm and Project Team Members**
Has the firm completed similar projects during the last three years? Do the assigned project team members have experience with similar projects?
- (iii) **Past Performance**
Is the firm's record of past performance sound? Do reference checks reveal weaknesses? Was abnormal level of monitoring required? Does the firm consistently complete assignments on time and within budget?
- (iv) **Resources**
Does the firm have ample resources (e.g. staff, equipment, etc.) to apply to this project?

Proposal Evaluation

- (i) **Scope**
Do the objectives, scope, work plan, and prediction of results comply with the terms of reference and project objectives?
- (ii) **Methodology**
Is the methodology clear and in sufficient detail to cover all necessary aspects? Does the Proposal reflect the required understanding of the project? Is each task clearly outlined and in logical sequence?
- (iii) **Environmental Performance [see criteria below]**
What is the environmental burden and unit cost of a product or service, from its design through to production and then final disposal?
- (iv) **Scheduling**
Does the Proposal indicate that the achievement of objectives will be met according to an acceptable schedule? Are they within the timelines set by the terms of reference (if outlined in the terms of reference) Are problems or delays accounted for? Is timing realistic for the project?
- (v) **Project Team**
Is the level of effort (total hours) adequate, low or high? Are the hours of professionals involved adequate, low or high? Is the proportion of professional vs. technical hours adequate or appropriate?
- (vi) **Clarity of Proposal**
Is the Proposal clear, concise, and logical?

Price Evaluation

- (i) **Total Price**
4. Upon completion of Step 2, the Evaluation Team shall determine, by consensus, the score for each Proposal and will forward these scores to the Board for its consideration to select the successful

Proponent.

Environmental Performance Decision Criteria

Basic evaluation criteria for rationalizing the purchase of environmentally sound alternatives:

- (i) Does the alternative product meet or exceed the minimum required performance specifications? (e.g) durability, safety, structural integrity. (If no, use the conventional product; if yes move to (ii)).
- (ii) Is the unit pricing of the alternative product equal, or less than, the conventional product? (If yes purchase the alternate product; if no move to (iii)).
- (iii) What is the total annual cost differential of using the alternate product instead of the conventional? (If the effect on budget is nominal use the alternate product; if the effect on budget is more than nominal go to (iv)).
- (iv) By using the alternate product are there any offsetting benefits that can be clearly measured and recorded in cost avoidance accruing to the same Business Unit, or to other business Units and, if so, do those benefits equal or exceed the extra acquisition costs? (If yes purchase the alternate product; if no go to (v)).
- (v) Are there any other benefits that are not measurable in any direct monetary sense but are benefits that we ought to realize for other on-pecuniary reasons?, e.g. "green benefits" such as reduced pollution, air emissions, effluent release, recyclable & disposal issues etc. (If no, purchase the conventional product; if yes define those reasons and report them through established reporting channels to get the increased budget commitment approved. In either case go to (vi)).
- (vi) If acquisition of the alternative product at the higher cost is approved purchase the alternate product; if not purchase the conventional product.

APPENDIX "B"

DRAFT CONTRACTING SERVICES AGREEMENT

AND WHEREAS the parties hereto wish to set out herein their respective rights and obligations.

NOW THEREFORE, the Regional District and the Contractor in consideration of their mutual rights and obligations as hereinafter set forth do hereby agree as follows:

Article 1 Contractor's Duties

- 1.1 The Contractor shall provide to the Regional District all services set out in the Request for Proposal (attached hereto as Schedule "A") and the Contractor's Proposal (attached hereto as Schedule "B"), both of which form part of this agreement.
- 1.2 In performing the Services under this Agreement, the Contractor shall, at all times, act in the best interests of the Regional District and exercise that degree of professional skill, care and diligence required according to generally accepted professional science and engineering standards applicable to the performance of such Services at the time and place the Services are performed.
- 1.3 It is agreed that in awarding the professional services encompassed within this agreement to the Contractor, the Regional District has relied upon the Contractor's representations concerning the experience of certain identified personnel in the employ of the Contractor. It is agreed that, in performing the services under this agreement, the Contractor shall assign such identified personnel to the project.
- 1.5 The Contractor shall request of the Regional District any information or data contained in Regional District files which the Contractor requires in order to perform the services. The Regional District is only obligated to provide to the Contractor information and data that is pertinent to the terms of reference and work program set out in Schedules "A" and "B". The Contractor may rely on such information or data as may be provided by the Regional District without independent verification.
- 1.6 To ensure that the Project is processed in a timely manner, the Contractor and the Regional District will apply their best efforts to meeting the following deadlines:
 - a) Phone call inquiries from the Regional District will be returned within 24 hours;
 - b) Public inquiries to the Contractor on technical issues will be returned within 48 hours;
 - c) Meetings will be scheduled within 5 working days from date of request;
 - d) Review comments for material submitted by the Contractor will be processed by the Regional District within 14 days of receipt.
- 1.7 Costs which have not been identified by the Contractor in the cost estimate will not be paid by the Regional District without prior approval and confirmation in writing. No payment shall be made to the Contractor for cost overruns that have not been the subject of prior notice and approval by the Regional District.

Any change in the rates charged for fees and disbursements must be approved in advance, in writing, by the Regional District.

Article 2 Fees and Disbursements

- 2.1 Invoices may be rendered on a monthly basis prorated to the work completed or, at the conclusion of each phase by the Contractor to the Regional District, and shall be delivered to the Regional District of Okanagan-Similkameen, 101 Martin Street, Penticton, British Columbia, V2A 5J9. Invoices shall be payable in full by the Regional District within thirty (30) days of receipt.
- 2.2 The Contractor shall provide all necessary and sufficient substantiation to the Regional District in order to verify any invoice upon request. If the Regional District is unable to verify any invoice within the said period, any payment by the Regional District either may be withheld or may be made and treated as an advance pending verification of the invoice.
- 2.3 Any necessary adjustments which have not been made prior to payment of an invoice may be made by the Regional District at the time of a later payment. If the Regional District is shown to have overpaid, the Regional District may deduct the amount from any other sums due to the Contractor from the Regional District or the Contractor shall pay the amount to the Regional District within thirty (30) days of the amount being agreed upon or otherwise established.
- 2.4 The Regional District may request the Contractor to submit prior to payment of the final invoice a statutory declaration or other proof that there are no outstanding costs, assessments, liens or claims in connection with the project.

Article 3 Confidentiality, Ownership and Use of Documents and Materials

- 3.1 The Contractor shall act in a confidential manner and make his best efforts to keep confidential all communications, plans, specifications, reports or other information used in connection with the project unless the same are stated by the Regional District to be in the public domain except as required by law; or by prior written consent of the Regional District. The Contractor shall instruct all his employees and agents of the obligations under this Article.
- 3.2 All drawings, plans, designs, specifications, photographs, digital data, and other intellectual properties and materials developed exclusively for the Work are the property of the Regional District regardless of whether the project proceeds and the Regional District reserves the copyright, patent and trademark therein and in the work executed there from and they shall not be used on any other work without the prior written agreement of the Regional District.
- 3.3 The Regional District acknowledges and agrees that the Contractor's Services have been provided for a specific purpose. Any reuse, modification, or misuse of the Contractor's reports, drawings, plans, designs, specifications, processes, documents, or other information by the Regional District or third parties shall be at the Regional District's sole risk and responsibility.

Article 4 Special Tools and Equipment

- 4.1 All necessary special tools, equipment and other things shall be acquired by the Contractor solely at the Contractor's cost and shall be the property of the Contractor unless the Regional District specifically authorizes the purchase of a specific item at the Regional District's expense.
- 4.2 The cost of special tools, equipment and other things that have not been specifically identified in

detail by the Contractor or specifically authorized in writing by the Regional District during performance of the project shall be considered to be within the overhead of the Contractor.

- 4.3 If the Regional District specifically authorizes, in writing, that the Contractor shall purchase any special tool, equipment, or other things at the expense of the Regional District then such items shall become the property of the Regional District. The Contractor shall bear the risk of loss or damage, normal wear and tear excepted, to all such items for the time when such items are out of the possession and control of the Regional District. Upon completion of the project, the Contractor shall deliver all such special tools, equipment and other things to the Regional District.

Article 5 Sub-Consultants and Sub-Contractors

- 5.1 The Contractor may, with the prior written approval of the Regional District, engage the services of sub-consultants or sub-contractors to perform work which the Contractor is unable to perform.
- 5.2 The Contractor shall advise the sub-consultants and sub-contractors in writing prior to their participation in the project of the duties and obligations arising out of this agreement between the Contractor and the Regional District.
- 5.3 The Contractor shall be responsible to the Regional District for all work carried out by sub-consultants and sub-contractors in connection with the project as if such work had been performed by the Contractor.
- 5.4 The Contractor shall be responsible to the Regional District for the acts and omissions of all sub-consultants and sub-contractors, their employees and agents, as if such sub-consultants and sub-contractors, their employees and agents, were persons directly employed by the Contractor.

Article 6 Termination and Suspension

By the Regional District :

- 6.1 If the Contractor is in default in the performance of any of his material obligations set forth in this agreement, then the Regional District may, by written notice to the Contractor, require such default to be remedied.

If, within thirty (30) days after delivery of such notice, such default shall not have been corrected or reasonable steps to correct such default have not been taken, the Regional District may, without limiting any other right or remedy the Regional District may have, immediately terminate this agreement and discharge its obligations under this agreement by paying for the cost of the services rendered and disbursements incurred by the Contractor and remaining unpaid as of the effective date of the termination.

- 6.2 If the Regional District decides for any reason not to proceed with the Project, the Regional District may terminate this agreement by giving thirty (30) days prior written notice to the Contractor. Upon receipt of such written notice, the Contractor shall perform no further services other than those reasonably necessary to close out the project.

In such event, the Contractor shall be paid by the Regional District for all services performed and all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective

date of such termination.

By the Contractor:

- 6.3 If the Regional District is shown to be in default in performance of any of its material obligations set forth in this agreement, then the Contractor may, by written notice to the Regional District, require such default to be corrected.

If, within thirty (30) days after receipt of such notice such default shall not have been corrected, or reasonable steps have not been taken to correct such default, the Contractor may, without limiting any other right or remedy he may have, immediately terminate this agreement. In such an event, the Contractor shall be paid by the Regional District for all services performed and disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such termination.

- 6.4 If the Contractor's services are suspended by the Regional District at any time for more than thirty (30) days through no fault of the Contractor, then the Contractor shall have the right at any time until such suspension is lifted by the Regional District, to terminate this agreement upon giving written notice thereof to the Regional District.

In such event, the Contractor shall be paid by the Regional District for all services performed and all disbursements incurred pursuant to this agreement and remaining unpaid as of the effective date of such suspension.

Article 7 Compliance With Laws

- 7.1 The Contractor shall comply with all applicable bylaws and regulations of the Regional District and all applicable laws of the Province of British Columbia and the Government of Canada. Without restricting the generality of the foregoing, the Contractor shall abide by all provisions of the Workers' Compensation Act of British Columbia and upon request by the Regional District shall supply proof that all assessments have been paid.

- 7.2 The laws of the Province of British Columbia shall govern this agreement and any arbitration or litigation in respect thereof.

Article 8 Insurance and Securities

- 8.1 At the time of signing this Contracting Services Agreement, the Contractor shall provide, maintain, and pay for Comprehensive General Liability Insurance on an occurrence basis for the Contractor with limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury and property damage and shall include coverage for:

1. premises, activities and operations liability
2. blanket contractual liability
3. cross liability
4. contingent employer's liability
5. owners and Contractors protective liability
6. employees as additional insureds
7. personal injury

8. broad form loss of use
9. broad form property damage
10. owned and non-owned automobile liability
11. the Regional District as an additional insured

This insurance shall be maintained continuously from commencement of the Work until the date of the completion certificate.

- 8.2 The Contractor shall, at all times, indemnify and save harmless the Regional District and its officers, directors, agents, and employees from and against all claims, damages, losses and expenses arising from personal injury, death, or damage to third party property to the extent directly attributable to the negligent acts, errors, or omissions of the Contractor.

The Contractor shall maintain and keep in force during the term of the Contract and until the date of the completion certificate, Two Million Dollars (\$2,000,000) inclusive limits for public liability and property damage, against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect of damage to property arising out of the performance of the Work.

- 8.3 Notwithstanding anything contained elsewhere herein, it is understood and agreed that the Regional District shall not be liable for any loss or damage to the Contractor's equipment, including loss or use thereof. Each and every policy insuring the Contractor's equipment to be used on the Work shall contain the following clause:

"It is agreed that the right to subrogation against the Regional District or any of its officers, employees or agents of their parent, subsidiary, affiliated or associated companies or corporations is hereby waived."

- 8.4 The Contractor shall, at all times, indemnify and save harmless the Regional District and its officers, directors, agents, and employees from and against all claims, damages, losses and expenses arising from personal injury, death, or damage, inclusive of claims made by third parties, to the extent directly attributable to the negligent acts, errors, or omissions of the Contractor.

The Regional District shall, at all times, indemnify and save harmless the Contractor and its officers, directors, agents, and employees from and against all claims, damages, losses and expenses arising from personal injury, death, or damage, inclusive of claims made by third parties, to the extent directly attributable to the negligent acts, errors, or omissions of the Regional District.

Article 9 Arbitration

- 9.1 All matters in dispute under this agreement may, with the concurrence of both the Regional District and the Contractor, be submitted to arbitration to a single arbitrator appointed jointly by them and the provisions of the Commercial Arbitration Act shall apply.
- 9.2 No one shall be nominated to act as arbitrator who is in any way financially interested in the project or in the affairs of either the Regional District or the Contractor.

Article 10 Independent Contractor

10.1 Nothing in this agreement or the Contractor's performance of his duties under this agreement shall constitute or create an employer-employee relationship. The Contractor shall act solely as an independent contractor and not as an employee or agent of the Regional District and is not authorized to create obligations on the part of the Regional District to third parties.

Article 11 Waiver

11.1 Any failure of the Regional District at any time to enforce or require strict compliance with any of the terms of this agreement shall not constitute a waiver or relinquishment of any such terms and the same shall remain at all times in full force and effect.

Article 12 Records and Audit

12.1 The Contractor shall keep reasonable and proper records, accounts, statements and other relevant documents for a period of not less than twelve (12) months after completion of the Project or for such extended period as the Regional District may request in advance and in writing.

12.2 The Contractor shall permit the Regional District to inspect, audit and copy all records, accounts, statements and other relevant documents of the Contractor relating to the Project at all reasonable business hours in the offices of the Contractor unless otherwise agreed in writing by the parties.

Article 13 Successors and Assigns

13.1 This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, administrators, successors and assigns.

13.2 Neither party may assign this agreement without the prior consent in writing of the other, which consent shall not be unreasonably withheld.

Article 14 Notices

14.1 All notices required by this agreement to be given by either party shall be deemed to be properly given and received within two (2) business days, if made in writing to the other party, by registered mail, or facsimile addressed to the regular business address of such party.

Article 15 Term

15.1 The parties hereto agree that the Term of this Contracting Services Agreement will be from ____ to ____.

Article 16 Entire Agreement

16.1 This agreement constitutes the sole and entire agreement between the Regional District and the Contractor relating to the Project and supersedes all prior agreements and communications between them whether written or oral respecting the subject matter hereof and no other terms,

conditions or warranties whether expressed or implied shall form a part hereof.

- 16.2 The Contractor, by signing this agreement, is agreeing in writing to be the Principal Contractor and agrees to perform all the duties and responsibilities of the Principal Contractor as set out in the most current edition of the Workers' Compensation Board, Occupational Health and Safety Regulation including amendments and the duties and responsibilities normally required of a Contractor by the Workers' Compensation Board.
- 16.3 Wherever the masculine gender is used in this agreement it includes the feminine and body corporate where the context so requires.

[https://portal.rdos.bc.ca/projects/LegalMatters/Procurement/PW/Area_I/2019 RFP Apex Transfer Station Maintenance/20190930RFP_Apex_Transfer_Station_Maintenance.docx](https://portal.rdos.bc.ca/projects/LegalMatters/Procurement/PW/Area_I/2019_RFP_Apex_Transfer_Station_Maintenance/20190930RFP_Apex_Transfer_Station_Maintenance.docx)