



# Conditions of Tender

TEN014: FFT – Lakes TSA:

West Francois FSR Area

Operational and General Services  
Contracts

The bidder (the 'Bidder') must observe the following Conditions of Tender (the 'Conditions') and these Conditions form part of every Irrevocable Tender Offer (the 'Tender') made by the Bidder. Failure to comply with these Conditions and those contained in the Tender may result in the disqualification of the Bidder. The defined terms in these Conditions have the same meaning as the same terms in the Tender.

## The Understood Bidder Having Full Knowledge and Understanding of:

- (a) the nature and scope of the work described in the Tender Documents and the tools and equipment required to complete the services or work (the 'Work');
- (b) the contents of all of the tender documents issued by the Company in respect of the Work, including any addenda (the 'Tender Documents'); and
- (c) the locality of the Work and the conditions of the geographical area within which the Work will be carried out (the 'Work Area'), having viewed the Work Area, if required.

## Hereby Offers to:

- (a) undertake all Work and supply all materials, tools, equipment and labour necessary to perform the Work in strict accordance with the Tender Documents, the provisions of this tender (the 'Tender'), and at the rates and prices specified in this Tender, which rates and prices include all fees, expenses of any kind, cash allowances, contingencies and applicable taxes (excluding the Federal Goods and Services Tax (GST));
- (b) sign an Agreement for the Work, in the form included in the Tender Documents and submitted to us by the Company (the 'Agreement');
- (c) complete all Work to the satisfaction of the Company in accordance with the Agreement, Tender Documents and this Tender, including any schedules, specifications, maps or drawings, which form part of this Tender, the Tender Documents or the Agreement;

## 1.0 Tender

- 1.01 The Tender is in response to an Invitation to Tender (the 'Invitation to Tender') for Lakes TSA, FFT Mechanical Falling Overstory Removal: West Francois FSR Area issued by the Forsite Management Consultants (the 'Company') and must be received by the Company 1235 Main St. Smithers, BC (the 'Closing Location') or by mail Box 3670 Smithers, BC V0J-2N0 or by e-mail to [mbandstra@forsite.ca](mailto:mbandstra@forsite.ca) or by fax to 1-866-241-6785 on the form provided not later than 3:00 pm Monday, March 29<sup>th</sup> 2010 (local time).
- 1.02 All Tenders submitted in accordance with these Conditions are irrevocable for a period of 30 days following the tender opening (the 'Tender Opening').
- 1.03 **Term:** The term of this contract will be from April 1, 2010 to March 31, 2011. During this time frame you must complete all harvesting activities and all merchantable fiber must be removed from the FLTC. **There are no commitments to contract extensions past the March 31, 2011 expiry date.**

## 2.0 Site Viewing

- 2.01 Although viewing is **optional**, the Bidder is recommended to view the Work Site prior to submitting the Tender

### 3.0 Information Meeting – Not Applicable

### 4.0 Bidder Eligibility or Disqualification

- 4.01 In addition to the other eligibility requirements in these Conditions and the Tender Documents, the Bidder must meet the following requirement(s) in order to be eligible to bid. The Bidder:
- (a) must ensure that all works are preformed by SAFE Certified contractors;
  - (b) must have demonstrated controls and capacity to be designated as Prime Contractor;
  - (c) must be in good standing with WorkSafe BC;
  - (d) must provide evidence, to the satisfaction of the Company, that they have a documented and functioning Safety Program that is in full compliance with WorkSafe BC requirements;
  - (e) must have at least 3 or more years experience in the following:
    - i. mechanical site preparation using excavator-based machinery for silviculture purposes (e.g. mounding, piling, brush-rake, etc), or
    - ii. use of mechanical harvesting equipment including a feller-buncher or feller-processor for harvesting;
  - (f) must have carried out similar work in British Columbia;
  - (g) must have equipment capable of meeting the contract requirements;
  - (h) must use be eligible to enter into a Forestry Licence to Cut (FLTC) agreement with the Ministry of Forests and Range;
  - (i) must not have a failed contract; and
  - (j) must have existed more than 5 years.
- 4.02 The Bidder must meet the Company's requirements for experience set out in the Tender Documents. Upon request, or if specifically required to be submitted with this Tender, the Bidder must provide, to the satisfaction of the Company, proof:
- (a) that the Bidder has previously and satisfactorily completed a project of the same type and size as the one described in the Tender Documents; or
  - (b) of the Bidder's prior employment in the same type of service as the one described in the Tender Documents.
- 4.03 As an alternative to Paragraph 4.02, the Bidder may obtain the written approval of the Company prior to submitting its Tender, confirming that the Bidder has demonstrated on the face of the record the minimum level of skill and knowledge necessary to submit a Tender for the Work.
- 4.04 If the Tender Documents indicate that a contractor performance rating system is in place within the Company, the Bidder must, prior to submitting its Tender, determine and disclose in its Tender, the Bidder's status within the applicable contractor rating system.
- 4.05 The Bidder and all individuals who perform the Work under the Agreement must be eligible to work lawfully in Canada and upon request of the Company; any individual who performs Work under the Agreement must provide a valid Social Insurance Number as proof of his or her eligibility.
- 4.06 Upon request of the Company, the Bidder must provide a written statement of business organization and workforce availability, satisfactory to the Company. If, in the opinion of the

Company, the statement fails to demonstrate that the Bidder is able to successfully complete the Agreement, the Company has the right to disqualify the Bidder and award the Agreement to another bidder.

- 4.07 The Company reserves the right to disqualify the Bidder and to award the Agreement to another bidder if the Bidder or a Related Person to the Bidder has:
- (a) withdrawn an irrevocable tender;
  - (b) failed to enter into a Company contract within the time limits specified in a contract award letter;
  - (c) had a contract cancelled by the Company;
  - (d) forfeited all or part of a bid security;
  - (e) breached a contract with the Company;
  - (f) had all or part of a contract performance security retained;
  - (g) had a charge assessed for failing to comply with the requirements of a previous contract; or
  - (h) been charged or convicted of any offense in respect of a contract with the Ministry or relating to a forest practice in British Columbia.
- 4.08 For the purposes of Paragraph 4.07, a person is related to the Bidder (a 'Related Person') if the Bidder and that other person are 'related persons' or 'affiliated persons' as those terms are defined in the federal *Income Tax Act*.
- 4.09 The Bidder is disqualified from bidding on Company contracts for a period of up to 2 years from the date of any of the events in Paragraph 4.07, unless the Bidder demonstrates to the satisfaction of the Company that the Bidder is able to successfully complete the Agreement and the deficiencies which led to any of the events in Paragraph 4.07 have been corrected.

## 5.0 Bid Security Requirement - Not Applicable

## 6.0 Contract Performance Security Requirement

- 6.01 A contract performance security ('Contract Performance Security') is **Mandatory**. Prior to entering into the Agreement, the successful Bidder must provide a Contract Performance Security in the amount of \$10,000.00 **or 10% of the contract value, whichever is greater**, to the Company in the form of an acceptable financial security instrument as specified below:
- a) an irrevocable letter of credit issued by a financial institution, payable to the 'Company', having a termination date at least 90 days after the Agreement completion date. If a Letter of Credit is required for a contract with a term greater than one year, it must contain the verbatim "Evergreen Clause", as provided by the Company, allowing for the automatic extension or renewal on an annual basis until the Contract is complete;
  - b) a treasury bill note issued by the Government of Canada or the government of any Province of Canada and covered by a duly executed "Safekeeping Agreement", in the form set out in the Tender Documents;
  - c) a marketable bond in fully registered form issued and guaranteed by the Government of Canada with a maturity date of not longer than 3 years, together with a duly executed Safekeeping Agreement;
  - d) a short-term deposit registered in the same name of the 'Company' issued by a financial institution and covered by a duly executed Safekeeping Agreement; or
  - e) cash or money order, certified cheque, or bank/credit union draft, made payable to the 'Company'.

- 6.02 Personal cheques, company cheques and Canada Savings bonds are not acceptable Contract Performance Securities.

## 7.0 Option to Renew - Not Applicable

## 8.0 Bidder's Representations

- 8.01 It is the Bidder's sole responsibility to ensure that the Bidder has received all Tender Documents. Submission of the Tender by the Bidder is a representation by the Bidder that the Bidder has verified receipt of a complete set of Tender Documents including any and all addenda to the Tender Documents.
- 8.02 Submission of the Tender by the Bidder is a representation by the Bidder that the Bidder has investigated and satisfied itself of every condition affecting delivery of the Work, including every condition affecting the Work Site, and including every factor that may affect the Bidder's ability to perform the Agreement in accordance with the Tender and the Tender Documents.
- 8.03 The Bidder further represents by submission of the Tender that the Bidder has made its own investigation and has relied solely upon its own knowledge, information, and judgment, and not upon any statement, representation or information made or given by the Company or any of its employees, other than the information contained in the Tender Documents.
- 8.04 Submission of the Tender is deemed by the parties to be conclusive evidence that the Bidder has made such investigations and inquiries as the Bidder determines necessary and that the Bidder assumes all risk regarding any conditions affecting the Work.

## 9.0 Tender Submission

- 9.01 The Tender must be on a completed original or unaltered copy of the Tender Offer form provided by the Company in the Tender Documents and submitted in the envelope provided or in an envelope clearly marked with the name and address of the Bidder and the words, "Tender for " TEN014: FFT - Lakes TSA: West Francois FSR Area " on the envelope.
- 9.02 The Tender must be received at the Closing Location of the Company not later than the date and time (the 'Closing Date' and the 'Closing Time') specified in the Invitation to Tender. The Company may, by giving notice, amend the Invitation to Tender and extend the Closing Date and Closing Time for receiving tenders.
- 9.03 Tenders submitted by facsimile or electronic submission **WILL BE ACCEPTED**. It is up to the Bidder to confirm receipt of Tenders submitted by facsimile or electronic submission. Tenders received after the Closing Time will be returned to the Bidder unopened.
- 9.04 The Company, its employees and agents assume no responsibility for the timely receipt of any tenders.
- 9.05 The Tender must be signed by the Bidder or the Bidder's authorized representatives, and should bear the date of signing. Witnessing of signatures is not required. If the Bidder is:
- (a) a company, the full company name and the name(s), signature(s) and status of the authorized signing officer(s) must appear on the Tender but affixing the corporate seal is optional;
  - (b) a partnership, all the partners must sign and print their names on the Tender;

- (c) a limited partnership, one or more of the general partners must sign and print their name(s) on the Tender and include the business name of the partnership (e.g., 'doing business as \_\_\_\_\_ Limited Partnership');
- (d) an individual or sole proprietorship, the individual or sole proprietor must sign and print his or her name and include the name of the sole proprietorship, if appropriate (e.g., 'doing business as \_\_\_\_\_').

## 10.0 Tenders Complete and All Inclusive

- 10.01 The Bidder's Tender must be complete and must cover all of the Work specified in the Invitation to Tender and the Tender Documents. All blank spaces on the Tender Offer form must be legibly filled in, where applicable.
- 10.02 The Company may reject any tenders which contain any qualifying words, clauses, alterations, or omissions. Corrections to numbers in the Tender must be initialed by the authorized signatory of the Bidder.
- 10.03 The Tender must be inclusive of all of the Bidder's fees, overhead, profit, expenses of any kind, cash allowances, contingencies and applicable taxes in force on the Closing Date (excluding the federal Goods and Services Tax (GST)).
- 10.04 The Company does not pay the GST. It will be the responsibility of the successful bidder to apply directly to Revenue Canada for Input Tax Credits for any GST paid on the Contract.

## 11.0 Addenda and Clarification of Tender Documents

- 11.01 If a Bidder finds any discrepancies, omissions, ambiguities or conflicts among the Tender Documents, or as a result of the Work Site visit or the Information Meeting, the Bidder must bring them to the attention of the Company Representative identified in Paragraph 14.01 not less than 3 business days prior to the Closing Date.
- 11.02 The Company will review the Bidder's question and where the Company determines that the information was not clearly specified in the Tender Documents, the Company will issue a clarifying addendum to all registered holders of Tender Documents, and the addendum will thereafter form part of the Tender Documents.
- 11.03 The Company may, in its discretion, at any time, amend the Tender Documents by issuing to all registered holders of the Tender Documents, in hard copy or electronically, a written addendum to the Tender Documents which addendum then forms part of the Tender Documents.
- 11.04 Where Tender Documents are available electronically on BC Bid<sup>®</sup>, the Company may post any addendum to the Tender Documents on the BC Bid<sup>®</sup> website at <http://www.bcbid.ca>. Bidders are strongly encouraged to select "Send Me Amendments" that is included as an option on the Opportunity Notice published on BC Bid<sup>®</sup>. By selecting this option a registered Bidder will be automatically notified of any amendment that may be issued. Bidders that are not registered with BC Bid<sup>®</sup> may register by selecting *Start your e-Service, Supplier Registration* on the BC Bid<sup>®</sup> home page, [www.bcbid.ca](http://www.bcbid.ca). Bidders who do not register with BC Bid<sup>®</sup> are solely responsible to continually monitor the BC Bid<sup>®</sup> website on an ongoing basis to keep themselves informed of any addendum.

## 12.0 Equivalents

- 12.01 The Tender is based on the materials and products specified in the Tender Documents.

- 12.02 The Company will allow equivalents to the materials and products specified in the Tender Documents only if:
- (a) the Bidder submits full descriptive data in writing of any suggested equivalent NOT LESS THAN 3 WORKING DAYS PRIOR to the Closing Date; and
  - (b) the Company approves the suggested equivalent in writing prior to the Closing Time.

### 13.0 Revisions to Tenders

- 13.01 Prior to the Closing Time, revisions to a Tender that has already been submitted may be made by facsimile, telegram or electronic transmission.
- 13.02 Revisions should only state the dollar amount by which a numeric figure is to be increased or decreased, or indicate specific directions as to the exclusion or inclusion of particular words.
- 13.03 Where a Bidder submits multiple revisions to the Tender, each successive revision will nullify and replace any previous revisions unless the Bidder numbers each revision sequentially and states on each new revision, that the new revision does not nullify previous revisions.
- 13.04 The Company facsimile transmission number is: **1-866-241-6785**. The Bidder is solely responsible for the effective delivery of any facsimile transmission prior to the Closing Time.
- 13.05 Electronic transmission of a Tender revision may be made to: **[mbandstra@forsite.ca](mailto:mbandstra@forsite.ca)**. The Bidder is solely responsible for the effective delivery of any electronic transmission prior to the Closing Time.

### 14.0 Verification of Tender Receipt

- 14.01 Any bidder who wishes to verify that their tender has been received, may do so by telephoning the Company representative: **[Mike Bandstra \(250\) 847-4822](tel:2508474822)** (the 'Company Representative').
- 14.02 Bidders must state their company name before the information in Paragraph 14.01 can be released. The Company may require the Bidder to FAX the request in writing on letterhead before releasing such information.
- 14.03 No other information concerning the receipt of tenders will be released under any circumstances prior to the tender opening (the 'Tender Opening').

### 15.0 Withdrawal of Tender

- 15.01 Any bidder wishing to withdraw their tender prior to the tender Closing Time may do so by submitting a withdrawal request letter to the same address to which the Tender was submitted. Upon receipt of the request, the tender will be returned to the Bidder unopened.

### 16.0 Opening and Evaluation of Tenders

- 16.01 All tenders will be evaluated in private, including tenders that were opened and read in public.
- 16.02 The Agreement will not be awarded at the Tender Opening.
- 16.03 If only one tender is received, the Company reserves the right to open the tender in private and if the total bid price exceeds the estimated budget for the Agreement, the Company may re-tender the Work seeking a better response, with or without any changes being made to the Tender Documents.
- 16.04 If more than one tender is received from the same bidder, the last tender received, as determined by the Company, will be the only tender considered.

- 16.05 The lowest or any other tender will not necessarily be accepted. The Company reserves the right to:
- (a) reject all tenders;
  - (b) reject a tender which in the sole opinion of the Company is too low to provide the Bidder with adequate resources to perform the Work; and,
  - (c) refuse award of the Agreement to a bidder the Company judges to be fully or over committed on other projects; and,
  - (d) accept bids for the whole of the Work or may delete any part at its discretion;
  - (e) limit the number of Company contracts held at one time by any bidder.
- 16.06 If prices are incomplete, contain omissions, or unbalanced or otherwise fail to provide an accurate total price, the Company may disqualify the Tender.
- 16.07 If the Tender indicates the requirement for a Total Bid Price or alternatively a Total Estimated Bid Price on a unit-priced based tender, this is for evaluation purposes only and the unit rates shall take precedence for the Contract. The Company will rank submitted tenders from lowest priced to highest priced based on the Total Bid Price or the Total Estimated Bid Price stated on each tender. The Company will:
- (a) check each extended amount (the "Extended Amount") on the lowest priced Tender to ensure it is the correct product of the quantity and the price per unit (the "Price Per Unit"); and,
  - (b) check the Total Bid Price or alternatively the Total Estimated Bid Price to ensure it is the correct sum of the Extended Amount.

Where the Extended Amount or the Total Bid Price or alternatively the Total Estimated Bid Price of the lowest priced Tender is incorrect, the Company will:

- (c) for each and every incorrect Extended Amount, recalculate the incorrect Extended Amount by using the Bidder's Price Per Unit entered on the Tender; and,
- (d) will correctly recalculate the Total Bid Price or alternatively the Total Estimated Bid Price on the Tender using the corrected Extended Amounts; and,
- (e) where the Total Bid Price or the Total Estimated Bid Price is no longer the lowest ranked Tender the Company will put the Tender to one side as a remaining tender; and,
- (f) The Company will then apply these conditions to the next lowest ranked Tender to the extent necessary until a Tender with the lowest price is finally determined.

## **17.0 Obligations of Successful Bidder**

- 17.01 Upon receiving an Agreement award letter from the Company, the successful bidder (the 'Successful Bidder') must take the following steps before starting Work:
- (a) sign the Agreement covering the Work and return the Agreement to the Company;
  - (b) provide its assigned WorkSafe BC registration number, which must cover all workers, shareholders, directors, partners, and other individuals employed or engaged in the performance of the Work, if it has not already done so in the Tender;
  - (c) provide proof of insurance coverage, if required under the Agreement, by delivering a completed Province of British Columbia 'Certificate of Insurance' in the form supplied by the Company; and
  - (d) provide a Performance Security Deposit, if required under the Agreement.

- 17.02 If the Successful Bidder does not complete the steps, as required in Paragraph 17.01, within the time specified in the Agreement award letter, the Company may, by written notice cancel the Agreement award letter and award the Agreement to another bidder, and:
- (a) if there is a Bid Security, make a demand on the Bid Security, which will be either,
    - (i) the difference between the Total Bid Price and the total bid price of the next lowest qualified bidder, or
    - (ii) the amount of the Bid Security, whichever is less; or
  - (b) if no Bid Security was required, the Company may pursue any remedy available to it at law or in equity, including the payment of liquidated damages by the Bidder calculated as the difference between the Bidder's Total Bid Price and the total bid price of the next lowest qualified bidder; and
  - (c) the Company may give written notice to the Successful Bidder that its eligibility to bid Company contracts is pending suspension. If the Successful Bidder fails to satisfactorily execute two additional Company contracts within the same calendar year, the Company reserves the right to disqualify the Successful Bidder from bidding on future contracts for a period of two years from the date of the last Agreement award letter.
- 17.03 In the event that the Successful Bidder has already started the Work, and is in default under Paragraph 17.01, and the default continues for seven days after written notice to correct the default is given to the Successful Bidder, the Company may terminate the Agreement or cancel the Agreement award letter, and the Successful Bidder must reimburse the Ministry for all costs, expenses, damages and losses arising out of the Successful Bidder's default.
- 17.04 The Successful Bidder must authorize the Company to cash the Bid Security and hold it as a Contract Performance Security until satisfactory completion of the Contract. Where no Bid Security was required, yet a Contract Performance Security is the Bidder shall submit one of the financial performance security instruments specified in Paragraph 17.05.
- 17.05 As an alternative to Paragraph 17.04, the Successful Bidder may request the return of the Bid Security after submitting one of the following financial performance security instruments in the amount specified in Paragraph 6.01:
- (a) an irrevocable letter of credit issued by a financial institution, payable to the 'Company', having a termination date at least 90 days after the Agreement completion date. If a Letter of Credit is required for a contract with a term greater than one year, it must contain the verbatim 'Evergreen Clause', as provided by the Company, allowing for the automatic extension or renewal on an annual basis until the Contract is complete;
  - (b) a treasury bill note issued by the Government of Canada or the government of any Province of Canada and covered by a duly executed 'Safekeeping Agreement', in the form set out in the Tender Documents;
  - (c) a marketable bond in fully registered form issued and guaranteed by the Government of Canada or the government of any Province of Canada with a maturity date of not longer than 3 years, together with a duly executed Safekeeping Agreement;
  - (d) a short-term deposit registered in the name of the 'Company' issued by a financial institution and covered by a duly executed Safekeeping Agreement;
  - (e) cash or a money order, certified cheque, or bank/credit union draft, made payable to the 'Company'.

- 17.06 Personal cheques, company cheques and Canada Savings bonds are not acceptable Agreement Performance Securities.

## **18.0 Independent Bidding**

- 18.01 Bidrigging is a criminal offense under the federal Competition Act. The Company will report any suspicion of bidrigging immediately to the Director of Investigation and Research appointed under the Competition Act.
- 18.02 By submission of the Tender, the Bidder certifies that the unit prices and/or the Total Bid Price in the Tender were independently developed without consultation with any other bidder or potential bidder.
- 18.03 Bidrigging between bidders, if proven, will be sufficient cause for rejection of the tenders of all bidders involved in that bidrigging and may result in disqualification from bidding on all future Company contracts for up to two years.

## **19.0 Successful Bidder's Representative**

- 19.01 The Contractor shall appoint a Contractor Representative fluent in English, who shall:
- (a) have full authority to act on behalf of the Contractor in connection with the Work and the Agreement; and;
  - (b) be available to the Company Representative, when requested, and be present at all times at any site where the Work is carried out.

## **20.0 Ownership**

- 20.01 The Tender, and all documents submitted as part of the Tender, become the property of the Company, and are subject to the provisions of the Freedom of Information and Protection of Privacy Act.
- 20.02 The Company will be the exclusive owner of all rights to any materials or property produced under the Agreement and the Bidder and its agents must not patent, copyright or otherwise claim any rights of ownership to any materials or property produced under the Agreement.

## **21.0 Limitation of Damages**

- 21.01 The Bidder, by submitting a Tender, agrees that it will not claim damages in excess of the reasonable costs incurred by the Bidder in preparing its Tender for matters relating to the Agreement award or in respect of the tendering process, and the Bidder, by submitting a Tender, waives any claim for loss of profits if no Agreement award is made to the Bidder.