**Ministry of**
**Forests, Lands and**
**Natural Resource Operations**

# CONDITIONS OF TENDER

**MAJOR WORKS CONTRACT**
**FOREST ROAD CONSTRUCTION**
**BC Timber Sales**

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.

## 1. Tender

1.01 The Tender is in response to an Invitation to Tender (**the 'Invitation to Tender'**) for ***EN22TFH003 Wardner South FSR Road Construction Project*** issued by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (**the 'Ministry'**) and must be received by the Timber Sales Manager, BC Timber Sales, Kootenay Business Area on the form provided not later than March 18, 2021 at 1:30PM (local time).

The address for ground delivery is 1907 Ridgewood Road, Nelson, BC V1L 6K1 and the mailing address for postal delivery is the same as above (**the 'Closing Location'**).

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'**).

## 2. Site Viewing

2.01 Viewing of the Work Site by the Bidder prior to bidding is ***Optional***. Although viewing is optional, the Bidder is recommended to view the Work Site prior to submitting the Tender.

## 3. Information Meeting – Not Applicable

## 4. Bidder Eligibility or Disqualification

4.01 In order to be eligible to bid, the Bidder must be:

(a) certified in the BC Forest Safety Council SAFE Company Program for the activity being performed as described in the tender documents (**the 'Tender Documents'**); or

(b) certified under another safety scheme recognized by the BC Forest Safety Council; or

(c) exempted by the Ministry in writing from the requirements to be certified in the SAFE Companies Program for it or its subcontractors and **proof of exemption must be submitted with the Tender**.

4.02 Upon request, the Bidder must provide, to the satisfaction of the Ministry:

(a) proof that it has adequate construction machinery and equipment to do the Work properly and expeditiously;

(b) proof that it, or a partner(s) or Key Personnel (individual(s) who would be responsible for the management of or performance of the work under the Contract), has previously and satisfactorily completed a project of similar size and nature as the one described in the Tender Documents;

(c) proof that it, or a partner(s) or Key Personnel, has appropriate related technical experience and qualifications in the same type of Work as the one described in the Tender Documents;

(d) proof that it is, prior to the tender Closing Date, certified in BC Forest Safety Council SAFE Company Program or another safety scheme recognized by the BC Forest Safety Council or BC Timber Sales for the activity being performed as described in the Tender Documents;

(e) confirmation that none of the elements described in Clause 4.05 has occurred.

4.03 The Bidder and all individuals who perform the Work under the Contract must be eligible to work lawfully in Canada and upon request of the Ministry, any individual who performs Work under the Contract must provide a valid Social Insurance Number or Work Permit as proof of his or her eligibility.

4.04 Upon request of the Ministry, the Bidder must provide a written statement of business organization, qualifications, experience, workforce availability and citizenship status of the Bidder's company and each member of the workforce, including a partner(s) or Key Personnel, who will perform the Work under the Contract, satisfactory to the Ministry. The Ministry may conduct such independent reference checks or verifications as are deemed necessary by it, to clarify, test, or verify the information and to confirm the suitability of the Bidder, including reference checks from any Natural Resource Sector ministry or other Provincial government office in which the Bidder, a partner(s) or Key Personnel, has been under contract. If, in the opinion of the Ministry, the statement fails to demonstrate that the Bidder is able to successfully complete the Contract, the Ministry has the right to disqualify the Bidder and award the Contract to another bidder.

4.05 The Ministry reserves the right to disqualify the Bidder and to award the Contract to another bidder if the Bidder or an Associated Person to the Bidder has, in respect of a contract or contracts with the Ministry:

(a) withdrawn an irrevocable tender;

(b) failed to enter into a contract within the time limits specified by the Ministry;

(c) had a contract cancelled by the Ministry;

(d) forfeited all or part of a bid security;

(e) breached a contract;

(f) had all or part of a contract performance security forfeited;

(g) had a charge assessed for failing to comply with the requirements of a previous contract; or

(h) been charged or convicted of any offence in respect of a contract or relating to a forest practice in British Columbia.

4.06 For the purposes of Paragraph 4.05, a person is associated to the Bidder (an 'Associated Person') if the Bidder and that other person are 'related persons' or 'affiliated persons' or 'associated persons' as those terms are defined or referenced in the federal *Income Tax Act* or related Canada Revenue Agency's interpretation bulletins. Upon request, the Bidder will provide the Ministry with: (i) the ownership of voting shares of the incorporated Bidder, (ii) a list of individuals who exercise legal and/or operational control over the Bidder; and (iii) a notarized declaration that the Bidder is not an Associated Person in respect of a Disqualified Bidder nor is it in legal or operational control of, nor is it acting in concert with or at non-arms length with a Disqualified Bidder.

4.07 The Bidder may be disqualified from bidding on Ministry contracts for a period of up to two years from the date of any of the events in Paragraph 4.05, unless the Bidder demonstrates to the satisfaction of the Ministry that the Bidder is able to successfully complete the Contract and the deficiencies which led to any of the events in Paragraph 4.05 have been corrected.

4.08 For the purposes of this Invitation to Tender, "Disqualified Bidder" means a person (individual or corporate) who has been disqualified from bidding by the Ministry for a stated period of time.

## 5. Bid Security Requirement

5.01 In order to secure the Bidder's obligations in respect of the Tender, the Bidder shall provide to the Province of British Columbia in the tender envelope a bid security (**the 'Bid Security'**) either in the form of cash or in the form of a bid bond.

5.02 Where the Bidder provides Bid Security in the form of cash:

(a) The Bid Security must be in an **amount not less than $5,000.00**;

(b) The Bid Security must be in the form of:

(i) cash; or,

(ii) bank draft, certified cheque or personal money order issued by a financial institution or postal money order issued by Canada Post Corporation, payable to the "Minister of Finance".

5.03 Where the Bidder provides the Bid Security in the form of a bid bond:

(a) it must be in an amount not less than 10% of the total amount of the Tender;

(b) it must be issued by a duly licenced surety company authorized to transact a business of suretyship in Canada;

(c) the obligee named on the bond shall be "Her Majesty the Queen in the right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations".

5.04 Where the Bidder provides the Bid Security in the form of cash and due to a revision of the total bid price (**the 'Total Bid Price'**) or the total estimated bid price (**the 'Total Estimated Bid Price'**) the security contained in the tender envelope is insufficient, the Tender will not be disqualified if the Bidder submits the deficiency in the Bid Security amount within two business days following the Tender Opening.

5.05 Where an unsuccessful bidder has provided the Bid Security in form of cash, the Bid Security will be returned to the unsuccessful bidder after the Successful Bidder has entered into the contract.

5.06 Where the Successful Bidder has provided a Bid Security in the form of cash, the Bid Security will be returned to the Successful Bidder after the Successful Bidder has entered into the Contract and submitted the contract performance security (**the 'Contract Security'**) in accordance with the terms of the Contract.

## 6. Contract Security Requirement

6.01 The Successful Bidder must submit the Contract Security in accordance with the terms of the Contract.

## 7. Bidder's Representations

7.01 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.

7.02 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, including the grades, nature of the ground, means of access, water supply and every factor that may affect the Bidder's ability to perform the Contract in accordance with the Tender and the Tender Documents.

7.03 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 Ministry or any of its employees, other than the information contained in the Tender Documents.

7.04 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.

7.05 The Bidder affirms it is not an Associated Person to, nor acting in concert with, a Disqualified Bidder and undertakes to not knowingly do so during the term of the Contract.

## 8. Tender Submission

8.01 The Tender must be on a completed original or unaltered copy of the Tender Offer form. The Tender is to be submitted in the envelope provided or in an envelope clearly marked with the name and address of the Bidder and the words, "**Tender for EN22TFH003 Wardner South FSR Road Construction Project**" on the envelope.

8.02 The Tender must be received at the Closing Location, not later than the date and time (**the 'Closing Date' and the 'Closing Time'**) specified in the Invitation to Tender. The Ministry may, by giving notice, amend the Invitation to Tender and extend the Closing Date and Closing Time for receiving tenders.

8.03 Tenders submitted by facsimile, telegram or electronic submission WILL NOT BE ACCEPTED. Tenders received after the Closing Time will be returned to the Bidder unopened.

8.04 The Ministry, its employees and agents assume no responsibility for the timely receipt of any tenders.

8.05 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, where appropriate, include the name of the sole proprietorship (e.g., 'doing business as _____').

8.06 If a joint tender is submitted, each of the joint Bidders must execute the Tender in one of the manners described above.

## 9. Tenders Complete and All Inclusive

9.01 The Bidder's Tender must be complete and must cover all of the Work specified in the Invitation to Tender and the Tender Documents. Unless otherwise indicated, all blank spaces on the Tender must be legibly filled in.

9.02 The Ministry may reject any tenders that contain any qualifying words, clauses, alterations, or omissions. Corrections to numbers in the Tender must be initialed by the authorized signatory of the Bidder.

9.03 The Tender must be inclusive of all of the Bidder's fees, overhead, profit, expenses of any kind, cash allowances, contingencies and any taxes (including taxes paid or payable by the Bidder to a supplier) that are in force on the Closing Date, but shall exclude the Goods and Services Tax (GST) and any applicable Provincial Sales Tax (PST) that the Bidder is required to charge the Province as a taxable transaction.

## 10. Addenda and Clarification of Tender Documents

10.01 If a Bidder finds any discrepancies, omissions, ambiguities or conflicts among the Tender Documents, or is in doubt as to their meaning, or as a result of the Work Site visit or the Information Meeting, the Bidder must bring them to the attention of the Ministry Representative identified in Paragraph 13.01 not less than four business days prior to the Closing Date. A business day means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia.

10.02 The Ministry will review the Bidder's question and where the Ministry determines that the information was not clearly specified in the Tender Documents, the Ministry will issue a clarifying addendum to all registered holders of Tender Documents, and the addendum will thereafter form part of the Tender Documents.

10.03 The Ministry may, in its discretion, amend the Tender Documents by issuing a written addendum, which will be available at least four calendar days prior to the Closing Date and Closing Time, to all registered holders of the Tender Documents, which addendum then forms part of the Tender Documents. A calendar day means any day of the week from January 1st to December 31st.

10.04 Where Tender Documents were obtained from BC Bid®, the Ministry will post any addendum to the Tender Documents on the BC Bid® website at http://www.bcbid.ca. Bidders are solely responsible to continually monitor BC Bid® on an ongoing basis to keep themselves informed of any addendum.

Bidders that are not registered with BC Bid® can register by selecting *Start your e-Service, Supplier Registration* on the BC Bid® home page. Bidders are strongly encouraged to select "Send Me Amendments" as an option on the Opportunity Notice published on BC Bid®. By selecting this option a registered Bidder will be automatically notified of any addenda that may be issued.

10.05 Where Tender Documents were provided directly by the Ministry to bidders (not obtained from BC Bid®), addendum to the Tender Documents will be sent by the Ministry to all registered package holders.

## 11. Revisions to Tenders

11.01 Prior to the Closing Time, revisions to a Tender that has already been submitted may be made by facsimile, telegram or electronic transmission.

11.02 Revisions should only state the dollar amount by which a numeric figure/unit rate is to be increased or decreased, or indicate specific directions as to the exclusion or inclusion of particular words.

11.03 If a revision is to the dollar amount and it does not state which unit rate is to be increased or decreased, the Ministry will consider the Tender to be incomplete and the Ministry will disqualify the Tender, except in situations where there is only one Tender in which case the Ministry may disqualify the Tender.

11.04 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.

11.05 The Ministry facsimile transmission number is: ***250-825-3411***. The Bidder is solely responsible for the effective delivery of any facsimile transmission prior to the Closing Time.

11.06 Electronic transmission of a Tender revision may be made to: ***Forests.KootenayTimberSalesOffice@gov.bc.ca***. The Bidder is solely responsible for the effective delivery of any electronic transmission prior to the Closing Time.

11.07 The calendar and clock showing on the Ministry's Email or facsimile destination, whether accurate or not, shall govern the delivery of revisions. The revision is deemed delivered to and received by the Ministry if the transmission is completed in whole on or before the Closing Date and Closing Time. Facsimile or electronic eMail submissions are submitted at the Bidder's own risk. The Ministry is not responsible for systems or other problems that may affect submission.

## 12. Verification of Tender Receipt

12.01 Any bidder who wishes to verify that their tender has been received may do so by telephoning the Ministry Representative: ***Reception at 250-825-1100***.

12.02 Bidders must state their company name before the information in Paragraph 12.01 can be released. The Ministry may require the Bidder to FAX the request in writing on letterhead before releasing such information.

12.03 No other information concerning the receipt of tenders will be released under any circumstances prior to the Tender Opening.

## 13. Withdrawal of Tender

13.01 Any bidder wishing to withdraw its Tender prior to the 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.

## 14. Opening and Evaluation of Tenders

14.01 Tenders will be opened ***in private***.

14.02 All tenders will be evaluated in private, including tenders that were opened and read in public.

14.03 The Contract will not be awarded at the Tender Opening.

14.04 If only one tender is received, the Ministry reserves the right to open the tender in private and if the Total Bid Price or the Total Estimated Bid Price exceeds the estimated budget for the Contract, the Ministry may re-tender the Work seeking a better response, with or without any changes being made to the Tender Documents.

14.05 If more than one tender is received from the same bidder, the last tender received, as determined by the Ministry, will be the only tender considered.

14.06 The lowest or any other tender will not necessarily be accepted. The Ministry reserves the right to:

(a) reject all tenders;

(b) reject a tender which in the sole opinion of the Ministry is too low to provide the Bidder with adequate resources to perform the Work; and,

(c) refuse award of the contract to a bidder the Ministry 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 Ministry contracts held at one time by any bidder.

14.07 If a bid price is incomplete, contains an omission, does not fairly represent proper compensation for an item of work to be done, or fails to provide an accurate total price, the Ministry may disqualify the Tender.

14.08 If the Tender indicates the requirement for a Total Bid Price or 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 Ministry 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 Ministry 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 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 the Total Estimated Bid Price of the lowest priced Tender is incorrect, the Ministry 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 recalculate the Total Bid Price or 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 Ministry will put the Tender to one side as a remaining tender; and,

(f) The Ministry 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.

## 15. Obligations of Successful Bidder

15.01 Upon receiving a Contract award letter from the Ministry, the Successful Bidder must take the following steps within the time specified in the award letter before starting Work:

(a) sign the Contract covering the Work and return the Contract to the Ministry; and

(b) provide its assigned Personal Optional Protection registration number or its 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; and

(c) provide proof of insurance coverage, if required under the Contract, by delivering a completed Province of British Columbia 'Certificate of Insurance' in the form supplied by the Ministry; and

(d) provide the Contract Security, as required under the Contract; and

(e) if required to be registered with the BC Registrar of Companies as an extra-provincial company, provide proof of registration; and .

15.02 If the Successful Bidder does not complete the steps, as required in Paragraph 15.01, within the time specified by the Ministry, the Ministry may, by written notice cancel the Contract award and award the Contract to another bidder, and:

(a) make a demand on the Bid Security, which will be either:

(i) the difference between the Successful Bidder's Total Bid Price or the Total Estimated Bid Price and the total bid price or total estimated bid price of the next lowest qualified bidder; or

(ii) the amount of the Bid Security,

whichever is less; and

(b) the Ministry may give written notice to the Successful Bidder that its eligibility to bid Ministry contracts is pending suspension. If the Successful Bidder fails to satisfactorily execute two additional Ministry contracts within the same calendar year, the Ministry 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 contract award.

15.03 In the event that the Successful Bidder has already started the Work, and is in default under Paragraph 15.01, and the default continues for seven calendar days after written notice to correct the default is given to the Successful Bidder, the Ministry may terminate the Contract or cancel the Contract award, and the Successful Bidder must reimburse the Ministry for all costs, expenses, damages and losses arising out of the Successful Bidder's default.

15.04 The Successful Bidder will be required to continue to meet the Ministry's requirements under Paragraph 4.02 throughout the term of the contract, to the satisfaction of the Ministry.

## 16. Independent Bidding

16.01 Bid-rigging is a criminal offence under the federal *Competition Act.* The Ministry will report any suspicion of bid-rigging immediately to the Director of Investigation and Research appointed under the *Competition Act*.

16.02 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.

16.03 Bid-rigging between bidders, if proven, will be sufficient cause for rejection of the tenders of all bidders involved in that bid-rigging and may result in disqualification from bidding on all future Ministry contracts for up to two years.

## 17. Successful Bidder's Representative

17.01 Prior to the commencement of Work, the Successful Bidder shall appoint a Contractor Representative fluent in English, who shall:

(a) have full authority to act on behalf of the Successful Bidder in connection with the Work and the Contract; and

(b) be available to the Ministry Representative, when requested, and be present at all times at any site where the Work is carried out.

## 18. Ownership

18.01 The Tender, and all documents submitted as part of the Tender, become the property of the Ministry, and are subject to the provisions of the *Freedom of Information and Protection of Privacy Act*.

## 19. Limitation of Damages

19.01 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 Contract award or in respect of the tendering process. The Bidder, by submitting a Tender, waives any claim for loss of profits if no Contract award is made to the Bidder.

## 20. Equivalents

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

20.02 The Ministry 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 FOUR BUSINESS DAYS PRIOR to the Closing Date and Closing Time; and

(b) the Ministry approves the suggested equivalent in writing prior to the Closing Time.

## 21. Alternatives

21.01 The Ministry will not accept separate or alternative prices.