

Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_



Purchasing/Procurement Services  
PO Box 400  
Office - #1600, 2<sup>nd</sup> Street NE  
Shop – 205 1<sup>st</sup> Ave West  
Three Hills, Alberta T0M 2A0

## **REQUEST FOR TENDERS**

**RFT-2022-3205-ED01**

**FOR THE SUPPLY AND DELIVERY OF  
ONE (1) NEW CURRENT PRODUCTION MODEL  
Triaxle Trailer, Gravel End Dump 36'**

**RFT Issue Date:** July 11<sup>th</sup>, 2022  
11:59:59 AM Alberta Time

**RFT Closing:** August 25<sup>th</sup>, 2022  
12:00:00 PM Alberta Time

**Purchasing Contact:** Shaine Isaac

**Telephone:** (403) 443-5541

**Facsimile:** (403) 443-2113

**Email:** [purchasing@kneehillcounty.com](mailto:purchasing@kneehillcounty.com)

## **RFT Administration Terms and Conditions**

These Terms and Conditions include the following Sections:

- 1. INTERPRETATION**
- 2. SUBMISSION OF TENDERS**
- 3. FORM OF TENDERS**
- 4. ADDENDA**
- 5. SPECIFICATIONS**
- 6. DISPUTES AND PAST PERFORMANCE**
- 7. CONFIDENTIALITY, FREEDOM OF INFORMATION AND SECURITY**
- 8. CONFLICT OF INTEREST AND ETHICS**
- 9. TITLE AND INTELLECTUAL PROPERTY**
- 10. CHANGES TO TENDER DOCUMENTS**
- 11. WARRANTY**
- 12. PRIME COST SUMS**
- 13. OPTIONAL, SEPARATE AND DELETE PRICE SUBMISSIONS**
- 14. IMPORTING AND GOODS AND SERVICES TAXES**
- 15. EVALUATION AND CONTRACT AWARD**
- 16. SUCCESSFUL VENDOR**
- 17. RETURN OF TENDER DOCUMENTS**
- 18. PRODUCT APPROVALS**
- 19. PROVISION OF GOODS FOR EVALUATION**
- 20. GOODS RECEIVED ANALYSIS AND ACCEPTANCE**
- 21. PAYMENT**
- 22. TENDER SUM EXCEEDING BUDGET**
- 23. INDEMNITY AND HOLD HARMLESS**
- 24. SURVIVAL OF TERMS**
- 25. ORDER OF PRECEDENCE**

## 1. INTERPRETATION

1.1. For the Administration Terms and Conditions:

1.1.1. "Tender Documents" means all documents listed in the Request for Tender, including but not limited to:

- 1.1.1.1. Administration Terms and Conditions
- 1.1.1.2. RFT Appendix A - Specifications

1.1.2. In this document:

1.1.2.1. headings are used for convenience only and will not affect the meaning or interpretation of the clauses.

1.1.2.2. words in the singular include the plural and vice versa.

1.1.2.3. "must", "shall" and "will" mean a requirement that must be met in order for the Tender to receive consideration.

1.2. In this document, unless the context otherwise requires,

**"Acceptance"** means the Goods are the same as ordered, undamaged, in an Operable State, and if applicable:

- (a) have the same components as the Goods quoted.
- (b) are appropriately labelled, in accordance with Clause 7.7.

**"Alberta Purchasing Connection ("APC")"** means the Government of Alberta's electronic tendering system.

**"Alberta Time"** means Mountain Standard Time or Daylight Saving Time as provided for in the Daylight Saving Time Act of Alberta.

**"AIT"** means Agreement on Internal Trade.

**"Authorized Reseller"** means an entity authorized by a Manufacturer or Canadian Distributor to act on its behalf, in Alberta, for the Goods.

**"Bidding Period"** means the time period from when the opportunity has been posted to when it closes.

**"Business Day"** means from 07:00 to 15:00, Alberta Time, Monday to Friday, excluding holidays observed by the Government of Alberta.

**"Business Hours"** means 07:00 to 15:00 Alberta Time on Business Days.

**"Canadian Distributor"** means an entity authorized by a Manufacturer to act on its behalf, in Alberta, for the Goods.

**"Confidential Information"** means Purchaser Confidential Information and Vendor Confidential Information.

**“Confidentiality Legislation”** means any statutory or regulatory requirement to keep the information confidential as amended, revised or substituted from time to time, including the Alberta Freedom of Information and Protection of Privacy Act.

**“Contract”** means the written agreement, which includes the RFT, if applicable, and the Tender Submission between the successful Vendor and the County to provide the supply of the Goods, Services or Materials contemplated by the RFT.

**“County, The”** means Kneehill County or departments of Kneehill County (See Purchaser).

**“Disposal Surcharge”** means any environmental surcharge/fee that Vendors are required by law to collect and remit.

**“Equivalent”** means equal to or better than the functionality and performance of the item specified in the RFT.

**“Evaluation”** means confirming the Tender Submission and Goods meet the RFT requirements.

**“Fixed Price”** means a definite and predetermined price.

**“Fixed Price Hourly Rate”** means a definite and predetermined hourly rate.

**“Goods”** means the products quoted by the Vendor, including all components and any products to be produced and/or any services to be supplied under the Contract.

**“Manufacturer”** means an entity that:

- (a) uses components from one or more sources to assemble the Goods that it sells under its brand or name.
- (b) has a third party, on its behalf, use components from one or more sources to assemble the Goods that it sells under its brand or name.
- (c) develops the Goods.

**“Materials”** means all the working papers, surveys, notes, plans, designs, reports, records, studies, drawings, examinations, assessments, procedures, specifications, evaluations, results, conclusions, interpretations, calculations, analyses, systems, software, source code, documents, writings, programs, hardware, devices, data or any components of these, regardless of how they are represented, stored, produced, or acquired.

**“Must”, “mandatory”, “required”, and “shall”** mean a requirement that must be met in a substantially unaltered form in order for the Tender to receive consideration.

**“NWPTA”** means New West Partnership Trade Agreement.

**“Operable State”** means operating in accordance with the Manufacturer's published specifications and/or diagnostic tests, industry standards, the RFT and the submitted Tender.

**“Optional”** means a requirement not considered essential, but for which preference may be given.

**“Personal Information”** means recorded information about an identifiable individual, including:

- (a) the individual's name, home or business address or home or business telephone number;

- (b) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations;
- (c) the individual's age, sex, marital status or family status;
- (d) an identifying number, symbol or other particular assigned to the individual;
- (e) the individual's fingerprints, blood type or inheritable characteristics;
- (f) information about the individual's health and health care history including information about a physical or mental disability;
- (g) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given;
- (h) anyone else's opinions about the individual; and
- (i) the individual's personal views or opinions, except if they are about someone else.

**"Procurement Services"** means the Purchasing/Procurement unit of Kneehill County.

**"Project"** means the studies, analysis, planning, design, construction, physical elements, or apparatus forming part of, or contributing to the development of, a transportation facility for a city transportation system;

**"Purchaser"** means:

- (a) department/s of Kneehill County.
- (b) boards, commissions and organizational units that form part of Kneehill County but are not part of a department of Kneehill County.
- (c) corporations that are an agent of Kneehill County.

**"Purchaser Confidential Information"** means any information concerning the County or third parties or any of the business or activities of the County or third parties acquired by the Vendor as a result of participation in the RFT process or Contract, which is required by any Confidentiality Legislation to be kept confidential by the County or is supplied by the County in confidence, including but not limited to such information that is contained in data management systems of the County or is financial, personal data or business information and plans of or relating to the County or third parties.

**"Purchasing Contact"** means the contact person for the RFT, usually the person to whom technical questions shall be directed to.

**"Quote"** means the Vendor's offer to supply the Goods in response to the RFT.

**"Request for Tender (RFT)"** means the solicitation for the Services and Materials including the attached appendices.

**"Services"** means the functions, duties, tasks and responsibilities to be provided by the Vendor as described in the Contract.

**"Should", or "desirable"** means a provision having a significant degree of importance to the objectives of the RFT.

“**Tender**” means the County’s request for Tenders as outlined in the Request for Tender and these instructions to Vendors but does not include a Purchase Order

“**Tender Submission**” means the Vendor’s response to the RFT and includes all the Vendor’s attachments and presentation materials.

“**Tender Sum**” means the total amount to be charged to the County in the event of a successful Tender.

“**Vendor**” means an individual or organization responding to the RFT with a Tender.

“**Vendor Confidential Information**” means information, supplied in confidence, concerning the Vendor or third parties or any of the business or activities of the Vendor or third parties and which is acquired by Kneehill County as a result of participation in the Contract.

“**Warranty Period**” means the period that commences upon receipt of the Goods, at the County’s site, and is the greater of the period stated in the RFT, or the standard Manufacturer’s, Canadian Distributor’s or Authorized Reseller’s warranty, including any warranty extensions.

“**Warranty Service**” means the service provided during the Warranty Period to repair or replace the Goods, at the Vendor’s expense, inclusive of but not limited to, parts, labour, freight and insurance to and from the County’s site.

## 2. SUBMISSION OF TENDERS

- 2.1. The RFT is subject to the MASH Sector provisions of the Agreement on Internal Trade, Part IV, Chapter Five - Procurement and Annex 502.4, (AIT) and the New West Partnership Trade Agreement (NWPTA).
- 2.2. Vendors may submit Tenders only up to 12:00:00 PM Alberta Time on July 25<sup>th</sup>, 2022.
- 2.3. Vendors must submit Tenders with all forms, issued with this Tender Document, completed.
- 2.4. A Vendor must indicate its name and address clearly in the upper left-hand corner of the envelope so that the Tender submission can be identified.
- 2.5. Tender submissions will be accepted during Business Days, and during Business Hours and should be submitted in a sealed envelope with the RFT number and closing date clearly marked on the envelope. The Vendor may deliver its Tender to Procurement Services by hand, courier or mail. Upon receipt, all Tenders are kept in a secure area until opened privately, the first business day immediately after the RFT closing date and time.
- 2.6. Electronic submissions in any other form (e.g. diskette files, disk files, tape files, e-mail or e-mailed files) will not be accepted as the Vendor’s Tender. The County cannot ensure the confidentiality of Tenders sent by this method. Electronic communication may be used for correspondence between the County and Vendors for informational/communication purposes.
- 2.7. Submissions by facsimile will not be accepted as the Vendor’s Tender. The County cannot ensure the confidentiality of Tenders sent by this method. The facsimile may be used for correspondence between the County and Bidders for informational/communication purposes.

- 2.8. Vendors should be aware that Canada Post only delivers Kneehill County mail to the main Canada Post depot in Three Hills once a day. The County then picks up the mail and distributes it in accordance with the address label. Vendors should consider the above when choosing the method of delivery for their submission as it is the Vendor's responsibility to ensure its Tender is received before the RFT closing date and time at the location specified in the RFT.
- 2.9. Vendors may submit Tenders at the following location only:
- Kneehill County  
"End Dump Trailer Tender Opening – Attention: Shaine Isaac, Purchasing"  
Main Office: #1600, 2<sup>nd</sup> Street NE, PO Box 400  
Three Hills, AB T0M 2A0  
403-443-5541
- 2.10. The Tender shall be valid for a period of 45 days from the closing date of this Tender. However, if a Tender is not awarded within this timeframe, the Tender may be extended upon the written agreement of the Vendor and the County.
- 2.11. The County will disqualify a Tender if, in the opinion of the County, the Vendor submits any false, deceptive or fraudulent information.
- 2.12. The Vendor, by submitting a Tender, consents to the County obtaining references to third parties in relation to the Goods and/or the vendor.
- 2.13. Submission of a Tender gives the County the irrevocable right to require the Vendor to execute the Contract and provide the Goods.
- 2.14. Vendors shall not have any claim for compensation of any kind as a result of participating in this RFT's process and, by submitting a Tender, each vendor shall be deemed to have waived its right to make a claim. The Vendor shall be responsible for all costs of preparing its Tender.
- 2.15. The official time of receipt of the Tender will be determined by Procurement Services' time recorder clock used to time and date stamp the Tender upon receipt.
- 2.16. Tenders will be opened privately, immediately after the RFT closing date and time at the County's main office address indicated in Clause 2.9. Unless otherwise stated in the RFT, the following information will be disclosed after the private opening:
- 2.16.1. Vendors' names
- 2.16.2. Prices quoted
- 2.16.3. Goods quoted

### 3. FORM OF TENDERS

- 3.1. The Tender Sum must be written in words as well as figures and must be for a sum in Canadian Dollars including all tariffs, freight, duties and taxes (other than the Goods and Services Tax). The Goods and Services Tax must be shown as a separate amount unless otherwise specifically stipulated. In the event of a discrepancy between an amount written in words and an amount written in figures, the amount written in words shall be deemed the intended amount.

- 3.2. Tenders must be written in English.
- 3.3. The County may reject Tenders that are unsigned, incomplete, conditional, illegible, unbalanced, obscure, irregular, or not in complete compliance with the Tender Documents.
- 3.4. The Vendor should, when submitting a Tender, obtain the RFT directly from APC to facilitate receiving any RFT amendments issued by the County. Tenders that do not comply with the RFT requirements, including if the RFT has been amended, will be rejected.
- 3.5. For unit prices, if there is a discrepancy found between the unit price and the extended amount, the unit price shall be deemed to represent the intention of the Vendor. The County shall be entitled to recalculate the Tender Sum using the unit prices and such recalculated Tender Sum shall be incorporated in the Tender.
- 3.6. Where alternative/multiple Tenders are submitted, the Vendor should identify each alternative as a separate Tender and in the same format as outlined in the RFT. Tenders must meet the fundamental intent of the RFT. The acceptability of each Tender will be decided by the County.
- 3.7. The Vendor may amend or rescind its Tender prior to the RFT closing date and time, by submitting written notice to Procurement Services and referencing the RFT number and closing date. Rescinded Tenders will, at the Vendor's choice, either be returned to the Vendor at the Vendor's expense, or destroyed by the County, after the RFT closing date and time. The Vendor cannot amend its Tender after the RFT closing date and time. All Tenders become irrevocable after the RFT closing date and time.
- 3.8. If a Vendor wishes to modify the Tender Sum, the Vendor may do so in accordance with Article 3.7 by issuing a written statement of the amount that is to be added to, or deducted from, the Tender Sum indicated on the Tender Form without stating the original Tender Sum or the revised Tender Sum. Unless otherwise stated, the modifying amount is deemed to exclude G.S.T.
- 3.9. In order for the County to deal effectively with Vendor questions or concerns about any terms, conditions or requirements of the RFT including the Tender provisions, such questions or concerns must be communicated in writing to the Purchasing Contact at least three (3) Business Days prior to the RFT's closing date. Questions received after this time may be answered if time permits.
- 3.10. Verbal responses to enquiries are not binding on any party.

#### **4. ADDENDA**

- 4.1. Addenda, when issued, form part of the Tender Document. The individual items included in the Addendum shall be added, deleted or changed in accordance with the instructions contained in the Addendum letter. A copy of each Addendum will be inserted at the end of the Tender Document.
- 4.2. During the Tender period, all Addenda issued by the County will be posted on APC. Vendors who have obtained Tender Documents from any source other than those listed may not automatically receive Addenda via email. Notwithstanding any other provision of this



Tender, each Vendor shall ascertain, prior to the time fixed for receiving Tender, that it has received all Addenda issued by the County.

- 4.3. When an Addendum is issued by the County, the individual items included in the Addendum shall be inserted in accordance with the covering letter. Addenda when issued, form part of these Tender Documents.

## 5. SPECIFICATIONS

- 5.1. The Goods must:

5.1.1. be new. Despite this provision, the County, at its sole discretion, may purchase Goods with components that are refurbished and warranted by the Manufacturer as new.

5.1.2. be the most current production and proven technology.

5.1.3. comply with the RFT required specifications.

5.1.4. conform to federal and provincial legislation.

- 5.2. Goods having a shelf-life must be marked with expiry dates and supplied sufficiently in advance of their expiry dates to permit reasonable use or consumption by the County.

- 5.3. All components of the Goods must be compatible and meet or exceed the RFT requirements and the Manufacturer's published specifications.

- 5.4. Where the RFT:

5.4.1. does not specify Manufacturers' names, brands, models and/or part numbers, the Tender must contain sufficient information for the County to identify the Goods quoted, or the Tender will be rejected.

5.4.2. specifies Manufacturers' names, brands, models and/or part numbers to describe the performance and/or the quality of the items in the RFT, unless the Tender indicates otherwise, the Tender will be deemed to be for the items specified in the RFT.

5.4.3. specifies Manufacturers' names, brands, models and/or part numbers and indicates that no other Manufacturers' names, brands, models and/or part numbers will be accepted, the Vendor must quote the Manufacturers' names, brands, and models and/or part numbers specified in the RFT, or the Tender will be rejected.

- 5.5. The Vendor must, upon request, provide the Manufacturer's published specification sheets and/or technical information ("Literature") for the Goods to enable the County to evaluate compliance with the RFT requirements. If any specifications in the RFT are not identified in the Literature, the Vendor must, upon request, provide written confirmation from the Manufacturer or Canadian Distributor validating that the Goods meet those specifications.

- 5.6. Goods that, as of the RFT closing date, have:
- 5.6.1. not commenced production or are not commercially available, will be rejected by the County;
  - 5.6.2. been or are scheduled to be discontinued or replaced with new models or versions, may be rejected by the County.
- 5.7. Where applicable, the Goods must bear evidence of certification to Canadian standards by an organization accredited by the Standards Council of Canada. This certification must, where applicable, be for the complete assembly of the Goods.
- 5.8. Deviations from the RFT requirements may result in rejection of the Tender. The Vendor should state each deviation, and the County will determine the acceptability of any minor deviations.

## 6. DISPUTES AND PAST PERFORMANCE

- 6.1. The County has an administrative policy that deals with contracting with parties who are in a dispute with the County that may need to be resolved through litigation or arbitration. The County may reject a Tender submitted by a Vendor or an affiliate or associate of a Vendor who is in a dispute with the County that may need to be resolved through litigation or arbitration. For the purpose of this section, an affiliate or associate shall have the same meaning as defined in the *Business Corporations Act*, R.S.A. 2000, c. B-9.
- 6.2. The County may reject a Tender submitted by a Vendor if the County determines that a Vendor's performance or the performance of an affiliate or associate of a Vendor on previous transactions with the County is unsatisfactory and the County's Purchasing Contact has advised the Vendor or its affiliate or associate of this determination.
- 6.3. The County follows the Bid protest mechanisms laid out by AIT and NWPTA. NWPTA has created a new procurement complaint process, or "bid protest mechanism"; which came into effect on July 1, 2015. Details on the new NWPTA complaint process can be found at [www.newwestpartnershiptrade.ca](http://www.newwestpartnershiptrade.ca) under the "Dispute Resolution" tab. A supplier may use either the dispute mechanism available under the Agreement on Internal Trade (AIT) or that available under the NWPTA, but cannot use both. If the dispute is related to a specific procurement and brought forward under the NWPTA, then the bid protest mechanism is used.
- 6.4. Suppliers may also choose processes outside either agreement, such as litigation or a generally available government complaint process.

## 7. CONFIDENTIALITY, FREEDOM OF INFORMATION AND SECURITY

- 7.1. All documents submitted to the County will be subject to the protection and disclosure provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ("FOIP"). FOIP allows persons a right of access to records in the County's custody or control. It also prohibits the County from disclosing the Vendor's personal or business information where disclosure would be harmful to the Vendor's business interests or would be an unreasonable invasion of personal privacy as defined in Sections 16 and 17 of FOIP. Vendors are encouraged to identify what portions of their Tenders are confidential and what harm could reasonably be expected from its disclosure. However, the County cannot assure Vendors that any portion of a Tender can be kept confidential under FOIP if the County is required to disclose any such record as a result of a direction by a regulatory authority pursuant to FOIP.
- 7.2. The County reserves the right to publish the names of responding Vendors and any summary cost information deemed appropriate by the County.
- 7.3. The Vendor and the Vendor's employees, subcontractors and agents must, subject to any Confidentiality Legislation requirement:
  - 7.3.1. not use, copy or disclose, except as necessary for the performance of the purpose of submitting a Tender or upon written authorization of Kneehill County, any County Confidential Information.
  - 7.3.2. adhere to security standards for Kneehill County Confidential Information, including control of access to data and other information, using the same care and discretion a reasonably prudent Vendor of such information would provide.
  - 7.3.3. keep strictly confidential all information concerning the County or third parties, or any of the business or activities of the County or third parties acquired as a result of participation in the RFT.
- 7.4. The Vendor may disclose County Confidential Information to:
  - 7.4.1. employees of the Vendor and any corporation, company or other entity that the Vendor controls or controls the Vendor and who have a need to know.
  - 7.4.2. the Vendor's subcontractors and agents who have a need to know provided that the Vendor has a similar confidentiality agreement with them as required of the parties by Section 7.3.
  - 7.4.3. anyone else with the County's prior written consent.
- 7.5. The County and the County's employees, subcontractors and agents must, subject to any Confidentiality Legislation requirement:

- 7.5.1. not use, copy or disclose, except as necessary for the performance of the Goods or upon written authorization of the Vendor, any Vendor Confidential Information.
- 7.5.2. maintain security standards for Vendor Confidential Information, including control of access to data and other information, using the same care and discretion it follows for its own Confidential Information, as of the date of execution of the Contract.
- 7.6. Subject to any Confidentiality Legislation requirement, the County may disclose Vendor Confidential Information to:
  - 7.6.1. employees of the County who have a need to know.
  - 7.6.2. the County's subcontractors and agents who have a need to know provided that the County has a similar confidentiality agreement with them as required of the parties by this Section 7.0.
  - 7.6.3. anyone else with the Vendor's, the Vendor's subcontractors or agent's prior written consent for their own Confidential Information.
- 7.7. A party has no obligation with respect to Confidential Information of the other party:
  - 7.7.1. that the first-mentioned party already possesses without obligation of confidentiality; develops independently; or rightfully receives without obligation of confidentiality from another.
  - 7.7.2. that is or becomes publicly available without breach of this Section 7.4.
- 7.8. A party has no obligation under Section 7.4 with respect to any ideas, concepts, know-how or techniques contained in the Confidential Information of the other party that is related to the first-mentioned party's business activities ("Knowledge"). This does not, however, give such party the right to disclose, unless described elsewhere in the Tender:
  - 7.8.1. the source of the Knowledge.
  - 7.8.2. any financial, statistical or personal data.
- 7.9. Each party may disclose Confidential Information of the other party to their legal counsel who has an obligation to keep such information confidential.
- 7.10. The disclosure of a party's Confidential Information does not grant to the other party any license under any patents or copyrights.

- 7.11. No press release or other public announcement relating to the Tender shall be issued without the prior written consent of each party to the specific content and form of such press release or announcement, except for timely disclosure required to be made by any lawful government authority or regulatory body, by any stock exchange or operation of law, including but not limited to any Confidentiality Legislation, and except for public disclosure made by any employee of Kneehill County, mindfully taking into consideration the sensitivity of specific confidentiality in the Contract. Each party shall use reasonable efforts to disclose such release or announcement proposed by it to the other party as soon as reasonably possible and the other party will use reasonable efforts to approve or otherwise comment on such release or announcement without delay.
- 7.12. In the event of a breach of any of the requirements of Section 7.4, the Vendor must immediately notify the County of such breach and take immediate steps to mitigate the breach.
- 7.13. The Vendor consents, and has obtained written consent from any individuals identified in the Tender to the use of the information in the Tender by Kneehill County, Kneehill County's employees, subcontractors and agents, to enable the County to evaluate the Tender and use this information for other program purposes of the County.
- 7.14. The purpose of collecting information for the RFT is to enable Kneehill County to ensure the accuracy and reliability of the information, as well as to evaluate the Tender and the Vendor, and for other related program purposes of Kneehill County. Authority for this collection is the Government Organization Act of Alberta, Schedule 11, as amended or substituted from time to time. The Vendor may contact the buyer identified in the RFT regarding any questions about the collection of information pursuant to the RFT.

## **8. CONFLICT OF INTEREST AND ETHICS**

- 8.1. The Vendor must fully disclose, in writing, to the Purchasing Contact on or before the closing date of the RFT, the circumstances of any possible conflict of interest or what could be perceived as a possible conflict of interest if the Vendor were to become a contracting party pursuant to the RFT. Kneehill County will review any submissions by Vendors under this requirement and may reject any Tenders where, in the opinion of the County, the Vendor could be in a conflict of interest or could be perceived to be in a possible conflict of interest position if the Vendor were to become a contracting party pursuant to this RFT.
- 8.2. The Vendor, upon request by the County, shall deliver copies of all written ethical standards, conflict of interest policies, and codes of conduct established or observed by the Vendor in its business practices or in relation to its employees or subcontractors.

## **9. TITLE AND INTELLECTUAL PROPERTY**

- 9.1. The Vendor warrants it has the right to offer the Goods.

- 9.2. If Clause 9.1 is breached or if a third party claims that any Goods delivered to the County by the Vendor, the Vendor's subcontractors or agents under the RFT, infringe any copyright, patent, trade secret, industrial design, trademark or any other proprietary right enforceable in Canada, the Vendor must at the Vendor's expense, defend the County against that claim. In this regard, the Vendor must pay all costs, damages and legal fees that a court finally awards or are agreed to in a settlement agreed to by the Vendor provided that the County:
- 9.2.1. promptly notifies the Vendor in writing of the claim.
  - 9.2.2. cooperates with the Vendor in, and allows the Vendor to control with the County's participation, the defence and any related settlement negotiations.
- 9.3. If such a claim is made or appears likely to be made under Clause 9.2, the County agrees to permit the Vendor to enable the County, at the Vendor's cost and with the County's agreement, to continue to use the Goods or to provide the County with a non-infringing replacement or modification which meets the specifications and functionality required for the Goods in the Tender. If the Vendor determines that none of these alternatives are reasonably available, the County will return the Goods to the Vendor on the Vendor's written request and the Vendor must pay the County, upon the County's return of the Goods, the amount paid to the Vendor for the Goods.
- 9.4. The Vendor has no obligation regarding any claim based on any of the following:
- 9.4.1. the County's modification of the Goods.
  - 9.4.2. the combination, operation or use of the Goods with any product, data or apparatus that the Vendor did not provide, unless the Vendor has specifically approved of the other products, data or apparatus for such combination, operation or use.
- 9.5. Title to each Good, with the exception of Goods being rented or leased, commercial off-the-shelf software (including any customizations) and licensed internal code and machine code for computers, will pass to the County upon completion of delivery and Acceptance at the location indicated in the Purchase Order.
- 9.6. Risk of loss for each Good will pass to the County upon completion of delivery and Acceptance at the location indicated in the Tender.

## **10. CHANGES TO TENDER DOCUMENTS**

- 10.1. The Vendor shall carefully examine the Tender Documents. Any errors, omissions, discrepancies or clauses requiring clarification shall be reported in writing to the County at least five days prior to the Tender closing date. If necessary, the County will respond to errors, omissions, discrepancies or clauses in the Tender Documents requiring clarification by way of addenda.

- 10.2. If no errors, omissions, discrepancies or clauses requiring clarification are reported to the County at least five days prior to the Tender closing date, the County shall be entitled to determine, in its sole discretion, the intent of the Tender Documents.
- 10.3. No implied obligation of any kind by or on behalf of the County shall arise from anything in the Tender Documents. The express obligations contained in the Tender Documents and made by the County are and shall be the only obligations that apply.
- 10.4. Without limiting the generality of Article 10.3, the Tender Documents supersede all communications, negotiations, agreements, representations and warranties either written or oral relating to the subject matter of the Tender made prior to the Tender closing date, and no changes shall be made to the Tender Documents except by written addenda.
- 10.5. Any addenda issued by the County with respect to the Tender shall form part of the Tender Documents and the cost for doing the work therein shall be included in the Tender Sum.
- 10.6. All questions and any form of communications with Kneehill County regarding the RFT must be in writing and only be directed to the Purchasing Contact unless otherwise advised in writing from the Purchasing Contact. The County is not responsible nor liable for statements or representations made by any other persons in relation to this RFT and may disqualify any Vendor who fails to comply with this provision. Enquiries to, and responses to, the Purchasing Contact will be recorded. The Purchasing Contact will respond in writing to the enquiring Vendor and this may, at the County's discretion, be distributed to all Vendors.
- 10.7. All questions regarding the RFT must be directed to the Purchasing Contact identified in the RFT, prior to the closing date and time. The Vendor is responsible for notifying the Purchasing Contact of any incorrect part/version number and/or product description, discontinued or scheduled to be discontinued item, ambiguity, error, omission, oversight, contradiction, or item subject to more than one interpretation in the RFT. If deemed appropriate by the County, the RFT will be amended.

## 11. WARRANTY

- 11.1. Manufacturer or Canadian Distributor authorized Warranty Service must be provided during the Warranty Period. Where Warranty Service is to be provided by the:
- 11.1.1. Vendor or a third party, these parties must, prior to the RFT closing date and time, be authorized by the Manufacturer or Canadian Distributor to perform the Warranty Service. The Vendor must, upon request, provide written confirmation from the Manufacturer or Canadian Distributor confirming the Vendor or the third party is authorized to service the Goods on its behalf in accordance with the RFT requirements.
- 11.1.2. Manufacturer or an authorized third party, the Vendor must, upon request, provide written confirmation from the Manufacturer or the authorized third party confirming the service arrangements, as specified in the RFT, will be provided on behalf of the Vendor.
- 11.2. Where the standard warranty for the Goods offered by the Manufacturer, Canadian Distributor or Authorized Reseller exceeds the Warranty Period and/or Warranty Service

indicated in the RFT, the Vendor's Tender should state the standard warranty. Such a warranty must be provided at no additional cost.

- 11.3. Where there is no Canadian Distributor or Authorized Reseller to offer Warranty Service, Kneehill County will consider this during the Tender Evaluation; such Tenders may be rejected.
- 11.4. During the Warranty Period, and during Business Days, the Vendor must:
  - 11.4.1. be available at a service depot in North America for telephone contact and to receive the Goods for servicing.
  - 11.4.2. provide telephone support to the County to assist with basic installation, setup and operation of the Goods. The cost of this telephone support must be included in the net unit price quoted.
- 11.5. All Goods repaired during the Warranty Period must be returned to the County in an Operable State and with Equivalent components.
- 11.6. If any defective materials or workmanship in the Goods, which appears to the County and is brought to the attention of the Contractor prior to the expiration of the Warranty Period, is not rectified by the vendor before the end of the Warranty Period, the Contractor shall continue to provide Warranty Services for such defect despite the expiration of the Warranty Period. Notwithstanding the foregoing, the Contractor shall not be responsible for providing Warranty Services for any defects appearing and brought to the Vendor's attention after the expiration of the Warranty Period.
- 11.7. Despite anything in the RFT, if a defect is not corrected during the Warranty Period within the time period indicated in the Tender, the County may reject the Goods in accordance with Clause 13.1.
- 11.8. The Vendor will not be required to provide Warranty Service in circumstances where the County:
  - 11.8.1. misuses or modifies the Goods.
  - 11.8.2. uses the Goods in an unsuitable physical or operating environment.
  - 11.8.3. causes accidental damage to the Goods.
  - 11.8.4. fails to maintain the Structure and/or any of its Components in accordance with the manufacturer's maintenance instructions and requirements.

## **12. PRIME COST SUMS**

- 12.1. The Vendor shall include in its Tender Sum any Prime Cost Sum as indicated in the Tender Document or in a schedule attached to the Tender Document. The Goods and Services Tax associated with this Prime Cost Sum shall be shown as a separate amount.



- 12.2. The unexpended portion of a Prime Cost Sum shall be deducted from the Contract Sum.
- 12.3. The Vendor should quote in Canadian funds. Where applicable, Tenders in foreign currencies will be converted to Canadian funds by the County and evaluated on the converted amount. This conversion will be based on the daily noon foreign exchange rate obtained from the County's primary financial institution on the RFT closing date. The Purchase Order will be issued in the converted Canadian funds and payment will be made in this amount.
- 12.4. The Vendor:
- 12.4.1. must quote firm net unit prices, unless otherwise stated in the RFT, in accordance with the unit of measure ("UOM") specified in the RFT. If an incorrect UOM is quoted, the County may convert a Vendor's Tender to the UOM specified in the RFT, if the Tender contains sufficient information to permit such conversion. If a price extension is incorrect, the unit price will apply.
- 12.4.2. must, in the net unit prices quoted, include all costs to complete delivery, Acceptance and Warranty Service of the Goods to the destination indicated in the RFT, including but not limited to packaging, handling, shipping, unloading, duty, customs, brokerage fees, insurance charges, and any Disposal Surcharge
- 12.5. In the event of any inconsistency between words and numbers, words shall govern.
- 12.6. The Vendor is encouraged to offer early payment discounts to the County, however, these discounts will not be considered when evaluating the Tender.

### **13. OPTIONAL, SEPARATE AND DELETE PRICE SUBMISSIONS**

- 13.1. If required, the Vendor shall provide prices, with the Goods and Services Tax shown as a separate amount, for all portions of the Unit/s specified as Optional, Separate or Delete in the Tender Form and in the schedules attached to the Tender Form.
- 13.2. The County shall have the right to accept any or all price submissions for portions of the Goods specified as Optional, Separate or Delete.
- 13.3. The portion of Tender evaluation based on price may consider the Optional, Separate, and Delete price submissions as well as the Tender Sum.

### **14. IMPORTING AND GOODS AND SERVICES TAXES**

- 14.1. The Vendor shall include in the Tender Sum all relevant fees, charges, penalties, or duties levied in importing any equipment, services or products unless otherwise specifically stipulated.
- 14.2. The Goods and Services Tax is to be quoted as a separate amount on all taxable supplies. Zero-rated and exempt supplies are to be noted separately.
- 14.3. The County may reject a Tender that does not comply with the tax-related instructions.
- 14.4. It is the responsibility of the Vendor to determine the correct amounts and classifications of all fees, charges, penalties, or duties.

## 15. EVALUATION AND CONTRACT AWARD

15.1. Tenders will be evaluated and awarded by line item, based on the lowest cost and compliance with all requirements of the RFT, with weight being allocated to each requirement as per the evaluation form. In the event of tie Tenders, the County will determine the successful Vendor by considering criteria, including but not limited to the following:

15.1.1. previous performance.

15.1.2. earliest delivery date quoted, if advantageous to the County.

15.1.3. Goods quoted that exceed the RFT requirements.

15.1.4. value-added services quoted, over and above the RFT requirements.

15.2. Tenders will be evaluated in the sequence identified below. During the evaluation process, Vendors may be required to provide additional information to clarify statements made in their Tenders. Each Tender shall be evaluated separately against the RFT's requirements. The Vendor submitting the highest-scoring compliant Tender will be identified as the Preferred Vendor. The Evaluation Sequence will be as follows:

15.2.1. **Mandatory RFT Requirements.** Vendors must provide sufficient detail in their Tender to substantiate compliance with the RFT's mandatory requirements. In addition, Vendors should provide cross-references to any parts of the Tender that contain information that they wish to be considered in the evaluation of any given requirement.

15.2.2. **Rated Criteria.** Tenders will be evaluated against the evaluation criteria in the RFT. Subject to the requirements of FOIP, such ratings shall be confidential, and no totals or scores of such ratings shall be released to any party.

15.2.3. **Shortlisting.** A shortlist of Vendors may be established. Shortlisted Vendors may be requested to make formal presentations regarding their Tender. Key Vendor management and technical personnel will be expected to participate in presentations. These presentations will be made at no cost to the County.

15.2.4. **References.** The Vendor must, upon request, provide the County with Vendor references, including the name of the organization, contact name and telephone number, who can verify the Vendor's satisfactory provision, performance and/or servicing of goods the same as or similar to those in the Tender, including similar quantities. The County may contact Vendor references, in addition to those provided by the Vendor.

If a Vendor receives, in the opinion of the County, unsatisfactory references, including a past unsatisfactory performance with Kneehill County, its Tender will be rejected. If these references have not been provided with the Tender at the RFT closing date and time, they

must be provided by the Vendor to the Purchasing Contact or delegated County personnel within two (2) Business Days of a written request.

15.3. The County may, at its sole discretion:

15.3.1. obtain clarification on any aspect of a Tender, without being obligated to seek clarification on all other Tenders.

15.3.2. eliminate, substitute or accept any line item or detail in a Tender.

15.3.3. accept or waive a minor and inconsequential irregularity, or where practical to do so, may request a Vendor to correct a minor and inconsequential irregularity with no change in the price quoted.

15.3.4. reject in whole or part, the lowest cost or any or all Tenders.

15.4. The Vendor must be available during Business Days to:

15.4.1. respond to the Purchaser during Evaluation; and

15.4.2. sign the Purchase Order, if applicable.

15.5. The Tender will form part of the Contract. Claims made in the Tender will constitute contractual warranties.

15.6. The Contract to be entered into will be finalized with the Vendor by Kneehill County and will contain all the terms and conditions specified in the RFT.

15.7. The Contract will be interpreted and applied in the courts, and in accordance with the laws in force, in Alberta.

15.8. The Vendor must not assign, sub-contract or otherwise dispose of any of its rights, obligations or interests, other than identified in the Tender, without the County's written consent which will not be unreasonably withheld. If the County consents to subcontract, the Vendor will remain responsible for the Contract obligations and liabilities. The Vendor may assign its rights to payment to any third party.

15.9. If in the opinion of Kneehill County, it appears that a purchase will not be finalized with the preferred Vendor within 30 days, the County may enter into an agreement with other Vendors submitting compliant Tenders.

## **16. SUCCESSFUL VENDOR**

16.1. The County reserves the right to award a Purchase Order to any Vendor, and not necessarily the lowest Vendor. The County also reserves the right to not award a Contract pursuant to this Tender.

- 16.2. Award of Contract by the County occurs once the Vendor receives written confirmation of acceptance from Purchasing Contact on behalf of the County.
- 16.3. The successful Vendor shall execute and return the Contract to the County within seven days of receipt.
- 16.4. The successful Vendor must conform to the laws in force in the Province of Alberta.
- 16.5. The Vendor, if other than the Manufacturer, must:
- 16.5.1. be a Canadian Distributor or Authorized Reseller for the Goods prior to the RFT closing date and time and, upon request, provide written confirmation of such authorization from the Manufacturer. The County may, at its sole discretion, waive this requirement.
  - 16.5.2. upon request, provide written confirmation from the Manufacturer that all rights granted in relation to the Goods are agreed to by the Manufacturer.
- 16.6. The Vendor must, upon request, allow Kneehill County to visit its premises during Business Days for any reason considered appropriate by the County related to compliance with the RFT requirements and performance of the Contract.

## **17. RETURN OF TENDER DOCUMENTS**

- 17.1. The hard copy Tender Documents remain at all times the property of the County. Vendors shall return Tender Documents issued by the Purchasing Contact within ten days of contract award or the decision by the County not to award a Contract pursuant to this Tender.
- 17.2. Article 25.1 does not apply to documents electronically obtained from APC or COOLNet. These documents shall be disposed of using a secure method, such as secure shredding.

## **18. PRODUCT APPROVALS**

- 18.1. The Vendor must obtain approval for proposed Products that are at variance with the Specifications or Drawings prior to submitting its Tender.
- 18.2. The Vendor must obtain approval for equivalent Products that it proposes to substitute for trade name Products specified in the Tender Documents prior to submitting its Tender.
- 18.3. Vendors must submit applications for approvals under this section in writing five days prior to the closing date of this Tender.
- 18.4. Applications for approvals under this section must contain sufficient data to establish that the proposed Products are in all respects equal to or better than the Products specified in the Tender Documents.
- 18.5. Approvals under this section shall be communicated to all Vendors by addenda.

## **19. PROVISION OF GOODS FOR EVALUATION**

- 19.1. Prior to Contract award, the Vendor must, upon request, supply the Goods for Evaluation at no additional cost to Kneehill County:

- 19.1.1. within five Business Days of a request to do so.
- 19.1.2. for a minimum of 5 Business Days.
- 19.2. If requested, the Vendor must set up and install the Goods for Evaluation testing at the appropriate County site.
- 19.3. The Vendor must pay all costs to supply the Goods for Evaluation at the location indicated in the RFT and be responsible for the Goods, in the event of loss or damage, while at the County's site during Evaluation. All costs referred to in this clause must include, but are not limited to, packaging, handling, shipping, unloading, duty, customs, brokerage fees and insurance charges.
- 19.4. If the Goods supplied for Evaluation are not in an Operable State, the Vendor must, at the Vendor's expense, make the necessary adjustments, repairs or replacements within a reasonable period of time.
- 19.5. If providing Goods for Evaluation has been requested as part of the RFT, failure to provide the Goods for Evaluation, or failure of the Goods to be in an Operable State during Evaluation, will result in rejection of the Tender.
- 19.6. Article 20.5 does not apply if the Goods have been supplied as an additional option outside of the Tender Evaluation process.
- 19.7. The Vendor must remove the Goods, at its expense and risk, within 10 Business Days after receiving notification from the County unless, during Evaluation, the Goods are either consumed or tested to destruction.
- 19.8. Results obtained during the Evaluation are the property of Kneehill County.

## **20. GOODS RECEIVED ANALYSIS AND ACCEPTANCE**

- 20.1. Upon Contract award and after receipt of the Goods, the County may perform a visual inspection and/or test the Goods supplied to determine if they are in accordance with the specifications found in the Tender. This will be completed within 10 Business Days of receipt of the Goods and, if applicable, installation of all components of the Goods. The Goods will be deemed accepted after 10 Business Days unless the County notifies the Vendor that the Goods are not in accordance with the Tender Specification.
- 20.2. If the County determines that the Goods supplied are:
  - 20.2.1. in accordance with Clause 29.1 and Acceptance, the Goods will be accepted.
  - 20.2.2. not in accordance with Clause 29.1 or do not meet the specifications listed in the RFT the Vendor must, at the Vendor's expense, make the necessary adjustments, repairs or replacements within a reasonable period of time. This obligation will not apply to Goods

that have been modified or repaired, after receipt by the County, by anyone not authorized by the Vendor, Manufacturer or Canadian Distributor.

20.3. If any Goods supplied are rejected by the County, the Vendor must:

20.3.1. remove the Goods, at its expense and risk, within 10 Business Days after notification from the County that the Goods have been rejected.

20.3.2. immediately, at the County's option, either replace the Goods or, if applicable, issue a credit or refund to the County all monies paid.

## **21. PAYMENT**

21.1.1. The County will, upon receiving an invoice, pay the Vendor the contracted price for the Goods within 45 days after Acceptance of the Goods.

21.1.2. The County may deduct from all payments to the Vendor such amounts as required by the Canadian Income Tax Act, as amended or substituted from time to time.

21.1.3. The County may, upon the Vendor's agreement, use a Kneehill County credit card or debit card to pay for Goods ordered through the RFT.

## **22. TENDER SUM EXCEEDING BUDGET**

22.1. If the best-evaluated Tender provides for a Tender Sum that exceeds the amount the County has budgeted for the Work, the County may:

22.1.1. reject all Tenders;

22.1.2. evaluate the Tender based on a revised Tender Sum considering any or all Optional, Separate, or Delete prices; or

22.1.3. attempt to negotiate a lower Tender Sum with the Vendor who submitted the best evaluated Tender.

22.2. If the Tender submitted by the best-evaluated Vendor provides for a Tender Sum that exceeds the amount budgeted for the Work and/or Goods and the County negotiates with the best-evaluated Vendor:

22.2.1. all statements made by the County and the Vendor in the course of negotiation are without prejudice and confidential;

22.2.2. in particular, the County's attempt to negotiate with the best-evaluated Vendor does not constitute a rejection of that Vendor's Tender;

22.2.3. the County will not attempt to obtain a lower price for the same work but may attempt to obtain a lower price for an altered scope of work. In no event will the County be obliged to disclose the amount budgeted for the Work.

22.2.4. The County may add or delete any scope of Construction without the need to re-issue to all bidders.

## **23. INDEMNITY AND HOLD HARMLESS**

23.1. Each party shall indemnify and hold harmless the other, its employees and agents against and from any and all third party claims, demands, actions, or costs (including legal costs on a solicitor-client basis) to the extent arising from:

23.1.1. that party's breach of this Contract, or

23.1.2. the negligence, other tortious act or willful misconduct of that party, or

23.1.3. the negligence, other tortious act or willful misconduct of those for whom that party is legally responsible, in relation to the performance of its obligations under this Contract.

23.2. The Vendor shall indemnify and hold harmless Kneehill County against and from any loss or damage to the real or personal property of the Kneehill County to the extent arising from the Vendor's breach of this Contract or from the negligence, other tortious act or willful misconduct of the Vendor, or those for whom it is legally responsible.

## **24. SURVIVAL OF TERMS**

24.1. Despite any other provision of the Contract, those clauses which by their nature continue after the conclusion or termination of the Contract will continue after such conclusion or termination, including:

24.1.1. Section 7.0 - Confidentiality and Freedom of Information

24.1.2. Section 9.0 - Title and Intellectual Property

24.1.3. Section 12.0 – Warranty

24.1.4. Section 27.0 – Indemnity and Hold Harmless

## **25. ORDER OF PRECEDENCE**

25.1. The RFT and the Tender will form part of the Contract. In the case of conflicts, discrepancies, errors or omissions among the RFT, the Tender, and the main body of the Contract, the documents and amendments to them will take precedence and govern in the following order:

25.1.1. Main body of the Contract

25.1.2. RFT

25.1.3. Tender/Quotation.