

# Request For Proposal (RFx) - Terms and Conditions

## CANADIAN PACIFIC RAILWAY COMPANY

- and -

[Supplier Invited to Submit a Proposal]  
**(“PROPONENT”)**

For full and valuable consideration, a receipt and sufficiency of which is confirmed by a Proponent submitting a Proposal, and by a Proponent submitting a Proposal the Proponent is deemed to have accepted these RFx Terms, without modification.

### **A. TERMS AND CONDITIONS:**

#### **1 TERMINOLOGY**

Throughout the RFx but only to the extent the term is not alternatively defined in the RFx, or Underlying Agreement (in which case the alternative definitions take precedence), the following definitions, as found at URL: <http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/definitions> shall govern and are deemed to be attached to and forming part of these RFx Terms (collectively, the “**Definitions**”)

#### **2 CONSENT TO USE OF INFORMATION**

The Proponent consents, and has obtained the written consent from any Person identified in their Proposal, to use of their Records by CPR, CPR’s employees, subcontractors and agents, to enable CPR to evaluate the Proposal and for other reasonable purposes of CPR. The Proponent shall promptly provide such consents to CPR for confirmation and review upon CPR request.

#### **3 AMENDMENTS TO RFx DOCUMENT**

**3.1** CPR expressly reserves the right in its sole discretion, at any time to 1) extend or otherwise vary the Due Date; 2) revise or vary the RFx; 3) withdraw or cancel the RFx without award; or 4) waive any of the stated requirements set out in the RFx, by notifying Proponent of the revision(s) in writing.

**3.2** No extension, variation, revision, withdrawal or cancellation of the RFx or any provision hereof shall be valid or binding on CPR unless in writing and issued by a duly authorized representative of CPR. Unless otherwise provided for in this RFx, the Contact Person is not a duly authorized representative of CPR.

#### **4 CLARIFICATION**

CPR may in its sole discretion, request clarification of the Proposal(s) submitted by a Proponent. Proponent will reply to any such request within forty-eight (48) hours of receipt. All replies shall be submitted in writing only to the Contact Person. CPR may elect to refuse to consider any reply received after that time or not received in writing. If required, CPR may request one or more interview sessions with one or more Proponents for clarification and explanation of their Proposals. CPR may require the attendance of key personnel at any such interviews. The Proponent will not be reimbursed for any cost associated with interviews or other clarification requests.

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### 5 PROPONENT EXPENSES

Any costs and expenses incurred by Proponent in the preparation of (and any risk associated with Proponent's development of) a Proposal, or arising from or in any way connected with this RFx shall be borne solely by the Proponent (including without limitation any subsequent discussions or negotiations with, or requests for clarifications by CPR). If CPR, in its exclusive discretion, elects to not proceed with this RFx, reject any or all Proposals, or enters into any discussions, negotiations or clarification processes with one or more Proponents or third parties, CPR will not be liable to Proponent for any claims whatsoever, whether for costs or damages incurred by the Proponent in preparing its Proposal (including without limitation any requested clarifications thereto), loss of anticipated profit, or any other matter whatsoever.

### 6 LIMITATION OF DAMAGES

Proponent by submitting a Proposal to this RFx, agrees that it shall indemnify, defend and hold CPR harmless and further shall not claim damages, costs, or expenses for whatever reason relating in any way to this RFx and any associated process (including without limitation any subsequent discussions or negotiations, if any, or in respect of any competitive process) and waives any and all claims against CPR whatsoever, whether for costs, damages or expenses incurred by the Proponent in preparing its Proposal, in participating in this RFx process (including without limitation any subsequent discussions or negotiations, if any), loss of anticipated profit, or any other matter whatsoever related to this RFx and any resulting process, discussions or negotiations. By submitting a Proposal, a Proponent shall be deemed to have waived its right to make a claim.

### 7 BINDING NATURE OF PROPOSAL

1. Each Proposal is the Proponent's offer to supply the Materials and/or Services identified in the RFx. Unless otherwise identified in the RFx Document, the resulting contract shall be in the form and contain all the terms as provided at URL: <http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/Temporary-Staffing-Agreement> ("**Contract Terms**") unless the Proponent (1) identifies which provision(s) in the Contract Terms the Proponent does not agree to [which response shall in the form provided immediately below] and (2) provides the Proponent's (i) rationale for change, and (ii) the Proponent's substituted language and which response shall be included in the Proponent's Proposal. CPR shall assess the Proponent's alternative language with the understanding that it represents the last, best and final position of the Proponent.

<b><i>Proponent's Qualifications to the Contract Terms (if any)</i></b>		
<b>Contract Paragraph #:</b>	<b>Rationale for Change:</b>	<b>Alternative Language:</b>

2. Proposals are final following the Due Date and may not be subsequently altered unless Proponent is requested to do so by CPR.
3. By submitting a Proposal, the Proponent represents and agrees that the Proposal, and all accompanying documentation (including the information, concepts and ideas therein) submitted with or in connection thereto, becomes the sole property of CPR when

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submitted and will not be returned, and that the claims, statements, and representations made in the Proposal, together with the claims, statements and representations made in the documentation and other materials supplied with the Proposal or referred to therein, are true and accurate and contractually binding representations and warranties of the Proponent made for the benefit of CPR. In the event that the Proposal is accepted or conditionally accepted by CPR (in whole or part), Proponent agrees that CPR has relied on such claims, statements and representations and that they form CPR's minimum acceptable requirements.

4. The terms of this RFx Terms supersede any conflicting terms in the Proposal. The terms contained in the RFx, these RFx Terms and any or all parts of the Proposal may, at the exclusive option of CPR, be incorporated, referenced or reflected in the final Contract of the parties.

### **8 IRREVOCABILITY OF PROPOSALS**

Proponents may amend or rescind their Proposal prior to this RFx closing date and time by submitting a clear and detailed written Notice to the Contact Person. Subject to any contrary terms contained in this RFx, Proposals (inclusive of pricing) shall be final, binding, and irrevocable on the Proponents for one hundred twenty (120) days following the RFx closing date and time.

A Proposal will, at the Proponent's choice, either be returned to the Proponent at the Proponent's expense after the RFx closing date and time, or be destroyed by CPR after the RFx closing date and time. If:

- (a) The Proponent has rescinded a Proposal prior to the RFx closing date and time; or
- (b) CPR has received the Proposal after the RFx closing date and time and elect not to accept it;

If no Notice is received by CPR within five (5) days following the close of this RFx, CPR shall be permitted, at its exclusive discretion, to destroy the Proposal.

### **9 CONFIDENTIALITY AND SECURITY OF INFORMATION**

The Confidentiality and Privacy terms are contained in the Definitions are deemed to be attached to and form part of these RFx Terms.

#### **9.1 PROPRIETARY INFORMATION AND CONFLICT OF INTEREST**

The scope of work resulting from this RFx is likely to include many items of commercial sensitivity to CPR. Given the sensitive nature, CPR is concerned about the protection of its proprietary information and the potential for a conflict of interest.

Proponents will be required to have or implement policies for ensuring the physical separation of work on sensitive issues; patents, ownership of information and confidentiality provisions in contracts; and human resource related issues such as controlled staff turnover.

In the event Proponent becomes aware of any matter that causes or is likely to cause a conflict of interest in relation to Proponent's performance herein, Proponent shall immediately disclose such matter to CPR in writing. Upon making such disclosure Proponent shall not commence or continue performance of the Services without the written consent of CPR.

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Proponent shall perform the Services and conduct its activities in relation to this RFx Terms in a manner consistent at all times with the CPR's Code of Business Conduct detailed at URL:

<http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/code-of-business-conduct>.

In the event that CPR is of the opinion that Proponent is not in compliance with these requirements including CPR's Code of Business Ethics, CPR may immediately terminate this RFx or subsequent Contract with no penalty or additional cost to CPR.

### 10 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

The Proponent acknowledges that:

- (a) The *Personal Information Protection Act*, SA 2003, c P-6.5 ("**PIPA**") and other legislation, both in Canada and abroad, may apply to information and Records relating to, obtained, generated, created, collected or provided in relation to this RFx or resulting Contract and which are in the custody or control of CPR. It is accepted by Party's that such legislation may allow any Person the right of access to Records in CPR's custody or control, subject to the exceptions as set out in the respective legislation;
- (b) The Proponent shall protect the confidentiality and privacy of any individual's Personal Information accessible to the Proponent or collected by the Proponent relating to this RFx or the resulting Contract;
- (c) The Proponent, if it considers portions of its Proposal to be confidential, shall identify those parts of its Proposal considered to be confidential to CPR and identify what harm could reasonably be expected from disclosure. CPR does not warrant that the Proponent's identification will preclude disclosure under PIPA, FOIP or other legislation;
- (d) Materials, data, information or Records produced or acquired by the Proponent in connection with or pursuant to this RFx or the resulting Contract, which are the property of CPR (including those which are made property of CPR pursuant to this RFx or the resulting Contract), could be subject to legislative control even before delivery to CPR. As such, the Proponent must conduct itself to a standard in compliance with such legislation in relation to such Materials, data, information or Records;
- (e) Without limiting other sections in this RFx, a Contract, or herein, for the Records and information obtained or possessed by the Proponent in connection with this RFx, the Proponent must conduct itself to a standard consistent with PIPA when providing the services, or carrying out its duties related to this RFx.

**10.1** Prior to providing Materials and prior to the start of providing Services and Materials to CPR, the Proponent must provide a detailed plan describing the security measures to be implemented to ensure the protection of Records and to ensure that only those Proponent employees, subcontractors and agents who are required to have access to, or to collect, Records for the purposes of providing the Services and Materials related to this RFx, are permitted access to the Records. To the extent the Proponent does not provide CPR with the security measures' plan or plans and the Services or Materials delivery commences, CPR shall not be deemed to have waived this requirement and may demand the same during the Contract Term. The plan shall include the following requirements:

- (a) manner of collection;
- (b) notification of collection purposes;
- (c) assurance of accuracy;
- (d) plans and controls over data matching and linkage;
- (e) controls over use and consistency;
- (f) controls over disclosure of Records;
- (g) provision for retention and disposal of Records;

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- (h) protection of Records from unauthorized access; and
- (i) collection, use, disclosure or disposal.

**10.2** The purpose for collecting information for this RFx is to enable CPR to ensure the accuracy and reliability of the information, to evaluate the Proposal, and for other related program purposes of CPR and, where applicable, government entities having oversight over CPR. The Proponent may contact the Contact Person identified on the RFx regarding any questions about collection of information relating to this RFx.

### **11 GOVERNING LAW**

This RFx Terms shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by the laws of the Province of Alberta without reference to its choice of law rules. In addition to any arbitration provision contained herein, each of the Parties hereto attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta and the Supreme Court of Canada.

### **12 TIME IS OF THE ESSENCE**

Time is of the essence for this RFx.

### **13 LANGUAGE LAWS (Quebec)**

The parties consent to having these terms and conditions drafted in the English language. *Les parties reconnaissent qu'elles ont exigé que la présente convention soit rédigée en langue anglaise seulement.*

### **14 CONTRACT REFERENCED DOCUMENTS**

If a document referenced in this RFx Terms by URL cannot be sourced online, Proponent must send an e-mail message to [IS\\_Contract\\_Management@cpr.ca](mailto:IS_Contract_Management@cpr.ca) to request an alternate method for delivery of the same. Failure to receive a copy of the referenced document shall not waive (or otherwise excuse) Proponent from adhering to the terms and requirements set out in such documents.

### **15 WAIVER OF DEFECT**

At CPR's sole discretion, CPR may waive any deviation in any Proposal.

### **16 PROPOSAL REJECTION IN WHOLE OR IN PART**

CPR is not bound to accept the lowest cost Proposal, or any or all Proposals or any part of a Proposal. CPR may reject any Proposal if conditional or incomplete, or if it contains any irregularities in content or procedure.

### **17 ORDER OF PRECEDENCE**

Subject to these RFx Terms and despite any provision in a Proponent's Proposal to the contrary, this RFx and the Proposal shall form part of the Contract. In the case of conflicts, discrepancies, errors or omissions among the RFx, the Proposal, and the Contract, including in each respect any amendments thereto, they take precedence and govern in the following order:

- (a) The main body of the Contract;
- (b) The RFx; and then,
- (c) The Proposal.

**B. NOTIFICATION TO PROPONENTS**

**1 ACCEPTANCE OF PROPOSAL AND PROPOSAL CONTENT**

CPR shall not be bound to accept the lowest cost Proposal submitted in response to this RFx or any Proposal at all. Proponents are advised that CPR is required to obtain internal corporate approvals prior to accepting a Proposal, failing which no purported acceptance is valid or binding on CPR.

Submission of Proposal to CPR in response to this RFx constitute acceptance in full by Proponent of all the provisions of this RFx. Unless clearly stated as not meeting a requirement in this RFx the provisions of this RFx shall supersede any conflicting terms contained in a Proposal to the extent necessary to resolve the conflict.

In the event that a Proposal is accepted or conditionally accepted by CPR, Proponent agrees that CPR can rely on such claims, statements and representations in making decisions and taking actions, that they form CPR's minimum acceptable requirements and that they will be incorporated, referenced or reflected in the resulting Contract.

If successful, CPR will notify Proponent of CPR's acceptance or conditional acceptance of its Proposal by way of a written Notice from the Contact Person. An acceptance or conditional acceptance by CPR of the Proposal shall be solely by way of issue of a Notice, and no verbal or other communication will be valid or binding on CPR.

If finalization of the resulting Contract with any successful Proponent is not completed within thirty (30) days of the date of issue of CPR's Notice, CPR may at its sole discretion, terminate proceedings with Proponent, and enter into negotiations with and execute a Contract with any other Proponent or Supplier of its choice and seek damages from the selected Proponent.

**2 PROPONENT QUESTIONS**

**2.1** Questions or concerns about any term(s), condition(s) or requirement(s) related to this RFx including the Contract provisions, must be submitted in writing to the Contact Person in the manner set out in this RFx. No questions will be accepted after the date reflected in the Schedule of Events on this RFx. CPR's response will be provided in writing by the date reflected in the Schedule of Events on this RFx. Copies of questions and responses will be provided to all Proponents. In all cases only written communications will be binding. CPR will address only those questions relevant to this RFx and may consolidate similar questions.

**2.2** Other than the Contact Person CPR is not responsible or liable for statements or representations made by any other Person(s) in relation to this RFx. Inquiries to, and responses of the Contact Person will be recorded. The Contact Person will respond in writing to the enquiring Proponent, and this response will be distributed to all Proponents via written note, which may include an e-mail alone.

**2.3** The Proponent has the responsibility to notify the Contact Person in writing, of any ambiguity, divergence, error, omission, oversight, contradiction, or item subject to more than one interpretation in this RFx, immediately when it is discovered, and to request any instruction, decision, or direction in respect of the same from the Contact Person. Failure to do so in respect of any ambiguity, divergence, error, omission, oversight, contradiction, or item subject to more than one interpretation shall render

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the successful Proponent's Proposal subject to the interpretation most favourable to CPR, as determined exclusively by CPR.

**2.4** The Proponent acknowledges and agrees that the principles of *contra proferentem* shall not apply to interpretation of any Contract resulting from this RFx.

**2.5** Despite any reference to the contrary in these RFx Terms or the RFx, verbal responses to inquiries are not binding on CPR. Amendments to this RFx (inclusive of amendments to these RFx Terms) shall be provided in writing (e-mail shall be deemed sufficient) to all Proponents ("**Amendments**"). Despite any term to the contrary, Amendments shall take precedence to conflicting terms in the RFx or the RFx Terms.

### **3 SUBMISSION AND CLOSE OF PROPOSALS**

Three (3) complete hardcopies of each response plus one (1) electronic copy (Microsoft Word format) of each RFx must be submitted to CPR, and should be delivered by courier to the Contact Person at the address as indicated in the RFx. Any annual report provided should be either in electronic form or only one (1) copy should be supplied. Proponents are encouraged to reply to the requirements and not add paper copies of any marketing material without informing CPR of the relevance of such material(s). Proponents are strongly encouraged to consider the impact on the environment when submitting responses and supply any additional information in electronic format.

Electronic submissions of Proponent's company response are to accompany hard copy submissions. CPR will accept the following electronic format:

- Unlocked USB drive (i.e. Memory stick, FOB, thumb drive, etc.)
- CD/DVD

### **4 EVALUATION**

Evaluation of proposals will be conducted by a cross-functional team based on a predetermined set of evaluation criteria i.e. service, quality, pricing etc. Evaluation criteria to be used may include, but are not limited to, the following: ability to deliver on CPR's requirements, expense management, and overall cost structure.

### **5 PROPONENT'S DUE DILIGENCE**

CPR is supplying information and identifying requirements within the RFx using reasonable commercial efforts, but also recognizes that not all the service details and task minutiae can be captured within a procurement document. The intention of the in-scope service requirements stated herein is to ensure that all tasks routinely done in the past three (3) years and within the cost structures provided will be included in the scope of services and will not be subject to change order debates and disputes.

To reduce any scope and cost risks to the Proponents, if so requested in writing by Proponent, the selected Proponent(s) may be allowed to perform due diligence review on the content, volume and complexity of the suite of services that were supplied by CPR and its prior supplier. Such due diligence is not to exceed fourteen (14) days unless otherwise agreed to by CPR in writing

Selected Proponent will receive reasonable cooperation and assistance from CPR in conducting this due diligence. CPR will provide resources to respond to questions asked. Due diligence effort shall be at the cost of the selected Proponent.

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### **6 REVISED PROPOSAL(S)**

Shortlisted Proponents may be offered an opportunity to submit a revised proposal based on any new information gained through due diligence.

### **7 RESPONSE REQUIRED**

The Proposal must be compliant with all Materials or Service requirements and contain sufficient information to allow CPR to verify all claims made by the Proponent.

### **8 PROPOSAL IRREGULARITY OR NON-COMPLIANCE**

CPR reserves the right to waive any irregularity or non-compliance with the requirements of this RFx where the irregularity or non-compliance is minor or inconsequential. The determination of what is or is not a minor or inconsequential irregularity or non-compliance, and the determination of whether to waive or not to waive the irregularity or non-compliance shall be at CPR's exclusive discretion.

### **9 COMPLETENESS**

Proponents must provide sufficient detail in their Proposal to substantiate compliance with the RFx's mandatory requirements. In addition, Proponents must provide cross references to any parts of the Proposal that contain information that they wish to be considered in the evaluation of any given requirement.

Unless otherwise agreed to by CPR, incomplete proposals cannot be considered and cannot be supplemented by submissions delivered after the closing time and date of this RFx.

### **10 ECONOMY OF PREPARATION**

Responses should provide straightforward and concise descriptions of Proponent's capability to satisfy the requirements of this RFx. Repetition of the terms and conditions of this RFx, without additional elaboration, will not be considered sufficiently responsive.

### **11 RESOURCE REPLACEMENT**

Resource replacement is not encouraged; however, it is accepted that there could be circumstances following the RFx closing date and prior to Contract execution that a Proponent may request that a proposed resource be replaced. Any proposed resource replacement must have (as determined exclusively by CPR) equivalent or better qualifications than the originally proposed resource. Proponents will not receive additional credit in the evaluation process if the qualifications of the replacement resource exceed those of the original resource. CPR reserves the right to deny any request for replacement and reject any proposed replacement.

### **12 STANDARDS OF CARE**

The Proponent shall perform the Services with reasonable skill, care and diligence and in accordance with the standard of care practiced by leading national and international suppliers of materials or services similar to, or the same as, the Materials, or Services described in the RFx.



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### 13 FORMAT FOR PROPONENT RESPONSE

#### 13.1 PROPOSAL LETTER

Unless otherwise set out in the RFx Document (in which case the RFx Document takes precedence), each Proposal must include:

- Acknowledgement of receipt of any RFx addenda; and,
- A statement indicating that all provisions of the Proponent's proposal will remain in effect for one hundred and twenty (120) days from the commencement of contract negotiations.

#### 13.2 PROPOSAL TABLE OF CONTENT

All proposals must include a detailed Table of Contents and an Executive Summary.

#### 13.3 BODY OF THE PROPOSAL

Proponents must address the requirements specified in this RFx *citing the Proposal Reference numbers corresponding to each request (see Attachment 2)*. Failure to do this may result in negative scoring.

### 14 PROPOSAL EVALUATION

#### 14.1 ASSESSMENT OF COMPLIANCE WITH REQUIREMENTS FOR PROPONENT RESPONSE AND PROPOSAL PREPARATION

Proposals will be assessed for timeliness, completeness, format and structure. Compliance with requirements defined in this RFx is required.

Please note that it is not mandatory for CPR to disclose to any Proponent the reason for their disqualification should they be disqualified.

#### 14.2 ORAL PRESENTATION

If appropriate to assist in defining or clarifying proposals, Proponents may be asked to participate, on an individual basis, in formal presentations regarding their Proposal or discussions with the CPR Evaluation Team. These discussions will be closed to third parties and other Proponents. Key Proponent management and technical personnel will be expected to participate in these presentations. All Proponents will be accorded fair and equal treatment with respect to any opportunity for discussion. In conducting discussions, there will be no disclosure of any information submitted by competing Proponents. All materially significant information must be communicated in writing if it is used to clarify the RFx response. These presentations will be made at no cost to CPR.

#### 14.3 USE OF OTHER SOURCES OF INFORMATION

CPR may use information sources not supplied by the Proponent concerning the Proponent's reliability and capability to provide RFx Service. These may include current or past customers or suppliers of the Proponent, published articles, or information from non-published sources made available to CPR.

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### **15 MODIFIED RFx PROCESS**

In the event no compliant Proposals are submitted in response to this RFx, CPR reserves the right to undertake a Modified RFx Process in order to facilitate the selection of a successful Proponent. The Modified RFx Process, if employed, will be conducted as follows:

- All Proponents identifying themselves as interested in the RFx will be requested to prepare a Modified RFx Process Proposal. The necessity, scope and the timing of such a Modified RFx Process will be at CPR's discretion;
- Details regarding the manner and form of the Modified RFx Process and the expected deliverables to be included therein will be provided in advance to all Proponents who submitted a noncompliant Proposal;
- Modified RFx Process Proposals and accompanying documentation, upon receipt by CPR, will become the property of and be retained by CPR;
- Proponents submitting Modified RFx Process Proposals must meet the fundamental intent of the requirements identified in the Modified RFx Process. The acceptability of any proposed alternative will be exclusively determined by the Evaluation Team; and
- At the conclusion of the Modified RFx Process, following a Proponents' submission of the Modified RFx Process Proposals, the Evaluation Team will evaluate these proposals in accordance with an evaluation plan developed for the Modified RFx Process Proposal and may select a preferred Proponent, if any.

### **16 CONSORTIUM PROPOSALS**

In the case of a Consortium Proposal, the Prime Proponent is responsible for all acts, omissions, errors and performance under the Proposal and (if awarded) the Contract.

### **17 PROPOSALS WITH SUBCONTRACTORS**

In the case of a Proposal describing Services being wholly or in part provided by subcontractors, agents, assigns or partners, the Proponent is responsible for all acts, omissions, errors and performance under the Proposal (and if awarded) the Contract.