

DRAFT



MUNICIPALITY OF SKAGWAY
PORT OF SKAGWAY
700 Spring Street
P.O. Box 415, Skagway, Alaska 99840
(Phone) (907) 983-2297
www.skagway.org

LEASE OF REAL PROPERTY FOR FUEL FACILITY LOCATED AT 198 TERMINAL WAY

Request for Proposals
DATE

Project and Background

The Municipality of Skagway (MOS or Municipality) is requesting proposals from all qualified persons and entities to lease (as Lessee) certain waterfront real property for use as a fuel storage and transfer facility, located at 198 Terminal Way, Skagway, Alaska, and more particularly described as follows (Property):

Lease parcels 8 and 9 according to the survey dated _____; within a portion of ATS #4, Skagway Recording District, First Judicial District, State of Alaska. If area or access is required outside of lease parcels 8 & 9 please identify that need in the proposal.

The Property is comprised of approximately 2.19 acres or 95,315 square feet and is depicted on the survey of the Property and surrounding area, attached as Appendix A. The Property is presently used for receiving fuel via barge, storing fuel, providing fuel locally, and providing for the transport of fuel between Skagway and the Yukon. The Municipality intends that such use of the Property continue in the future by the successful Proposer, but is willing to consider alternative uses.

The Property currently has improvements that allow it to be used as a fuel transfer and storage facility. The continued presence and use of these improvements are regulated by the current tideland lease and sublease, copies of which are attached as Appendix B. In the event that the Property continues to be used as a fuel storage and transfer facility MOS intends to provide the successful Proposer with the right to use and operate certain pipelines located outside of the Property.

The term of the lease of the Property will commence on or about March 19, 2023 following the expiration of the lease term of the presently effective Property lease, and the term will not exceed thirty-five (35) years.

The MOS objectives in issuing this RFP are to ensure:

- The best and highest use of the lease site to maximize revenues and return on investment;
- That the lease creates business opportunities and private sector jobs by developing a strong, mutually beneficial working relationship with private industry;

DRAFT

- That the lease includes safety enhancements to the area, where applicable; and
- That proposals conform to the Municipality's zoning code for the Waterfront District pursuant to SMC 19.06.080.

Proposal Requirements, Evaluation Criteria, and Selection Process

Scope of Proposal

The successful Proposer will negotiate and enter into a lease agreement with the Municipality that is consistent with Skagway Municipal Code (SMC), including Chapter 16.03, Lease of Lands. The minimum rent to be paid under the lease will be determined by appraisal at its market value within the six (6) months prior to the lease commencement date, subject to the provisions of SMC 16.02.010(C) and 16.03.160(B).

Deliverables for a successful proposal include:

- Operational plans for providing a fuel transfer station and bulk fuel storage, including quantities of fuel transported and provision for the receipt and delivery of fuel.
- Proposal of annual rent amount at or above the minimum appraised market value.
- Statement of qualifications and experience of Proposer to successfully construct and operate similar fuel transfer station and bulk fuel storage facilities.
- Statement of the financial fitness of Proposer to construct, maintain, and operate fuel transfer station and bulk fuel storage facilities.
- Quantification of fuel provided locally. The Municipality may provide flow-through tariff credits for the provision of home heating and/or vehicle fuel to the Skagway community.
- Acknowledgment of the ability to maintain insurance coverages as provided below.
- Assumption of the maintenance of the Property and improvements.
- Provision for security and stevedoring services.
- Provision for environmental bonding.
- Acknowledgement of the obligation to pay appropriate tariffs as detailed in Port of Skagway Tariff No. 2, a copy of which is attached as Appendix C.
- Acknowledgement of obligation to assume all environmental liabilities for the existing facilities and their future use, including but not limited to diesel and gasoline range organics (GRO).
- Acknowledgement of the obligation to comply with all federal, state, and municipal laws and regulations associated with the existing facilities and their future use as a fuel storage and transfer facility including, without limitation, any environmental laws and regulations concerning the site cleanup and remediation of any petroleum or other hazardous material contamination.
- Description and quantification of local investment, including jobs created and retained.

Proposals which do not address the items listed in this Scope of Proposal section may be considered incomplete and may be deemed non-responsive by the Municipality of Skagway in its sole discretion.

DRAFT

Deadline for Receipt of Proposals

Interested Proposers shall submit one original copy of the completed proposal in a sealed envelope marked "PROPOSAL FOR LEASE OF REAL PROPERTY LOCATED AT 198 TERMINAL WAY; [INSERT PROPOSER'S NAME]" no later than **2:00 p.m. on _____, 2022** at the address listed above, or delivered directly to the Municipal Offices on 7th and Spring Street. Faxed or e-mailed proposals will not be accepted. Failure to meet the deadline will result in disqualification of the proposal from review. All proposals will be opened and recorded immediately after the deadline.

Qualifications

Pursuant to Skagway Municipal Code section 16.03.030(A), an applicant for a lease is qualified if the applicant:

- Is eighteen (18) years of age or over; or
- Is a group, association, partnership, or corporation which is authorized to conduct business under the laws of Alaska; or
- Is acting as an agent for another or has qualified by filing with the borough manager or his designee, prior to the time set for the disposition, a power of attorney or a letter of authorization creating such agency. The agent shall represent only one (1) principal, to the exclusion of themselves.

The execution of a lease by the Municipality does not relieve the Lessee of responsibility of obtaining licenses or permits as may be required by the Municipality or by any other governmental authority. Before a lease will be executed, the successful Proposer must obtain a valid Alaska business license and be licensed to do business in the State of Alaska in accordance with Alaska law and regulations. For more information on these licenses, contact the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing, P.O. Box 110806, Juneau, Alaska 99811. Telephone (907) 465-2550. Proposer must also obtain a Business License from the Municipality of Skagway.

Lease Procedure Summary and Rent Provisions

1. Lease Procedure Summary

- The proposal will serve as the lease application and the starting point for negotiations, although not all terms are negotiable.
- The Municipality reserves the right to include additional terms and conditions during the course of lease negotiations.
- The filing of a proposal for a lease in response to this RFP, the selection of a successful proposal, or the negotiation of a lease with the Borough Manager shall give the Proposer no right to a lease nor to the use of the land whatsoever until such time as a fully executed lease is in place. Only a fully executed lease between the Municipality and the successful Proposer will convey such right.
- The final terms of a negotiated lease are subject to approval by the Skagway Borough Assembly (including determinations after appeal, if any), unless the minimum essential

DRAFT

terms and the authority of the Borough Manager to execute the lease are set forth in the ordinance authorizing negotiations.

- The Municipality reserves the right to require a guarantor on any lease, in the Municipality's sole discretion.

2. **Rent Provisions**

- The minimum rent to be paid under the lease will be determined by appraisal at its market value within the six (6) months prior to the lease commencement date, subject to the provisions of SMC 16.02(C).
- The annual rent payable shall be subject to adjustment at a minimum on the fifth anniversary of the lease and each five (5) year interval thereafter.
- The adjusted rent shall be based on market rent as determined by an appraisal, the expense of which shall be borne by the Lessee.
- The appraisal shall include any existing improvements, and improvements owned or made by the Municipality.
- The new market rent shall be effective on the beginning of the interval agreed upon in the lease.

Proposal Format and Content

1. **Title Page** (one page maximum) – At a minimum, the title page shall show the physical address of the Property proposed to be leased, the name, address, and telephone numbers of the Proposer, the name and telephone number of the Proposer's contact person, and the date.
2. **Letter of Transmittal** (one page maximum) – The transmittal letter shall identify the Property proposed to be leased; state the Proposer's willingness to negotiate in good faith and enter into a lease agreement with the Municipality consistent with Skagway Municipal Code, including Chapter 16.03, Lease of Lands; and, provide the name(s), title(s), address(es), and phone number(s) of the persons authorized to make representations for the Proposer. The letter shall be signed by an individual Proposer or a representative of an entity Proposer with the authority to bind the entity Proposer. By signature on its RFP proposal transmittal letter, a Proposer certifies that the Proposer is in compliance with: (1) the laws of the State of Alaska; (2) the applicable portion of the Federal Civil Rights Act of 1964; (3) the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government; and (4) all terms and conditions set out in the RFP. If any Proposer fails to comply with 1-4 of this paragraph, the Municipality reserves the right to disregard the RFP response, terminate any award, or consider the Proposer in default.
3. **Proposal Narrative** – The proposal narrative shall provide the following information:
 - Responses to each of the items set forth as the deliverables under the Scope of the Project section above.
 - The purpose of the proposed lease, including proposed use of the Property;
 - The proposed term of the lease. In determining whether to grant a lease for the requested term, the nature, extent and cost of the improvements which the Proposer agrees as a condition of the lease to construct thereon, the value of the applicant's proposed use to the economy of the Municipality, and other relevant factors, will be considered. The term of

DRAFT

any given lease shall depend upon the desirability of the proposed use, the amount of investment and improvements proposed to be made by the Lessee, and the nature of the improvements proposed with respect to the durability and time required to amortize the proposed investment;

- Describe any Property improvements proposed to be removed/demolished and details regarding same. To the extent that any existing Property improvements are not proposed to be removed/demolished, describe the remaining useful life of any such existing improvements and provide support for such asserted remaining useful life;
 - The use, value and nature of improvements to be constructed;
 - The type of construction;
 - At a minimum, 35% designs for any new construction and/or structures to be placed on site;
 - Dates that construction is estimated to commence and be completed;
 - Whether the intended use complies with the zoning ordinance and comprehensive plan;
 - The financial ability of Proposer to successfully complete the proposal and operate the Property as proposed; and
 - Lessee shall provide as-builts of all construction within 60 days of final construction to the Borough Manager or designated representative.
4. **Proposer's Resources and Experience** – Proposer shall provide a statement setting forth (i) its size, resources, and business history, including number of employees and types of business in which respondent is engaged; (ii) experience in the type of business to be operated on the leased Property, with special note to any that is similar in ownership, service, and use; (iii) a list of the names, titles, and phone numbers of at least three references who are familiar with the Proposer's business.
5. **Application Filing Fee** - Proposer shall submit a \$100.00 non-refundable filing fee with the RFP proposal as required under Skagway Municipal Code section 16.03.030(B).

Deposits for Cost

Following the selection of the successful RFP Proposer, the Municipality will determine estimated costs required to handle the proposal, including but not limited to one (1) or more of the following: survey, appraisal, and advertising of the proposed lease of the area under proposal. Upon determination of the estimated costs, the Municipality shall notify the Proposer in writing of such costs, and a deposit thereof must be made by the successful RFP Proposer within thirty (30) calendar days after the notice is mailed. Failure of the successful RFP Proposer to pay the deposit shall result in the proposal being canceled. If the Municipality and the successful RFP Proposer are unable to successfully negotiate a written lease acceptable to all parties, all deposit money spent or encumbered for survey, appraisal, or advertising shall be forfeited, and the balance, if any, shall be returned to the Proposer. If the land lease area is leased to another, the latter shall be required to pay actual costs of survey, appraisal, and advertising, and the original deposit shall be returned to the depositor. The lessee shall be required to pay any excess of costs over deposits, and where the deposit exceeds actual costs, the excess shall be credited to present or future rents under the lease. All survey, appraisal, and advertising shall be performed only under the control of the

DRAFT

Municipality, and any such work done without such control will not be accepted by the Municipality.

Evaluation Criteria and Selection Process

The Municipality of Skagway reserves the right to reject any and all proposals submitted in the best interests of the Municipality and shall not be liable for any costs incurred by any Proposer in response to this solicitation or for any work done prior to the issuance of a notice to proceed.

A selection committee consisting of the Borough Manager, Port Director, and the Ports and Harbors Advisory Board Assembly Member (in the absence of any of these the mayor can appoint a substitute) will evaluate the proposals and make a recommendation to the Skagway Borough Assembly. Evaluators may discuss factual knowledge of and may investigate Proposer's prior work experience and performance, including projects referenced in the proposal and available written evaluations, and may contact listed references or other persons knowledgeable of a Proposer's past performance. Factors such as overall experience, quality of past experience, and the ability to perform tasks proposed and to perform lease obligations may be addressed during the evaluation.

Proposals will be evaluated and scored in accordance with the following criteria:

A. Proposal's compliance with RFP requirements	Pass/Fail
B. Overall quality of operational plan	20 points
C. Proposer's ability to finance proposal to completion	20 points
D. Proposal that includes all deliverables	20 points
E. Proposed lease terms, including financial benefit to MOS	20 points
F. Development schedule	10 points
G. Demonstration of success as community resource	<u>10 points</u>
Maximum Score:	100 points

General Conditions and Notices

Proposal Evaluation/Award: The Municipality reserves the right to reject any or all proposals received for any reason if it is in the best interest of the Municipality. The Municipality reserves the right to waive minor informalities and irregularities of proposals received if it is in the best interest of the Municipality. The Municipality reserves the right to not lease the Property, to lease the Property to any Proposer if negotiations with the initial successful Proposer fail, or to resolicit interest from potential Lessees in leasing the Property. Plans to lease the Property may be cancelled in whole or in part in the sole discretion of the Municipality.

Project Site: It is the sole responsibility of the Proposers to evaluate the Property and make their own technical assessment of the Property for determining the contents of its RFP response and the financial viability of the proposal. The Municipality will not make any accommodations if the Property conditions or other elements of the proposal are different from that assumed by the Proposer, or as believed to be by the Proposer, or as represented to the Proposer by any source.

DRAFT

The Municipality specifically makes no representations as to the conditions of the Property or any improvements on the Property, and no Municipality employee, Assembly member, the Mayor, or any other representative of the Municipality has any actual or apparent authority to make any oral or written representations as to the conditions of the Property. The Municipality shall not allow later adjustments to the negotiated lease terms due to or as the result of weather or any other events of force majeure, except as expressly provided below. RFP Proposers are expected to be familiar with the potential extreme and challenging weather conditions in Skagway, Alaska, and the Municipality will assume all Proposers have considered weather in preparing their proposals. Extraordinary weather delays may be considered and addressed through lease modification in the sole discretion of the Municipality.

Project Contact and Technical Questions: Proposers shall familiarize themselves with this RFP and RFP response requirements. All questions or requests must be written and addressed to the Borough Manager at manager@skagway.org. All technical questions shall be in writing and directed to the Borough Manager at manager@skagway.org, no later than _____, _____, **2022 at 4:00 p.m.**

A non-mandatory RFP conference will be held at _____ on _____, 2022 at _____. Proposers are encouraged to attend and ask questions at that time.

The Municipality's responses to questions, including any supplemental information, that significantly changes the content of this RFP will be made available to all persons and entities that have requested that they be provided with all of the Municipality's responses to questions regarding this RFP.

Submittal Deadline and Location: Proposers are responsible to assure physical delivery prior to the deadline. Only proposals received prior to the date and time, and received at the location specified, shall be considered. Faxed or emailed proposals will not be accepted.

Proposals to Remain Open: The Proposers shall guarantee and stand behind the proposal for a period of sixty (60) calendar days from the date of the proposal opening. The successful RFP Proposer shall negotiate with the Municipality in good faith the terms of a lease of the Property.

Proposer's Responsibility: Responding Proposers have the responsibility of understanding what is required by this solicitation. The Municipality shall not be held responsible for any firm's lack of understanding. Should a Proposer not understand any aspect of this solicitation, or require further explanation or clarification regarding the intent or requirements of this solicitation, it shall be the responsibility of such Proposer to seek guidance from the Municipality as indicated above. By submitting a proposal in response to this solicitation, a Proposer certifies that it has thoroughly read and understands this solicitation in its entirety and has submitted the proposal in agreement with the terms and conditions of this Request for Proposals.

Addenda: The Municipality will make a reasonable effort to provide all addenda to known potential Proposers when issued. Addenda may be issued by any reasonable method such as by email and will be located at the borough website, www.skagway.org. It is the Proposer's

DRAFT

responsibility to ensure receipt of all addenda. No claim or protest will be allowed based on the allegation that the Proposer did not receive all of the addenda.

Cost Incurred in Proposal Preparation: No lease or other contract shall be in effect until the Municipality executes a written agreement. The Municipality is not liable for any cost incurred by any Proposer in the response to this solicitation, including any work done, even in good faith, prior to the execution of a written agreement.

Proprietary Information: Proposers shall not include proprietary information in proposals if such information should not be disclosed to the public. Any language with a submittal purporting to render all or portions of a proposal confidential will be disregarded.

Minor Informalities: The Municipality reserves the right to waive any minor informality, negotiate changes, or reject any and all proposals and to not award the proposed lease, if it is in the Municipality's best interest. Minor informalities means matters of form rather than substance which are evident from the submittal, or are insignificant matters that have a negligible effect on price, quantity, quality, delivery, or contractual conditions and can be waived or corrected without prejudice to other Proposers.

Receipt and Proposal Opening: The Municipality must receive all proposals including any amendment or withdrawal prior to the deadline for submitting proposals. Any proposal, amendment, or withdrawal, which has not been actually physically received by the Municipality prior to the scheduled time for submitting proposals, shall not be considered. No responsibility shall be attached to any officer, employee, or agent of the Municipality for the premature opening of, or failure to open, a proposal improperly delivered, addressed or identified.

Until the approval of a lease by the Skagway Borough Assembly and the full execution of a lease, the Municipality reserves the right to reject any or all proposals, to waive technicalities, or to advertise for new proposals without liability against the Municipality. Receipt of proposals will be publicly acknowledged at the submittal deadline and location.

Rejection of Proposals: The Municipality reserves the right to reject any and all proposals. The Municipality reserves the right to reject the proposal of any Proposer who has previously failed to perform properly on any lease, other contract or project, or failed to complete any contract or project on time, or required amendments to its original scope of work to complete a project. The Municipality reserves the right to reject the proposal of any Proposer who is not, in the sole opinion of the Municipality, in a position to perform the proposed lease or whose proposal does not appear to assure full lease performance; and to reject a proposal as non-responsive where the Proposer fails to furnish the required documents, fails to complete the required documents in the manner directed, makes unauthorized alterations to proposal documents, or otherwise fails to meet the requirements of an RFP response.

Non-Responsive Proposals: Proposals shall be considered non-responsive and may be rejected if there are unauthorized additions, conditional or alternative proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.

DRAFT

Award and Execution of Contract: All Proposers will be notified of the Municipality's selection of the successful RFP Proposer by e-mail or fax. No lease or other obligation of the Municipality shall be considered as effective until approved by the Skagway Borough Assembly and a written agreement is fully executed by both the Municipality and the successful Proposer.

Failure to Execute Lease: Failure of the successful RFP Proposer to execute and return to the Municipality the negotiated and approved lease and any other required lease documentation within seven (7) days after submission to the successful Proposer, will be, in the sole discretion of the Municipality, cause for the rejection of the award. Award may then be made to another RFP Proposer, or a lease RFP may be re-issued, in the sole discretion of the Borough Manager.

Ownership of Proposal Submittals: Once proposals are received, they become the property of the Municipality, and shall not be returned. Proposals may be withdrawn by submitting a written withdrawal request to the same address to which the proposal was submitted if the request is received by the Municipality no less than one (1) hour prior to the deadline for submitting proposals.

Proposers are Responsible to Assure Delivery Prior to Deadline: Only proposals received prior to the deadline date and time, and received at the location specified, will be considered. The Municipality is not responsible for any costs incurred in the preparation of proposals. The Municipality reserves the right to reject any or all proposals. The Municipality reserves the right to cancel the RFP, or delay the proposed lease process, or decide not to lease the Property, all in its sole discretion.

Interviews: The Municipality reserves the right to independently interview any Proposer. Any such interview will be scheduled at the convenience of the issuing office and will be limited to clarification to insure a mutual understanding of a proposal's contents.

Insurance & Indemnification: No lease shall be issued or continued unless there is presented to the Municipality of Skagway a certificate of insurance showing that the successful Proposer has obtained at least twenty million dollars (\$20,000,000.00) general liability insurance and two million (\$2,000,000.00) of professional liability errors and omissions insurance and professional pollution liability. Proof of such insurance shall be provided to the Municipality as a condition of entering the lease. Failure to maintain such insurance shall constitute a material breach of lease. The certificate of insurance must establish that the Municipality is named as an additional insured on such policy, and that the insurer thereof shall notify the Municipality twenty (20) days before the policy is canceled, or terminated. Additionally, the Proposer shall execute an instrument under the terms of which the Proposer will agree to indemnify, defend and hold harmless the Municipality of Skagway from any and all claims for injury or damage, including death, to persons or property as a result of the successful Proposer's activities or the condition of the Property and pipelines used in conjunction therewith.

Proposer shall provide Worker's Compensation Insurance in compliance with the laws of the State of Alaska, AS 23.30et seq., and federal jurisdiction where the work is being performed.

The Municipality of Skagway is an equal opportunity employer.

1 ACRE CONCEPT

