

**RFB # tender\_12637**  
**ATTACHMENT #1 – RFB DEFINITIONS, TERMS AND CONDITIONS**

**1. DEFINITIONS AND INTERPRETATION**

The following definitions are applicable to this RFB. Unless otherwise specified in this RFB, capitalized words and phrases used in the RFB have the meaning set out in the Form of Agreement (Attachment #2) to this RFB.

**“Agreement”** means the agreement to be entered into with the Preferred Bidder as set forth in Attachment #2 – Form of Agreement.

**“Bid”** means all documentation submitted by a Bidder in response to the RFB or in respect of the RFB.

**“Bidder”** means a legal entity that submits a Bid in response to this RFB.

**“Bid Deposit”** is described in Section 1.3.3 of the Qualification Envelope.

**“Commercial Envelope”** means Section 3 of the RFB, as set out on the Ontario Tenders Portal eTendering System.

**“Commercial Response”** means all quoted pricing for the Work as found in the Bidder’s response to the Commercial Envelope and any related attachments.

**“Company Level Check”** means a Security Screening Check that requires checks to be conducted on all directors and officers of the Bidder regardless of whether they will have direct involvement in the work associated with the procurement which was deemed to require security screening, and requires the consent to security screening and clearance of all directors and officers of the Bidder and the Company Security Officer.

**“Company Security Officer” or “CSO”** is a person who: holds that standing in Ontario’s Contractor Security Screening Program; plays an administrative role in the security screening process on behalf of his or her company, including verifying identify for workers requiring screening; and who holds a valid Security Clearance issued by Contractor Security Screening (CSS), Supply Chain Ontario (SCO), Ministry of Government and Consumer Services (MGCS) prior to performing that role.

**“Contractor”** means the entity that enters into the Agreement with the Ministry to perform and provide the Work.

**“Credit Check”** means a Security Screening Check based on results provided by a Canadian credit bureau to determine if the person being checked has any adverse credit information; as part of this check, information collected may include a credit score and any relevant bankruptcies, legal proceedings, collection actions and court orders; information obtained from the check will only be used for the purpose of assessing the person’s clearance status.

**“Criminal Record and Judicial Matters Check” or “CRJMC”** means a search through the Canadian Police Information Centre (CPIC) database maintained by the Royal Canadian Mounted Police (RCMP) and a search through provincial and municipal police databases, using an individual’s name and date of birth, for information relating to the offence provisions of federal legislation including the Criminal Code (Canada), the Controlled Drugs and Substances Act (Canada) and the Youth Criminal Justice Act (Canada), and which includes records of previous convictions, convictions for which a pardon has been granted (where disclosure is authorized under the Criminal Records Act (Canada), findings of guilt under the Youth Criminal Justice Act (Canada), findings of guilt that have resulted in absolute or conditional discharges (disclosed within one (1) and three (3) years respectively), any outstanding charges and related information (e.g., an arrest warrant), as well as court orders (excludes mental health related orders and family court restraining orders).

**“Driver’s Record Check”** is a Security Screening Check conducted where driving is a requirement for the Bidder/Contractor under the Agreement and a valid driver’s licence is required, and involves a check of provincial databases for information regarding driving history using the individual’s driver licence number, providing a three, five or ten year history of Highway Traffic Act and Criminal Code of Canada convictions and any current suspensions, along with the driver’s current listed address and licence status.

**“Equivalent”** means a product or material, or a part of a manufactured product, or a technical standard that: (i) is of a similar size and quality, (ii) works and performs in substantially the same way, and (iii) accomplishes substantially the same result, to that of a particular product or material forming part of the Work, of a manufacturer named or referred to in the Contract Documents, or to a technical standard referred to in the Contract Documents.

**“Other Security Screening Checks”** means higher level Security Screening Checks determined on the basis of a Ministry risk assessment that may be required when the duties or tasks of the Bidder/Contractor under the Agreement establish a risk level greater than can be addressed through a CRJMC, Driver’s Record Check, Out-of-Country Driver’s Record Check (US and/or International) or Out-of-Country Police Certificate (US and/or International), and which may be conducted in addition to the CRJMC, be those included in the Police Record Checks Reform Act, out of scope of the Act or permitted by regulatory exemption to the Act.

**“OTP” and “Ontario Tenders Portal eTenderingSystem”** means the Ontario Tenders Portal electronic tendering system currently hosted by BravoSolution.

**“Out-of-Country Driver’s Record Check (US and/or International)”** means a Security Screening Check conducted in a foreign jurisdiction(s) in which the individual resided for more than six (6) months consecutively within the last five (5) years, and which is conducted where driving is a requirement for the Bidder/Contractor under the Agreement, a valid driver’s licence is required, and which includes information such as current suspensions, along with the driver’s current listed address and licence status.

**“Out-of-Country Police Certificate (US and/or International)”** means a Security Screening Check conducted in a foreign jurisdiction(s) in which the individual resided for more than six (6) months consecutively within the last five (5) years, and which is a summary

of an individual's criminal record or a declaration of the absence of any criminal record from a law enforcement agency in another country outside of Canada (and which may also be known as a police clearance certificate, good conduct certificate, judicial record extract, etc.).

**“Police Record Checks Reform Act” or “PRCRA”** means the Police Record Checks Reform Act, 2015, S.O. 2015, c. 30.

**“Preferred Bidder”** means the Bidder (or Bidders in the case of a multiple vendor opportunity) who has the highest scoring compliant Bid at the conclusion of the evaluation process set out in the Qualification Envelope.

**“Qualification Envelope”** means Section 1 of the RFB as set out on the Ontario Tenders Portal eTendering System.

**“Qualification Response”** means the Bidder's response to the Qualification Envelope, any related attachments and includes the Form of Offer.

**“Reference Project”** has the meaning set forth in Section 2.8.5(a) below.

**“RFB Closing Date and Time”** means the Bid submission date and time as set out in the RFB and as may be amended from time to time in accordance with the terms of the RFB.

**“RFB Contact”** means the person listed in Section 1.1 – Procurement Details of the Qualification Envelope.

**“Security Clearance”** means a decision made by CSS, SCO following receipt of the Security Screening Check documents that will permit the person being cleared to engage in the performance or provision of the Work.

**“Security Screening Check”** is the process conducted by the Bidder to gather information on designated persons for submission to the Ministry in order to obtain a Security Clearance and includes all of the following:

1. A written declaration by an individual disclosing any unresolved charges and previous convictions under the offence provisions of federal statutes, including but not limited to the Criminal Code (Canada), for which a pardon under the Criminal Records Act (Canada) has not been granted;
2. A Criminal Record and Judicial Matters Check; and
3. Other Security Screening Checks if determined necessary on the basis of an approved risk assessment for the procurement; and

**“TCV number”** means the Bidder's tax compliance verification number, obtained by following the instructions set forth in Section 2.5.7 of this Attachment #1.

**“Technical Envelope”** means Section 2 of the RFB, as set out on the Ontario Tenders Portal eTendering System.

**“Technical Response”** means all information as found in the Bidder’s response to the Technical Envelope and any related attachments.

**“Third Party Reviewer”** means a person who has fulfilled the legal requirements in Ontario to be registered as either an architect and/or professional engineer and is competent in the pertinent architect/engineering discipline to review and certify that a proposed Equivalent by a Bidder is Equivalent.

**“Total Bid Price”** refers to the total price for the Work, to be set out by each Bidder in the Commercial Response.

**“Vulnerable Sector Check” or “VSC”** means all information disclosed in a Criminal Records and Judicial Matters Check, and includes every criminal offence with which the individual has been charged that resulted in a finding of not criminally responsible on account of mental disorder (disclosure prohibited if the request is made more than five years after the date of the finding or if the individual received an absolute discharge and any non-conviction information authorized for exceptional disclosure in accordance with section 10 of the Police Records Check Reform Act, 2015.

## **2. GENERAL TERMS AND CONDITIONS**

### **2.1 RFB**

These general terms and conditions of the RFB shall be read and interpreted together with the terms and conditions set forth in the Qualification Envelope, Technical Envelope and Commercial Envelope, and taken together with Attachment #2 – Form of Agreement and any other Attachment referred to in the Qualification Envelope, Technical Envelope or the Commercial Envelope, and any addenda issued in respect thereof, shall constitute the whole of the RFB.

### **2.2 Bidder Representations and Warranties**

By submitting a Bid for consideration, the Bidder in each case agrees, represents, confirms or warrants as follows:

- (i) to be bound to its Bid;
- (ii) that to its best knowledge and belief no actual or potential Conflict of Interest exists with respect to the submission of the Bid or performance of the contemplated contract other than those disclosed in the Form of Offer indicated in the Qualification Envelope. Where the Ministry discovers a Bidder’s failure to promptly disclose all actual or potential Conflicts of Interest, the Ministry may disqualify the Bidder or terminate any contract awarded to that Bidder pursuant to this procurement process;
- (iii) that it has accepted all provisions of this RFB and has prepared its Bid with reference to such provisions, including the attached Form of Agreement and has factored all such provisions, including the insurance requirements, into

its pricing assumptions and calculations and into the proposed costs indicated in the Commercial Envelope; and

- (iv) that its Bid was arrived at separately and independently, without conspiracy, collusion or fraud. See the Competition Bureau of Canada for further information.

## **2.3 General Instructions and Requirements**

### **2.3.1 Bidders to Follow Instructions**

Bidders should structure their Bids in accordance with the instructions in this RFB. Where information is requested in this RFB, any response made in a Bid should reference the applicable section numbers of this RFB where that request was made.

### **2.3.2 Conditional Bids May be Disqualified**

A Bidder who submits any condition, option, variation or contingent statement to any of the terms and conditions set out in the RFB, including the Form of Offer and Form of Agreement, either as part of its Bid or after receiving notice of selection, may be disqualified. The Ministry acknowledges the need to add transaction-specific particulars to the Form of Agreement, but the Ministry will not otherwise make material changes to the Form of Agreement.

### **2.3.3 Bids in English**

All Bids are to be in English only. Any Bids received by the Ministry that are not entirely in the English language may be disqualified.

### **2.3.4 Ministry's Information in RFB Only an Estimate**

The Ministry and its advisors make no representation, warranty or guarantee as to the accuracy of the information contained in this RFB, or issued by way of addenda to the RFB. Any quantities shown or data contained in this RFB or provided by way of addenda are estimates only and are for the sole purpose of indicating to Bidders the general size of the work.

It is the Bidder's responsibility to avail itself of all information necessary to prepare a Bid in response to this RFB.

### **2.3.5 Bidders Shall Bear Their Own Costs**

The Bidder shall bear all costs associated with or incurred in the preparation and presentation of its Bid including, but not limited to, if applicable, costs incurred for interviews or demonstrations.

### **2.3.6 No Guarantee of Volume of Work or Exclusivity of Contract**

The Ministry makes no guarantee of the value or volume of work to be assigned to the selected Bidder. The Agreement executed with the selected Bidder will not be an exclusive

contract for the provision of the Work. The Ministry may contract with others for the same or similar Work to those described in this RFB or may obtain the same or similar Work internally.

### **2.3.7 RFB Terms**

All rights and obligations that apply to this procurement process are found only in the RFB. For greater clarity, no other document is to be read into this RFB or used to interpret or understand its terms or establish any rights or obligations related to this procurement.

### **2.3.8 Accessibility Obligations**

The Province of Ontario is committed to the highest possible standard for accessibility. The Bidder is responsible for complying with the requirements under the Ontario Human Rights Code, the Ontarians with Disabilities Act, 2001 and Accessibility for Ontarians with Disabilities Act, 2005 ("AODA") and its regulations.

### **2.3.9 Trade Agreements**

Bidders should note that procurements falling within the scope of:

- (a) the Canada Free Trade Agreement ("CFTA");
- (b) the Trade and Cooperation Agreement between Ontario and Quebec ("Ontario/Quebec");
- (c) the Agreement between the Government of Canada and the Government of the United States of America on Government Procurement ("GPA"); or
- (d) the Canada-European Union Comprehensive Economic and Trade Agreement ("CETA"),

are subject, respectively, to those agreements but that the rights and obligations of the parties shall be governed by the specific terms of each particular RFB. In any event of the preceding, all rights under each of those trade agreements, wherever prosecuted, shall be limited to the remedies available in each. For further reference please see: (for the CFTA) the [Internal Trade Secretariat](#) website; (for Ontario/Quebec) the [Ontario Ministry of Economic Development and Growth](#) website; (for the GPA) the [Canadian Federal Government](#) website; and (for CETA) the [Canadian Federal Government](#) website.

## **2.4 Communication after Issuance of RFB**

### **2.4.1 All New Information to Bidders by way of Addenda**

This RFB may only be amended by the Ministry by an addendum through the OTP in accordance with this section. If the Ministry, for any reason, determines that it is necessary to provide additional information relating to this RFB, such information will be communicated to all Bidders through an addendum to the RFB by way of the OTP. Each addendum shall form an integral part of this RFB.

Each addendum may contain important information, including significant changes to this RFB. The onus remains on the Bidder to make any necessary amendments and to re-submit its Bid based on the addenda. The Ministry may also be issuing addenda included in the RFB as an attachment, which will contain responses to Bidders' questions. Bidders are responsible for obtaining all addenda issued by the Ministry.

If the Ministry makes any changes to the RFB after a Bidder has submitted its Bid, the Bid will be invalidated on the OTP and the Bidder will need to re-submit its Bid. The Bidder will be required to update any new or modified sections of the RFB by way of the OTP and re-submit its Bid.

#### **2.4.2 Post-Deadline Addenda and Extension of RFB Closing Date and Time**

The Ministry may, at its discretion, issue addenda after the Deadline for Issuing Addenda and may also then extend the RFB Closing Date and Time for a reasonable amount of time.

#### **2.4.3 Ministry May Verify Information or Seek Clarification and Incorporate Response into Bid**

The Ministry reserves the right, but is not obliged, to verify or seek clarification and supplementary information relating to the verification or clarification from Bidders after the RFB Closing Date and Time including those related to an ambiguity in a Bid or in any statement made subsequently during the evaluation process. Any response received by the Ministry from a Bidder shall, if accepted by the Ministry, form an integral part of that Bidder's Bid. However, Bidders are cautioned that any verification or clarification sought will not be an opportunity to correct any error or change their Bids in any substantive manner.

Verifications or clarifications sought under this subsection may be made by whatever means the Ministry deems appropriate and may include contacting,

- (a) any person identified in the Bid; and
- (b) persons or entities other than those identified by any Bidder.

In submitting a Bid, a Bidder is deemed to consent to the Ministry's verification or clarification rights.

In the event that the Ministry receives information at any stage of the evaluation process, which results in earlier information provided by the Bidder being deemed by the Ministry to be inaccurate, incomplete or misleading, the Ministry reserves the right to revisit the Bidder's compliance with the mandatory requirements or adjust the scoring of rated requirements or both.

## **2.5 Bid Process Requirements**

### **2.5.1 Bids must be submitted on time and in the Ontario Tenders Portal eTendering System**

Bids must be submitted by the RFB Closing Date and Time through the OTP, with the exception of the Bid Deposit, if required by this RFB (which must be submitted to the address specified in the RFB by the RFB Closing Date and Time). The OTP will not allow a Bidder to submit a Bid after the RFB Closing Date and Time. Any Bid submitted in any other manner will be disqualified and returned to the Bidder. For the purpose of calculating time, the OTP electronic time-stamp on the submission shall govern.

**Please note:** Any Bids (or sections of a Bid) submitted through the OTP online messaging function will not be accepted.

### **2.5.1A Bid Deposit Submission Address:**

The Bid Deposit must be submitted by the Bidder in a sealed envelope with the Bid Deposit Submission Label affixed and must be delivered to the address specified in Section 1.1.19 (Bid Deposit Submission Address) of the Qualification Envelope before the RFB Closing Date and Time.

Failure to comply with this requirement will result in disqualification.

### **2.5.2 Bid Irrevocable after RFB Closing Date**

Bids shall remain irrevocable in the form submitted by the Bidder for the period set out in Section 1.1 - Procurement Details of the Qualification Envelope of this RFB running from the moment that the RFB Closing Date and Time has lapsed.

### **2.5.3 Bidders to Review RFB**

Bidders shall promptly examine all of the documents comprising this RFB and:

- (a) shall report any errors, omissions or ambiguities; and
- (b) may direct questions or seek additional information,

through the OTP online messaging function on or before the Bidder's Deadline for Questions to the RFB Contact set out at Section 1.1 - Procurement Details of the Qualification Envelope of this RFB. The time stamp on a question submitted by Bidder's through the OTP online messaging function shall be used to determine if the question was received on or before the Bidder's Deadline for Questions. No such communication is to be directed to anyone other than the RFB Contact or designate. The Ministry is under no obligation to provide additional information but may do so at its sole discretion.

It is the responsibility of the Bidder to seek clarification from the RFB Contact on any matter it considers to be unclear. The Ministry shall not be responsible for any misunderstanding on the part of the Bidder concerning this RFB or its process.

### **2.5.4 No Incorporation by Reference by Bidder**



The entire content of a Bidder's Bid must be submitted in a fixed form. The content of web sites or other external documents referred to in a Bid will not be considered to form part of the Bid.

### **2.5.5 Amending or Withdrawing Bids Prior to RFB Closing Date and Time**

At any time prior to the RFB Closing Date and Time, a Bidder may amend or withdraw a submitted Bid. The right of Bidders to amend or withdraw includes amendments or withdrawals wholly initiated by Bidders and amendments or withdrawals in response to subsequent information made through an addendum to the RFB.

### **2.5.6 Bid to be Retained by the Ministry**

The Ministry will not return any Bid, sample or accompanying documentation submitted by a Bidder including amended or withdrawn Bids (excluding Bid Deposits, if required by the RFB, which shall be returned in accordance with the instructions related to Bid Deposits).

### **2.5.7 Tax Compliance Verification**

Bidders are advised that if they are selected for contract award, their Ontario tax obligations, if any, must be in good standing at the time of entering into an Agreement. A Bidder's TCV number is required by the Ministry to confirm with the Ministry of Finance that the Bidder's Ontario tax obligations, if any, are in good standing. Each Bidder is therefore requested to provide its TCV number in the Form of Offer. If the Bidder does not provide its TCV number with the Form of Offer, it will have to provide the TCV number prior to signing an Agreement, so the Ministry can confirm with the MOF the Bidder's tax compliance status at the time of signing the Agreement.

The Ministry will rescind the notice of selection of a Bidder for contract award whose Ontario tax obligations are not in good standing within the timeframe for satisfying the preconditions of execution set out in the RFB.

Bidders are required to follow the following process in order to determine their tax compliance status.

The Ministry of Finance (MOF) has automated the Tax Compliance Verification (TCV) process by creating an **online portal (<http://www.etax.fin.gov.on.ca/>)**, where you can confirm your tax compliance status online and at any time.

#### **Getting a TCV Number**

Before you can verify your tax compliance status, your business will need to have a **One-key ID (<https://www.iaa.gov.on.ca/iaalogin/IAALogin.jsp>)**. Visit **One-key Account Registration (<https://www.appenrol.one-key.gov.on.ca/UserMgmtWebApp/registration.iaa>)** to set up an account.

1. To get your TCV number: Register for E-Services  
(<https://www.etax.fin.gov.on.ca/eServices/eServicesHome/RegisterOneKey?lang=en>)
2. Select **e-Services** from My Services
3. **Select** or **Add a business** on the e-services page
4. Select **TCV** (you will be redirected to **Bidder Portal** (<http://www.etax.fin.gov.on.ca/>))
5. In the Bidder Portal (<https://www.etax.fin.gov.on.ca>), select **Request TCV Number** on the TCV page
6. Attach the Filing and Balance Confirmation (FBC) Letter (if required) and select **Next**
7. Select **View Summary** to review compliance summary
8. Download **TCV Certificate** (optional)
9. Provide your email to receive alerts about your account status

## Where to go for help?

Please refer to the **frequently asked questions** (<https://www.doingbusiness.mgs.gov.on.ca/mbs/psb/psb.nsf/English/FAQ-TCTC-Program>) for more information.

## 2.6 Execution of Agreement, Notification and Debriefing

### 2.6.1 Selection of Bidder

The Ministry anticipates that it will select a Bidder within the irrevocable period. Notice of selection by the Ministry will be in writing. The Preferred Bidder shall execute the Agreement in the form attached to this RFB and satisfy any other applicable conditions of this RFB within the period of time set out to do so in Section 1.1 - Procurement Details of the Qualification Envelope of this RFB. This provision is solely to the benefit of the Ministry and may be waived by the Ministry at its sole discretion.

Bidders are reminded that there is a question and answer period available if they wish to ask questions or seek clarification about the terms and conditions set out in the Form of Agreement. The Ministry will consider such requests for clarification in accordance with its right to do so under this RFB.

### 2.6.2 Failure to Enter Into Agreement

In addition to all of the Ministry's other remedies, if a selected Bidder fails to execute the Agreement or satisfy any other applicable conditions within the period of time set out to do

so in Section 1.1 - Procurement Details of the Qualification Envelope of this RFB following the notice of selection, the Ministry may, in its sole discretion and without incurring any liability, rescind the selection of that Bidder and proceed with the selection of another Bidder.

### **2.6.3 Notification to Other Bidders of Outcome of Procurement Process**

Once the selected Bidder and the Ministry execute the Agreement, the other Bidders will be notified by the Ministry in writing of the outcome of the procurement process, including the name of the selected Bidder, and the award of the contract to the selected Bidder.

### **2.6.4 Debriefing**

Bidders not selected for contract award may request a debriefing after receipt of a notification of award. All requests must be in writing to the RFB Contact and must be made within sixty (60) days of notification of award. The intent of the debriefing information session is to aid the Bidder in presenting a better Bid in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

### **2.6.5 Bid Dispute**

Bidders are advised that a formal bid dispute process is available, the details for which are available from the RFB Contact.

### **2.6.6 Prohibited Bidder Communications**

Bidders shall address all questions and requests for clarification with respect to their Bids, or the RFB documents or the RFB process only to the RFB Contact set out at Section 1.1 - Procurement Details of the Qualification Envelope of this RFB.

Bidders shall not contact or make any attempt to contact:

- (a) any Ontario government employee or representative, other than the RFB Contact; or,
- (b) any other Bidder;

with respect to a Bid, the RFB documents, or the RFB process, at any time during the RFB process.

Without limiting the generality of the above, Bidders, shall not contact or attempt to contact:

- (a) any member of the Ministry evaluation team for the RFB;
- (b) any expert or advisor assisting the Ministry evaluation team, including WSP Canada Inc.;
- (c) any staff of the Premier of Ontario's office or the Ontario Cabinet Office;
- (d) any Member of the Ontario Provincial Parliament or his or her staff or advisors; or
- (e) any Member of the Ontario Provincial Cabinet or his or her staff or advisors;

on matters related to their Bids, the RFB documents, or the RFB process at any time during the RFB process.

#### **2.6.7 Bidder Not to Make a Public Statement or Communicate With Media**

A Bidder may not at any time directly or indirectly make a public statement or communicate with the media in relation to this RFB or any contract awarded pursuant to this RFB without first obtaining the written permission of the Ministry. Where a Bidder makes a communication contrary to this section the Ministry may disclose such information necessary to correct any inaccuracy of information in the Bidder's communication.

#### **2.6.8 Confidential Information of Ministry**

All information provided by or obtained from the Ministry in any form in connection with this RFB either before or after the issuance of this RFB:

- (a) is the sole property of the Ministry and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFB and the performance of any subsequent Contract;
- (c) must not be disclosed without prior written authorization from the Ministry; and
- (d) shall be returned by the Bidders to the Ministry immediately upon the request of the Ministry.

#### **2.6.9 Freedom of Information and Protection of Privacy Act**

The *Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31*, as amended, applies to information provided to the Ministry by a Bidder. A Bidder should identify any information in its Bid or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the Ministry. The confidentiality of such information will be maintained by the Ministry, except as otherwise required by law or by order of a court or tribunal. Bidders are advised that their Bids will, as necessary, be

disclosed on a confidential basis, to the Ministry's advisors retained for the purpose of evaluating or participating in the evaluation of their Bids.

By submitting any personal information requested in this RFB, Bidders agree to the use of such information as part of the evaluation process, for any audit of this procurement process and for contract management purposes. Where the personal information relates to an individual assigned by the selected Bidder to provide the Work, such information may be used by the Ministry to compare the qualifications of such individual with any proposed substitute or replacement. If a Bidder has any questions about the collection and use of personal information pursuant to this RFB, questions are to be submitted to the RFB Contact in accordance with Section 2.5.3.

## **2.7 Reserved Rights and Governing Law**

### **2.7.1 Reserved Rights of the Ministry**

The Ministry reserves the right to:

- (a) make public the names of any or all Bidders, the name of the selected Bidder(s), and the total price for the contract awarded;
- (b) request written clarification or the submission of supplementary written information in relation to the clarification request from any Bidder and incorporate a Bidder's response to that request for clarification into the Bidder's Bid;
- (c) assess a Bidder's Bid on the basis of:
  - (i) a financial analysis determining the actual cost of the Bid when considering factors including transition costs arising from the replacement of existing goods, services, practices, methodologies and infrastructure (howsoever originally established);
  - (ii) information provided by references;
  - (iii) the Bidder's past performance on previous contracts awarded by the Government of Ontario;
  - (iv) the information provided by a Bidder pursuant to the Ministry exercising its clarification rights under this RFB process; or
  - (v) other relevant information that arises during this RFB process;
- (d) waive non-compliance where, in the Ministry's sole discretion, such non-compliance is minor and not of a material nature, or to accept or reject in

whole or in part any or all Bids, with or without giving notice; such minor non-compliance will be deemed substantial compliance and capable of acceptance; the Ministry will be the sole judge of whether a Bid is accepted or rejected;

- (e) verify with any Bidder or with a third party any information set out in a Bid;
- (f) check references other than those provided by any Bidder;
- (g) disqualify any Bidder whose Bid contains misrepresentations or any other inaccurate or misleading information;
- (h) disqualify any Bid or rescind any contract award where the Bidder either fails to disclose or is determined to have an actual or perceived unfair advantage or Conflict of Interest determined to be material by the Ministry;
- (i) disqualify any Bidder or the Bid of any Bidder who has engaged in conduct prohibited by this RFB;
- (j) make changes, including substantial changes, to this RFB provided that those changes are issued by way of an addendum in the manner set out in this RFB;
- (k) select any Bidder other than the Bidder whose Bid reflects the lowest cost to the Ministry or the highest score;
- (l) cancel this RFB process at any stage;
- (m) cancel this RFB process at any stage and issue a new RFB for the same or similar Work;
- (n) accept any Bid in whole or in part; or
- (o) reject any or all Bids.

These reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances. The Ministry shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Bidder or any third party resulting from the Ministry exercising any of its express or implied rights under this RFB.

By submitting its Bid, the Bidder authorizes the collection by the Ministry of the information set out under (e) and (f) in the manner contemplated in those subparagraphs.

## **2.7.2 Governing Law of RFB Process**

This RFB process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## **2.8 Supplementary Terms and Conditions**

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### **2.8.1 Publication of Data and Consent**

It is Ontario's intention, in accordance with the [Open Data Directive](#) and as part of its commitment to open data, to publish and allow the public to use:

- (i) procurement contract data, including the name of the Preferred Bidder and total contract value; and,
- (ii) data created or collected as an output of a contract,

except where Ontario chooses not to publish the data in accordance with the [Open Data Directive](#), such as for privacy, confidentiality, security, legal or commercially-sensitive reasons.

Each Bidder, by submitting a Bid, expressly consents to the above and agrees that, if it becomes the Preferred Bidder, it will not object to the above being incorporated into its contract.

### **2.8.2 Equivalents**

- (a) A Bidder may propose any Equivalent(s) in lieu of any particular product(s) or material named or referred to in the Contract Documents or any technical standard referred to in the Contract Documents (excluding those technical standards required by law) and shall include the price of the proposed Equivalent in its Total Bid Price. Bidders must include in their Bid the list of proposed Equivalent(s) and the supporting documentation, in accordance with section 2.8.2(c).
- (b) A Bidder that has included proposed Equivalent(s) in its Bid shall be deemed to have included in its Total Bid Price all costs related to the substitution of the referable product/material with the proposed Equivalent(s) and the Bidder's assurance that the completion date for the Work shall not be delayed by reason of the substitution by the Equivalent. Costs related to the provision of any proposed Equivalent shall be all inclusive, including costs for redesign, drawings, modifications, labour costs, and obtaining any permit, consent or approval in accordance with any Requirements of Law.
- (c) Each Bidder that has included the price(s) for a proposed Equivalent(s) in its Total Bid Price, must include in its Bid a list of all such proposed Equivalents and for each proposed Equivalent, the Bidder is to provide the following supporting documentation with its Bid:
  - (i) Product(s)/material description, including number of years on the North American or comparable market;
  - (ii) Product(s)/material specifications;
  - (iii) Product(s)/material performance specification;
  - (iv) Product(s)/material dimensional and reference drawings; and

- (v) References with contact information for the same product(s) or product used on three (3) similar applications that have been in use for the last two (2) years.

**Failure to include ALL of the foregoing information for EACH Equivalent shall result in disqualification.**

- (d) A Bidder that proposes any Equivalent(s) in its Bid must be prepared to provide a certificate from a Third Party Reviewer at no cost to the Ministry, within three (3) Business Days of the Ministry's request, in accordance with section 2.8.2(e), in the event that such Bidder is selected as the Preferred Bidder. In the event that the Agreement is entered into with the Ministry and such Bidder, the Contract Documents shall be deemed amended accordingly, as and where applicable by the substitution of the referable product/material with the Bidder's proposed Equivalent(s).
- (e) If the Bid of a Bidder referred to in section 2.8.2 is found to be compliant with the RFB and to have the lowest Total Bid Price, the Ministry shall notify such Bidder to provide the Ministry within three (3) Business Days and at no cost to the Ministry, with a certificate from a Third Party Reviewer, confirming that:
  - (i) the substitution of the proposed Equivalent(s) has been reviewed by the Third Party Reviewer, by undertaking an impartial comparison of each proposed Equivalent against the applicable brand name product(s)/material specified or referred to in the Contract Documents, having regard to the Contract Documents, the supporting documentation from the Bidder, as described in section 2.8.2(c), and industry standards, where applicable; and
  - (ii) the Bidder's proposed Equivalent(s) in its Bid is Equivalent and the use of the proposed Equivalent should not delay the Contract completion date, with a detailed rationale from the Third Party Reviewer.
- (f) The Ministry reserves the right to undertake its own review and make the final determination whether to accept the Bidder's proposed Equivalent(s) as Equivalent(s), and if not, to reject such Bid.
- (g) Further, the Ministry reserves the right to reject a Bid of a Bidder that failed to meet the requirements of this section, or where the Ministry has not accepted the Bidder's proposed Equivalent(s) as Equivalent(s), and to proceed with notifying the next Bidder whose Bid is compliant to the terms of the RFB and has the second lowest Total Bid Price.

### **2.8.3 Security Clearance**

- (a) Upon notification from the Ministry, the Bidder shall obtain one or more of the following Security Screening Checks for any person, including directors, officers,



employees, agents or sub-contractor, as applicable, engaged in the performance of the Work:

- (i) Criminal Record and Judicial Matters Check;
  - (ii) Company Level Check;
  - (iii) Credit Check;
  - (iv) Driver's Record Check;
  - (v) Out-of-Country Police Certificate (US and/or International);
  - (vi) Out-of-Country Driver's Record Check (US and/or International);
  - (vii) Vulnerable Sector Check; and
  - (viii) any Other Security Screening Check deemed necessary by the Ministry at its sole discretion.
- (b) The Contractor shall obtain the Security Screening Checks set out above at its own cost unless notified otherwise by Contractor Security Screening, Supply Chain Ontario, Ministry of Government and Consumer Services.
- (c) If applicable, Security Clearance Checks must be completed before the Contractor and the Ministry enter into the Agreement.
- (d) All required information shall be provided in a form and substance acceptable to the Ministry.

#### **2.8.4 Mandatory Materials to be Submitted as Part of Bid**

The Bidder shall provide the following items with its Bid:

- (a) The Bid deposit, in the manner described in Section 1.3.3 of the Qualification Envelope;
- (b) The Agreement to Bond, in the manner described in Section 1.3.4 of the Qualification Envelope;
- (c) A complete set of references for the purposes of evaluation in accordance with Section 2.2.1 of the Technical Envelope and Section 2.8.5(a) below;
- (d) Key staff project experience summary for the purposes of evaluation in accordance with Section 2.2.2 of the Technical Envelope and Section 2.8.5(b) below;
- (e) A preliminary construction schedule for the purposes of evaluation in accordance with Section 2.2.3 of the Technical Envelope and Section 2.8.5(c) below;
- (f) The name of the Subcontractor that will be performing the dewatering portion of the Work, together with a list of the Equipment such Subcontractor will be using to perform the dewatering. **Bidders are specifically referred to Special Provision Section 10.2 (Attachment #2) for further information.**

Failure to submit any mandatory item shall result in immediate disqualification of the Bidder's Bid, which shall not be considered further.

### 2.8.5 Technical Response and Evaluation

- (a) The Bidder shall submit reference project information for three (3) separate reference projects completed by the Bidder that included cast in place concrete foundations requiring a cofferdam and dewatering in the last fifteen (15) years (each, a "**Reference Project**"), which should include the following information:
- (i) confirmation that the Bidder was the primary contractor for such Reference Project;
  - (ii) confirmation that the total Reference Project value was three million dollars (\$3,000,000) or greater (not including extras, additional work or change orders);
  - (iii) a description of the work completed on such Reference Project sufficient to demonstrate the Bidder's experience with shallow concrete foundations, working in water, cofferdams and dewatering;
  - (iv) a description of the system that was installed by the Bidder on such Reference Project to facilitate the dewatering of the work area, which description should include:
    - a) size (length, width, height) and type of cofferdam installed;
    - b) photos of cofferdam and dewatered area;
    - b) description of pumping system installed;
    - c) date of cofferdam installation (mo/yr);
    - d) date of cofferdam removal (mo/yr); and
    - e) description and photo of systems used to treat water pumped from the work area prior to discharge into the environment.
  - (v) contact information for the owner's representatives or contract administrator (telephone and email) for such Reference Project, who are able to verify the project information provided.

The reference project information should be provided in the form attached as Appendix A.

The Ministry, in its sole discretion, may contact the references provided to verify the information submitted by the Bidder. If the Ministry chooses to contact references, it shall contact all of the references so supplied by the Bidder. In addition, if the Ministry contacts references for one Bidder, it will contact references for all Bidders who submit otherwise compliant bids.

Bidders whose reference submissions meet or exceed all of the above requirements in the opinion of the Ministry (and, if the Ministry chooses to verify such information, are verified as true and complete in all material aspects), will receive a score of "PASS" and will receive a score of 1 point.

Bidders whose reference submissions do not meet the above requirements or are incomplete in the opinion of the Ministry (or, if the Ministry chooses to verify such information, are not verified as true and complete in all material respects) will receive a final score of 'Fail' and be assigned a score of 0 points and their bid will be disqualified and will not be evaluated further.

- (b) The Bidder shall submit a key staff project experience summary for each of the project manager and construction superintendent who will have control over the Works for the duration of the project. Each of the key staff project experience summaries should include:
- (i) the name and contact information for the proposed individual;
  - (ii) a list of a minimum of three (3) successfully completed projects over the past 10 years; and
  - (iii) demonstration that such individual has a minimum of 10 years of experience in his or her role (i.e. as a project manager or as a construction superintendent), by including a minimum of one project completed no later than February 2010.

In addition, for each project listed in a key staff project experience summary, the following information should be provided by the Bidder:

- (i) a project description including the nature of the work, the overall contract value for each listed project (minimum three million dollars \$3,000,000), project duration, the year the project was completed and the dates (from mo/yr – to mo/yr) that the key staff member was in the position of project manager or construction superintendent (as the case may be) for the listed project
- (ii) confirmation that the listed project included the construction of a cofferdam and a description of the cofferdam installed including type, size (length, width, height), date of installation (mo/yr) and date of removal (mo/yr)
- iii) Contact information of owner's representative or contract administrator (telephone and email) for each listed project who is able to verify the information supplied above.

The key staff project experience summaries should be provided in the form attached as Appendix B for each of the proposed project manager and the proposed construction superintendent.

The Ministry, in its sole discretion, may contact the proposed individuals and the references provided to verify the information submitted by the Bidder. If the Ministry chooses to contact the proposed individuals and references, it shall contact all of the proposed individuals and references so supplied by the Bidder. In addition, if the Ministry chooses to contact the proposed individuals and references for one Bidder, it will contact proposed individuals and references for all Bidders who submit otherwise compliant bids.

Bidders whose key staff experience summaries meet or exceed all of the above requirements in the opinion of the Ministry (and, if the Ministry chooses to verify such information, are verified as true and complete in all material aspects), will receive a score of "PASS" and will receive a score of 1 point.

Bidders whose key staff experience summaries do not meet the above requirements or are materially incomplete in the opinion of the Ministry (or, if the Ministry chooses to verify such information, are not verified as true and complete in all material respects) will receive a final score of 'Fail' and be assigned a score of 0 points and their bid will be disqualified and will not be evaluated further.

- (c) The Bidder shall submit a preliminary construction schedule which should include the following information;
- (i) Outline of the Work's major components on the left and the Project duration in weeks along the top;
  - (ii) Contain a schedule demonstrating that the Work will meet the critical milestones set forth in the Agreement and RFB (e.g. substantial completion date and completion date as set forth in Section 2(b) of the Agreement, Phases outlined in Special Provisions Sections 1.4 and 1.5), including the critical path for in-water Work between July 15<sup>th</sup> and March 29<sup>th</sup>; and
  - (iii) assume a mobilization start date no earlier than the last day of the Bid Irrevocability Period.

Bidders whose submission meets all the above requirements in the opinion of the Ministry will receive a score of 'PASS' and be assigned a score of 1 point.

Bidders whose submissions do not meet all the above requirements in the opinion of the Ministry will receive a score of FAIL and be assigned a score of 0 points and their bid will be disqualified and will not be evaluated further.

**APPENDIX A  
RECOMMENDED FORMAT – REFERENCE PROJECT INFORMATION**

**Project #1**

<b>Project Name:</b>	
<b>Project Location:</b>	
<b>Dates Project Commenced and was Substantially Completed:</b>	
<b>Owner Name and Contact Information (name, telephone number and e-mail):</b>	
<b>Bidder was primary contractor (yes or no):</b>	
<b>Total Project Value (minimum \$3M CAD, not including extras, additional work or change orders):</b>	
<b>Description of Work Completed (including shallow concrete foundations, working in water, cofferdams and dewatering):</b>	
<b>Description of dewatering system (including size, photos, description of pumping system, date of cofferdam installation, date of cofferdam removal, description and photos of water treatment systems):</b>	

*Photos may be attached rather than inserted above, but should be clearly labeled (e.g. "Project 1 – Dewatering System" or "Project 1 – Water Treatment System").*

**Project #2**

<b>Project Name:</b>	
<b>Project Location:</b>	
<b>Dates Project Commenced and was Substantially Completed:</b>	
<b>Owner Name and Contact Information (name, telephone number and e-mail):</b>	
<b>Bidder was primary contractor (yes or no):</b>	
<b>Total Project Value (minimum \$3M CAD, not including extras, additional work or change orders):</b>	
<b>Description of Work Completed (including shallow concrete foundations, working in water, cofferdams and dewatering):</b>	
<b>Description of dewatering system (including size, photos, description of pumping system, date of cofferdam installation, date of cofferdam removal, description and photos of water treatment systems):</b>	

*Photos may be attached rather than inserted above, but should be clearly labeled (e.g. "Project 2 – Dewatering System" or "Project 2 – Water Treatment System").*

**Project #3**

<b>Project Name:</b>	
<b>Project Location:</b>	
<b>Dates Project Commenced and was Substantially Completed:</b>	
<b>Owner Name and Contact Information (name, telephone number and e-mail):</b>	
<b>Bidder was primary contractor (yes or no):</b>	
<b>Total Project Value (minimum \$3M CAD, not including extras, additional work or change orders):</b>	
<b>Description of Work Completed (including shallow concrete foundations, working in water, cofferdams and dewatering):</b>	
<b>Description of dewatering system (including size, photos, description of pumping system, date of cofferdam installation, date of cofferdam removal, description and photos of water treatment systems):</b>	

*Photos may be attached rather than inserted above, but should be clearly labeled (e.g. "Project 3 – Dewatering System" or "Project 3 – Water Treatment System").*

**APPENDIX B  
RECOMMENDED FORMAT –EXPERIENCE SUMMARY**

Name: \_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Proposed Role (Project Manager or Superintendent): \_\_\_\_\_

**Project #1**

<b>Project Name:</b>	
<b>Project Location:</b>	
<b>Dates Project Commenced and was Substantially Completed:</b>	
<b>Owner Name and Contact Information (name, telephone number and e-mail):</b>	
<b>Role of Proposed Individual during Project:</b>	
<b>Total Project Value (minimum \$3M CAD, not including extras, additional work or change orders):</b>	
<b>Description of Project:</b>	
<b>Description of cofferdam/dewatering system (type, size, date of installation, date of removal):</b>	

**Project #2**

<b>Project Name:</b>	
<b>Project Location:</b>	



<b>Dates Project Commenced and was Substantially Completed:</b>	
<b>Owner Name and Contact Information (name, telephone number and e-mail):</b>	
<b>Role of Proposed Individual during Project:</b>	
<b>Total Project Value (minimum \$3M CAD, not including extras, additional work or change orders):</b>	
<b>Description of Project:</b>	
<b>Description of cofferdam/dewatering system (type, size, date of installation, date of removal):</b>	

**Project #3:**

<b>Project Name:</b>	
<b>Project Location:</b>	
<b>Dates Project Commenced and was Substantially Completed:</b>	
<b>Owner Name and Contact Information (name, telephone number and e-mail):</b>	
<b>Role of Proposed Individual during Project:</b>	
<b>Total Project Value (minimum \$3M CAD, not including extras, additional work or change orders):</b>	
<b>Description of Project:</b>	
<b>Description of cofferdam/dewatering system (type, size, date of installation, date of removal):</b>	