CITY OF TORONTO

Request for Tenders for the Construction of a Net Zero Energy Childcare Facility, Located at 1234 Weston Road

RFT No.: Doc2190370119

Contract No.: N/A

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PART 1: REQUEST FOR TENDERS PROCESS

SECTION 1 - RFT SPECIFIC PROCESS AND SUBMISSION INSTRUCTIONS

1.1 Introduction

.1 This RFT is an invitation by the City:

.1 **to prospective Suppliers to submit bids for the performance of the Work, as further described in Part 3 (DRAWINGS AND SPECIFICATIONS) and the Contract (the "Project").**

.2 This RFT shall be interpreted in accordance with Section 3.123.3.12 (Governing Law) and 3.13 (RFT Definitions and Interpretation).

.3 Invitation to submit a Bid, including participation in any pre-qualification, request for information or other similar process or exchange of information prior to the RFT, does not imply that a Supplier is automatically prequalified to meet the requirements of the RFT or that the factors which were examined during such process or exchange may not be re-examined or re-evaluated by the City during the consideration and selection process for this RFT. It will still be necessary for the Supplier to demonstrate its qualifications through the RFT process.

.4 The Successful Supplier will be required to execute the Contract with the City for the provision of the Work. Suppliers should review the terms and conditions set out in Part 2 (FORM OF CONSTRUCTION AGREEMENT) to understand the Contract being entered into with the City.

1.2 Procurement Contact

.1 The contact Person at the City for all matters related to the RFT process (the "**Procurement Contact**") is set out below:

Name and Title
Name: Max Parker Title: Senior Corporate Buyer

.2 All communications relating to this RFT must be submitted to the Procurement Contact using the internal messaging function of the City Online Procurement System.

.3 Only communications received by the Procurement Contact in the City Online Procurement System will be considered in the RFT process.

.4 All permitted communications with the Procurement Contact will be deemed as having been received by the Procurement Contact on the dates and times indicated by the City Online Procurement System.

1.3 RFT Documents

.1 This RFT is comprised of the following documents:

Part 1 – Request for Tender Process Particulars

Section 1 – RFT Process and Submission Instructions;

Section 2 – Evaluation, Acceptance and Execution;

Section 3 – Other RFT Terms and Conditions;

Part 2 – Form of Construction Agreement;

Part 3 – Drawings and Specifications;

Part 4 – Submission Forms, consisting of:

- Form A - Bid Submission Form;
- Form B - Bid Bond;
- Form C - Experience and Qualifications Form;
- Form D - List of Subcontractors Form;

Part 5 – Pricing Form; and all Addenda.

.2 Prior to submitting a Bid, Suppliers shall examine all components of the RFT (including all reference documents, appendices, forms and Addenda) and, in accordance with Section 1.8 (Questions) promptly notify the Procurement Contact of any perceived errors, omissions, conflicts, ambiguities or discrepancies in the RFT.

.3 For clarity, no prequalification documents issued by the City or prequalification submissions delivered by the Suppliers to the City shall form a part of the RFT or the Contract.

.4 It shall be the responsibility of each Supplier to acquire, from online or other sources or in person from the Procurement Contact, as specified in the RFT, any document that is referenced or mentioned in this RFT which is not included herein.

.5 The failure of any Supplier to acquire, receive or examine any document, form, Addendum, or policy shall not relieve the Supplier of any obligation with respect to its Bid or the Contract. The City is not responsible for any misunderstanding on the part of any Supplier concerning this RFT or its processes.

1.4 Responding to the RFT and Prohibited Communications

City Online Procurement System

.1 The RFT is available only through the City's online procurement system supplied by SAP Ariba ("**City Online Procurement System**"). For further information about the City Online Procurement System, visit the City Online Procurement System website at: https://www.toronto.ca/business-economy/doing-business-with-the-city/upcoming-changes-to-bidding-on-city-contracts.

.2 Suppliers that intend to respond to the RFT must ensure that they have the necessary hardware and software to access the RFT through the City Online Procurement System. Suppliers that intend to respond to the RFT must check the City Online Procurement System from time to time for the addition, deletion or amendment of any documents related to the RFT, Addenda and the posting of responses to Questions. Suppliers at all times must keep themselves informed of and take into account the most current version of the RFT and other City Materials available on the City Online Procurement System.

.3 It is recommended that Suppliers monitor their spam/ clutter/ junk filters to ensure they do not miss automatically generated messages sent by the City Online Procurement System that relate to this RFT.

.4 If a Supplier experiences any difficulties with the City Online Procurement System during the RFT process, the Supplier must notify the helpdesk of the supplier of the City Online Procurement System and the Procurement Contact immediately. Please use the following information to contact helpdesk of the City Online Procurement System for technical and product support:

Canada/US Toll Free: 1 866 218 2155

US: 1 412 222 6153

Europe: 44 20 7187 4144

Asia: 65 6311 4745

Suppliers shall not contact the City for such technical and product support.

.5 The City will not assume any risk, responsibility or liability whatsoever to any Supplier for ensuring that the City Online Procurement System is in good working order or that the Suppliers are able to download or upload documents or other material from or to such system, including delays caused by the supplier of the City Online Procurement System or the City Online Procurement System when responding to Suppliers' requests for technical and product support. The City makes no representation, warranty or condition that the City Online Procurement System will be uninterrupted, timely, secure, or error-free.

.6 Each Supplier is solely responsible for accessing the RFT through the City Online Procurement System in sufficient time prior to the Submission Deadline to enable the Supplier to submit a Bid.

Prohibited Communications

.7 Suppliers (including potential Suppliers) shall not, and shall cause their representatives not to discuss, disclose or communicate, directly or indirectly, any details pertaining to or in connection with their Bid or this RFT to:

- any employee, official, agent, elected or appointed official or other representative of the City other than the Procurement Contact; or
- anyone not specifically involved in their Bid (including, without limitation, any other Supplier),

except as may be authorized in writing by the Procurement Contact through the City Online Procurement System.

.8 Other than the Procurement Contact, no City representative, whether an official, agent or employee, is authorized to speak for the City with respect to this RFT. Any Supplier who uses or relies on any representation, information, clarification, correspondence or other communication from any other City representative does so entirely at the Supplier's own risk and the City shall not be bound by such representation, information, clarification, correspondence or other communication.

.9 Notwithstanding anything to the contrary set out in this RFT, each Supplier shall comply with the obligations with respect to lobbying as set out in the City of Toronto Municipal Code, Chapter 140. The links to the City's Lobbying By-Law and Interpretive Bulletin on Lobbying and Procurement are as follows:

- http://www.toronto.ca/legdocs/municode/1184_140.pdf
- https://www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/lobbyist-registrar/guidelines-regulatory-bulletins/interpretation-and-advisory-bulletins/

.10 Communications in relation to this RFT outside of those permitted by the applicable procurement policies and this RFT contravene the Lobbying By-law, an offence for which a Person is liable to a maximum fine of $25,000.00 on a first conviction and $100,000.00 on each subsequent conviction. In addition, the Supplier Code of Conduct provides that any Supplier found in breach of the provisions therein respecting prohibited communications may be subject to disqualification from this RFT or suspended from future procurements in the sole and absolute discretion of the City.

.11 Without limiting any other provision of this Section 1.4. (Responding to the RFT and Prohibited Communications), any attempt by a Supplier to bypass the RFT process may be grounds for rejection of its Bid.

1.5 RFT Timetable

.1 The City's currently proposed schedule for each step in the RFT process is set out in below.

Event	Date /Time
Issue Date of RFT on the City Online Procurement System	January 21, 2020
Site Visit / Pre-Bid Meeting	Not Applicable
Deadline for Questions	Three days prior to the Original Closing Date
Submission Deadline	As displayed in the City Online Procurement System countdown clock
Bid Validity Period	90 Days
Anticipated Award Date	March 2020

.2 The City reserves the right to, in the City's sole and absolute discretion, at any time:

- revise the RFT schedule, to accelerate, eliminate or postpone any of the dates or times set out in this RFT, including the Submission Deadline;
- to add to, delete or re-order any of the milestones set out in this RFT, at any time; or
- modify the RFT process.

.3 In the event of an inconsistency or a conflict between the Submission Deadline as displayed in the City Online Procurement System and the Submission Deadline as indicated in an Addendum, the SAP Ariba Discovery portal or any other source, document or location maintained by the City (online or otherwise), the Submission Deadline as displayed in the City Online Procurement System shall take precedence.

1.6 Site Meetings

Not Applicable

1.6 Addenda

.1 The RFT may only be amended by Addendum in accordance with this Section 1.7 (Addenda). Prior to the Submission Deadline, the City may at any time or times modify the RFT in whole or in part through the issuance of an Addenda, if deemed necessary by the City. Each Addendum shall form an integral part of this RFT.

.2 All Addenda will be posted through the City Online Procurement System. Although the City Online Procurement System may send notices to registered Suppliers of when Addenda are posted, the City is not responsible for any failure of such notice system or for notices not received by Suppliers.

.3 Suppliers must check the City Online Procurement System frequently to inform themselves of any posted Addendum. Suppliers acknowledge that any information input directly by Suppliers into the interface of the City Online Procurement System (including information in the Pricing Form), which is the subject matter of an Addendum that is issued after such information has been input, will be automatically erased from the City Online Procurement System by the issuance of such Addenda, whether or not the Supplier's Bid has been fully completed or submitted. Suppliers shall be wholly responsible for checking and reviewing any posted Addenda and ensuring the completeness of the RFT (as amended) and their Bids (as impacted by such Addenda). The City is not responsible for any incomplete or incorrect Bids resulting from the issuance of an Addendum or a Supplier's failure to update its Bid in response to an Addendum.

.4 The City will make reasonable efforts to issue the final Addendum (if any) in a sufficient time prior to the Submission Deadline to allow Suppliers to submit their Bids. If any Addendum requires substantial amendments to the RFT, the City may, in its sole and absolute discretion, extend the Submission Deadline.

.5 Other than documents issued as part of the RFT (including Addenda), the City shall not be responsible for any explanations, instructions or interpretations even if provided by its actual or purported employees, designees or agents. No oral or written explanations, instructions or interpretations shall modify any of the requirements or provisions of the RFT unless in the form of an Addendum.

.6 Any reference in this RFT to any document comprising this RFT includes any amendments to such document made in accordance with this Section 1.7 (Addenda).

1.7 Questions

.1 Prospective Suppliers finding errors, omissions, conflicts, ambiguities or discrepancies in the RFT or having questions, comments or concerns regarding this RFT, its process and related matters ("**Questions**") may submit such Questions to the Procurement Contact using the internal messaging system of the City Online Procurement System.

.2 The City will make reasonable efforts to respond to Questions received by the deadline for Questions set out in the RFT timetable in Section 1.5 (RFT Timetable). However, the City shall have no obligation to respond to any or all Questions, and the City's determination as to whether or not it will respond to any Question shall be in the City's sole and absolute discretion. The onus is on each Supplier to confirm the City has received all correspondence from the Supplier.

.3 Although it is the City's practice to make available to all Questions received as well as responses to such Questions: (i) for Questions of an administrative nature; or (ii) where a prospective Supplier's Question is identified as commercially confidential in nature and where, the City in its sole and absolute discretion deems the Question or response to be commercially confidential, the City may provide a response only to that Supplier. The City reserves the right to edit Questions for clarity and applicability to all Suppliers generally.

.4 Pursuant to Section 1.7.1 (Addenda), responses to Questions prepared and circulated by the City are not RFT documents and do not amend the RFT, unless such responses form part of an Addendum.

1.8 Submission of Bids

.1 General

.1 Subject to Section 1.9.3 (Bid Bond) with respect to the submission of the Bid Bond, Bids must be submitted through the City Online Procurement System prior to the Submission Deadline. Bids will be rejected as non-compliant if submitted by any other mechanism including, but not limited to, post, courier, fax, e-mail or orally, unless specifically requested by the City Procurement Contact through the City Online Procurement System.

.2 The City Online Procurement System will not accept any Bids that are attempted to be submitted after the Submission Deadline. The expiry of the Submission Deadline and submission time of a Bid shall be determined by the City Online Procurement System.

.3 It is the Supplier's sole responsibility to ensure its Bid is received by the Submission Deadline in accordance with the requirements of this RFT. The receipt of Bids can be delayed due to a number of factors including "internet traffic", file transfer size and transmission speed. The Supplier should allow sufficient time to download, complete and upload, as applicable, the submission forms comprising its Bid and any attachments.

.4 A Bid will only be considered to be submitted once it has been received by the City in the City Online Procurement System. The time of such receipt is reflected by the time stamped acknowledgement of receipt generated by the City Online Procurement System, regardless of when the Bid was submitted by the Supplier. A Supplier may access such time stamped acknowledgement of receipt using the response history function of the City Online Procurement System to confirm the submission time of its Bid.

.5 Suppliers must submit their Bids in the format presented, prescribed and compatible with the requirements of the RFT and the City Online Procurement System and must include all attachments required by the City Online Procurement System. Failure to fully complete the forms presented in this RFT or to include and submit the required attachments or separate documentation, as applicable, may result in the bid being rejected as non-compliant.

.6 The forms, documents and other items outlined in this Section 1.9 (Submission of Bids) must be completed in their entirety and submitted in the format presented and prescribed by the City Online Procurement System and in accordance with the requirements of the RFT. Failure to so submit any such items may result in the Bid being rejected as non-compliant.

.7 Any documents forming part of a Bid uploaded to the City Online Procurement System by the Supplier must:

- not have a security password;
- not be defective, corrupted or blank; and
- be provided in Word or PDF format and be able to be opened and viewed by the City.

.8 If there is any discrepancy whatsoever between:

- the information input directly by Suppliers into the interface of the City Online Procurement System and the electronic copy of any documentation uploaded to the City Online Procurement System, information input directly by Suppliers into the interface of the City Online Procurement System shall govern; or
- any documentation physically delivered by Suppliers and the electronic version of such documentation uploaded to the City Online Procurement System, such electronic version shall govern.

.9 All Suppliers should exercise extreme care when completing their Bid submissions, as failure to complete the Bid fully or to comply with the requirements of this RFT may cause the Bid to be rejected as non-compliant.

.2 **Bid Submission Form**

.1 Suppliers shall complete and submit all information and respond to all items in the Bid submission form set out in Form A of Part 4 (Bid Submission Form) ("**Bid Submission Form**").

.2 The Bid Submission Form contains confirmatory statements and declarations in respect of the City's Policies and Legislation.

.3 **Bid Bond**

.1 In addition to the requirements set out in this RFT in respect of the submission of a Bid through the City Online Procurement System, each Supplier shall submit, a bid bond to secure the execution of the Contract by the Supplier ("**Bid Bond**").

.2 The Bid Bond shall be either:

.1 a digital Bid Bond uploaded to the City Online Procurement System, which meets all of the following requirements:

- **include a method of authentication that confirms 'integrity of content"** - the digital Bid Bond shall include assurances that the document received is the true document executed and that the content has not been changed or altered. All instructions for accessing authentication shall be included with the uploaded digital Bid Bond;

- **be verifiable and enforceable** - the digital Bid Bond shall include assurances that the document was duly executed by the parties identified and that it is enforceable at law. Such assurances require the use of a third-party digital service provider;

- **be digitally signed and sealed** – the digital Bid Bond shall contain digital signatures and valid digital seals.

A scanned copy of an original paper bid bond is not an acceptable digital Bid Bond. The Supplier and its surety company should refer to the e-bonding information on Surety Association of Canada's website which includes: a list of third parties that provide online surety digital bond services (the City does not endorse or promote any specific third party electronic surety bond service provider) and a checklist of industry requirements for e-bonding solutions which sets out the requirements for digital bonds;

OR

.2 an original paper Bid Bond physically delivered to the Procurement Contract before the Submission Deadline at the following address:

Attention: Max Parker, Senior Corporate Buyer
Purchasing and Materials Management
100 Queen Street West, 19th Floor West Tower
City Hall
M5H 2N2
Re: Bid Bond for Request for Tender No. Doc2190370119

Submitting a photocopy of the original paper Bid Bond is not acceptable. For clarity, the City will not accept any original paper Bid Bonds that are delivered after the Submission Deadline and any original paper Bid Bond received after the Submission Deadline shall result in the Bid being rejected as non-compliant. **The determination of whether the original paper Bid Bond is delivered by or before the Submission Deadline shall be based on the time and date stamp the Supplier must ensure it receives from the City at foregoing address**

.3 The Bid Bond shall be in the amount and in the form provided in Form B of Part 4 (Bid Bond) or in another substantially similar format approved by the City prior to Bid submission; and

.4 The Bid Bond shall be signed and sealed by the Supplier and by a licensed surety company, authorized to carry on business in the Province of Ontario, and having a place of business in Ontario.

.5 Failure of a Supplier to submit a Bid Bond, in compliance with the requirements of Sections 1.9.3.1 and 1.9.3.2 (Bid Bonds) shall result in the Bid being rejected as non-compliant.

.4 **Experience and Qualifications Form**

.1 Each Supplier shall complete, and submit the Experience and Qualifications Form provided in Form C of Part 4 (Experience and Qualifications Form). In submitting such form the Supplier gives the City consent to contact the references therein to confirm the information therein. Failure to provide the required information listed on the Experience and Qualifications Form shall render the Bid non-compliant. If, in the City's sole and absolute discretion, the references do not confirm the Supplier's experience and qualifications as required by the RFT, the Bid will be declared non-compliant and will not be considered for acceptance.

.2 The City reserves the right to verify whether Suppliers are relying upon past experience of an Affiliated Person including the nature of the corporate relationship and its relevance to the Project. If, in the City's sole and absolute discretion, it is determined that a Supplier is relying on an Affiliated Person's past experience and a transfer of the Affiliated Person's experience cannot be demonstrated as relevant to the Project then the Bid will be declared non-compliant and not be considered for acceptance.

.3 The City reserves the right to verify past performance of the Supplier or its Affiliated Persons with the City's performance records on relevant City projects (including the City's agencies, boards, commissions and corporations).

.4 The City reserves the right to verify a mandatory certification of qualifications submitted by a Supplier for itself or its Affiliated Persons with any relevant third party certifying organization.

.5 **List of Subcontractors Form**

.1 The Supplier shall download, complete, upload and submit the form provided in Form D of Part 4 (List of Subcontractors Form) indicating the subcontractors it intends to employ to carry out each portion of the Work ("**Subcontractors**") indicated therein.

.2 Suppliers must not include companies under suspension by the City on their list of Subcontractors.

.3 Where union affiliation is required pursuant to the City's "Labour Trades Contractual Obligations in the Construction Industry" (more particularly described in Form A of Part 4 (Bid Submission Form) (Labour Trades Contractual Obligations in The Construction Industry)) for the Work or any part thereof, the Contractor (and any Subcontractor performing any part of such Work) must be affiliated with the applicable collective bargaining agency and the Supplier shall submit proof of such affiliation of the Contractor and all applicable Subcontractors prior to an award of contract.

.6 **Pricing Form**

.1 Each Supplier shall complete and submit the Pricing Form set out in Part 5 (PRICING FORM) according to the instructions contained in such form.

.2 In completing the Pricing Form, Suppliers must take into account compliance with all of the requirements of the RFT, including Part 3 (DRAWINGS AND SPECIFICATIONS) and the terms of the Contract. The City will assume, in evaluating all Bids, that compliance with such requirements has been accounted for the in the completed Pricing Form.

1.9 Amendment of Bids

.1 Prior to the Submission Deadline, a Supplier may amend its Bid at any time after submission of the Bid in the City Online Procurement System by using the revise response function in the City Online Procurement System. Bids will not be viewed by the City until after the Submission Deadline and a Supplier may amend its Bid one or more times if it so wishes prior to the Submission Deadline.

.2 If a Supplier amends its Bid, the Supplier must resubmit the Bid using the revise response function in the City Online Procurement System. After resubmitting a Bid, the Supplier should check that the City Online Procurement System has generated a time stamp acknowledgment of such resubmission. If a Supplier commences the amendment of a Bid through the revise bid function in the City Online Procurement System, but fails or is unable to resubmit an amended Bid prior to the Submission Deadline through the use of such function, the most recently submitted version of the Bid as recorded in the response history function of the City Online Procurement System shall be considered to be the Supplier's submitted Bid, shall be irrevocable and binding in accordance with the provisions of the RFT, and may be accepted by the City in its sole and absolute discretion unless such Bid has been properly withdrawn in accordance with Section 1.11 (Withdrawal of Bids).

1.10 Withdrawal of Bids

.1 A Bid may be withdrawn at any time prior to the Submission Deadline by delivering written notice of withdrawal to the Procurement Contact by means of the internal messaging function of the City Online Procurement System before the Submission Deadline.

.2 For clarity, a Bid may only be withdrawn by delivering such notice to the Procurement Contact prior to the Submission Deadline and cannot be withdrawn by any other means. If a Supplier fails to properly withdraw a Bid, the Bid shall be considered to be the Supplier's submitted Bid, shall be irrevocable and binding in accordance with the provisions of the RFT, and may be accepted by the City in its sole and absolute discretion, notwithstanding such failure.

.3 Any Bids that are properly withdrawn will not be examined or evaluated for the purpose of the RFT but shall be retained for the City's record retention purposes.

1.11 Bid Validity Period

.1 Upon the Submission Deadline, each submitted Bid shall be irrevocable and binding on Suppliers for the period of time following the Submission Deadline as set out in the RFT timetable in Section 1.5 (RFT Timetable) ("**Bid Validity Period**").

.2 In exceptional circumstances, prior to the expiration of the Bid Validity Period, the City may request Suppliers to extend the validity of their Bids and any accompanying Bid Bonds. The request and responses shall be made in writing by the Procurement Contact through the internal messaging function of the City Online Procurement System. A Supplier may refuse the City's request without rendering its Bid non-compliant. A Supplier granting the request shall not be required or permitted to modify its Bid.

SECTION 2 - EVALUATION, ACCEPTANCE AND EXECUTION

2.1 Evaluation

.1 **Evaluation Process**

.1 The City will conduct the evaluation of Bids in the following two stages.

Stage 1: The Bids will be reviewed to determine whether they comply with all of the mandatory requirements of the RFT, including the requirements of Section 1.9 (Submission of Bids). Bids that that are substantially incomplete or do not substantially comply with the requirements of this RFT will be excluded from consideration in Stage 2.

Stage 2: The compliant Bids will be ranked on the basis of the submitted pricing of each in accordance with the price evaluation method set out in the Pricing Form.

.2 Subject to its reserved rights set out in this Part, the City may at any time and from time to time, in its sole and absolute discretion, revisit, revise, confirm or adjust the evaluations of a Bid at any time during the RFT process.

.2 **Tied Bids**

In the event that the City receives two (2) or more Bids identical in price, the City reserves the right to select one of such Bids as set out in the Tied Bid procedure under the Purchasing Procurement Processes Policy of the City's Policies and Legislation. The Tied Bid procedure allows for the City to first consider whether any of the relevant Suppliers are a Diverse Supplier as defined in the Social Procurement Policy to break the tie. If no such Supplier is a Diverse Supplier, then the tie will be broken by way of coin toss or lottery.

.3 **Materially Unbalanced or Abnormally Low Bids**

.1 A Bid is materially unbalanced if:

- it is based on prices which are significantly less than cost for some items and prices which are significantly overstated in relation to cost for other items; and
- the City has determined that the Bid may not result in the lowest overall cost to the City even though it may be the lowest submitted Bid; or
- it is so unbalanced as to be tantamount to allowing an advance payment.

.2 A Bid is abnormally low if the pricing, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the pricing raises material concerns with the City as to the capability of the Supplier to perform the Contract on the basis of the offered pricing.

.3 If a materially unbalanced Bid or an abnormally low Bid is identified, the City may seek clarification from the Supplier, including a detailed price analysis of its pricing in relation to the subject matter of the Contract, the scope of Work, the estimated quantities, the schedule for the performance of the Work, the allocation of risks and responsibilities and any other requirements of RFT.

.4 If after evaluation of the price analysis, the City determines that the Supplier has failed to demonstrate its capability to perform the Contract on the basis of the offered pricing, or that the offered pricing in constitutes a material risk to the City, the City may reject the Bid.

2.2 Rights of the City

In addition to, but without limiting any other rights or options of the City under this RFT, the City may, in its sole and absolute discretion carry out the RFT process as it determines to be in the best interests of the City and to be the most beneficial to City. The City may, in its sole and absolute discretion, exercise any or all of the following rights and options with respect to this RFT, at any time.

.1 The City may waive minor irregularities in any Bid.

.2 The City may extend any deadline in the RFT to address unavailability of the City Online Procurement System, in whole or in part, or to address telecommunication system or internet disruption preventing access to the City Online Procurement System.

.3 The City shall not be obliged to accept or reject any Bid (in whole or in part), including if:

- the Bid contents appear to be incorrect, inaccurate or inappropriate;
- the Supplier has engaged in conduct prohibited by the RFT; or
- the Supplier or any member of a Supplier's Joint Venture is or becomes bankrupt, insolvent, makes an assignment for the benefit of its creditors generally or has a receiver appointed over all or a substantial part of its assets.

.4 The City may suspend, modify and/or cancel this RFT (with or without the substitution of another RFT) or the Project.

.5 The lowest quoted price may not necessarily be accepted by the City.

.6 The City may verify the validity of a Bid including the Supplier's statements, claims, qualifications or capabilities, by whatever means the City deems appropriate including obtaining references other than those offered by the Supplier, and conduct investigations as to the qualifications of each Supplier.

.7 The City may, at any time during the RFT process, require (within such time period as set by the City) one, some or all of the Suppliers to:

- submit supplementary information or documentation clarifying any matters contained in their Bid;
- meet with the City to clarify aspects of their Bid;
- acknowledge and agree to the City's interpretation of any aspect of a Bid,

provided, however, that the City is not obliged to seek clarification of any aspect of a Bid and may request clarification from some but not all Suppliers. Such clarification may be in respect of clarification with respect to whether a Bid meets the mandatory requirements of the RFT or whether the Supplier meets the necessary experience and performance qualifications set out in the RFT, if any. Any supplementary information and documents submitted by a Supplier which have been accepted by the City and the interpretations prepared by the City which have been acknowledged and agreed to by a Supplier shall be considered to form part of the Bid.

.8 The City reserves the right to assess the ability of the Supplier to perform the Contract and may reject any Bid where, in the City's sole determination, the personnel and/or resources of the Supplier are insufficient.

.9 Bids that are improperly prepared, not in compliance with all of the requirements or instructions of the RFT, incomplete, improperly signed, conditional, qualified, illegible, obscure or contain reservations, additions not called for, arithmetical errors, omissions, erasures, alterations, or irregularities of any kind may, be considered informal or irregular and may be rejected or be retained by the City for consideration and acceptance.

.10 The City may choose to meet with some or all of the Suppliers in connection with their Bids or the matters provided for in the RFT. The City may visit the existing place or places of business of some or all Suppliers for purposes of clarification or verification.

.11 The City may award one or more contracts for portions or all of the Work to as many Suppliers and/or Other Persons as it deems appropriate, including awarding a contract for Work less than the scope or quantity contemplated in the Successful Supplier's Bid or the RFT.

.12 The City may issue a solicitation to one, some or all of the Suppliers and/or any Other Person.

.13 After the Submission Deadline, the City may increase or decrease the quantity of any unit of Work in accordance with the Contract.

.14 The City may exercise any other right or option provided for in, or in connection with, this RFT, including the rights and options set out in the City's Policies and Legislation.

.15 The City may do nothing in relation to the Bids or this RFT.

2.3 Contract Execution

.1 Once a Bid has been accepted by the City, the Procurement Contact will notify the Successful Supplier that it has been awarded the Contract.

.2 The Successful Supplier will be required to execute and deliver the Contract as well as the other documentation set out below in this Section 2.3.2 (Contract Execution) by taking the following steps within ten (10) Business Days after being notified by the City that the Contract is ready for execution:

.1 execute and return the Contract, without any unilateral revisions to the Contract;

.2 obtain and deliver a performance bond and a labour and material payment bond for the due and proper performance of the Work, each in accordance with the requirements of the Contract and signed and sealed by the Supplier and its surety;

.3 arrange for the certificate of insurance in the form attached as a part of the Contract to be completed and signed (including stamp of insurance broker) and delivered to the City; and

.4 if requested by the City:

- deliver a copy of its and/or any Affiliated Persons' Corporate Profile Report(s) (Ontario), or equivalent official record issued by the appropriate government authority. The Corporate Profile Report(s) must have been issued not more than ten (10) Business Days prior to the date of such written notice. The City reserves the right to confirm the accuracy of the information contained in the Corporate Profile Report, and to require additional information from the contractor as necessary;

.3 Should the Successful Supplier fail to execute and deliver the Contract and deliver the accompanying documents in accordance with the requirements of Section 2.3.2 (Contract Execution), the Successful Supplier shall be deemed to have abandoned all rights and interests in the Contract and the RFT and the City may, without prejudice to any other remedy or right which it may have, exercise all or any one or more of the following rights:

- rescind its award of the Contract;
- call on the Bid Bond;
- accept the Bid of the next highest ranked Supplier and proceed to execute the Contract with such Supplier; or
- suspend the Successful Supplier from participating in other City procurement processes for such period of time as may be determined under the Supplier Code of Conduct.

2.4 Notification to Other Suppliers

Once the Successful Supplier is notified that the City has awarded the Contract, the other Suppliers will be notified by the City in writing through the internal messaging function of the City Online Procurement System of the outcome of the RFT process.

2.5 Debriefing

Unsuccessful Suppliers may request a debriefing after receipt of a notification of the outcome of the selection process. All requests must be in writing to the Procurement Contact through the internal messaging function of the City Online Procurement System and must be made within sixty (60) days of notification of the outcome of the selection process. The intent of the debriefing information session is to aid the Supplier in presenting a better bid in subsequent procurement opportunities. Any debriefing provided is at the sole and absolute discretion of the City, and not for the purpose of providing an opportunity to challenge the RFT process.

SECTION 3 - GENERAL RFT TERMS AND CONDITIONS

3.1 General Process Terms and Conditions

.1 Suppliers acknowledge that their Bids are governed by the terms and conditions set out in this RFT as well as the by-laws, policies and procedures established by the City (including the City's Policies and Legislation) and any additional terms and conditions related to the provision of the City Online Procurement System and Suppliers will become familiar, and comply with, all of the foregoing. Each Supplier shall comply with the City's Policies and Legislation including the specific policies set out in Form A of Part 4 – Bid Submission Form (City's Policies and Legislation) and elsewhere in this RFT. It is the responsibility of the Supplier to review all such policies.

.2 Suppliers should structure their bids in accordance with the instructions in this RFT. Where information is requested in this RFT, any response made in a Bid should reference the applicable section numbers of this RFT.

.3 The City will have no obligation to consider information, documentation or other content not included in a Bid for the purpose of evaluating the Bid. For clarity, the City will not consider any content referred to in but not included in the Bid, including information referenced by links to websites or other external documents.

3.2 Suppliers Shall Bear Their Own Costs

Each Supplier shall bear all costs, expenses and financial obligations associated with or incurred by the Supplier to: (i) prepare and present its Bid or to otherwise participate in the RFT process including, if applicable, costs incurred for samples, interviews or demonstrations; or (ii) to establish a legally binding contract with the City.

3.3 Limitation of Liability

.1 Notwithstanding anything in the RFT and any express or implied duties or obligations of the City to the contrary, the City and each of its agencies, boards, commissions, elected officials, officers, employees, servants, agents, volunteers, suppliers, advisers and contracted personnel will have no liability to any Person, including any Supplier and prospective Supplier for any damages, costs, liabilities, losses or expenses including direct, indirect, special or punitive damages, or for loss of profits, loss of opportunity or loss of reputation arising out of or otherwise relating to:

- this RFT,
- participation of any such Person in this RFT process;
- the provision and availability or lack of availability or accuracy of the City Online Procurement System; or
- the City's acts or omissions in connection with the conduct of this RFT process, including the acceptance, non-acceptance or delay in acceptance by the City of any Bid.

.2 This limitation applies to all possible claims, whether arising in contract, tort, equity, or otherwise, including any claim for a breach by the City of a duty of fairness, if any, or relating to a failure of the City Online Procurement System or to comply with the rules set out in this RFT. By submitting a Bid to the City, each Supplier irrevocably and unconditionally waives any claims for damages, costs, liabilities, losses and expenses, and shall not seek any order for injunctive relief or specific performance, against the City, its agencies, boards, commissions, elected officials, officers, employees, servants, agents, volunteers, advisers and contracted personnel.

.3 Each Supplier agrees that, despite Section 3.3.1(Limitation of Liability) or any limitations of liability or releases in favour of City, if the City is found to be liable, in any way whatsoever, for any act or omission in respect of the RFT or the provision of the City Online Procurement System, the total liability of the City to any Supplier or any other Person participating in the RFT process, and the aggregate amount of damages recoverable against City for any matter relating to or arising from any act or omission by the City, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the City shall be no greater than the Supplier's cost of preparing its Bid.

.4 Notwithstanding the City's limitation of liability, the Supplier may seek a debriefing or may pursue a dispute of the RFT process in accordance with the City's Policies and Legislation.

3.4 Joint Venture Bids

A Supplier may be a private legal entity or any combination of such entities in the form of a joint venture (**Joint Venture**) under and existing agreement or with the intent to enter into such an agreement as supported by a letter of intent. In the case of a Joint Venture, all members shall be jointly and severally liable for the execution of the entire contract if selected by the City. The Joint Venture shall nominate a representative who shall have the authority to conduct all business on behalf of all members of the Joint Venture during the procurement process and for the execution and performance of any resulting contract.

3.5 Participation in Multiple Bids

Submission or participation in more than one Bid by a Supplier will result in the disqualification of all proposals in which the Supplier is involved. This does not limit the inclusion of the same subcontractor from being named in more than one Bid as a subcontractor only.

3.6 City Materials

.1 The RFT and all correspondence, data, plans, materials, drawings, specifications, reports, estimates, summaries, photographs, models and all other information and documentation in any form provided or made available to any Supplier or prospective Supplier by, or on behalf of, the City in connection with, or arising out of this RFT (collectively, the "**City Materials**") and all intellectual property rights therein:

- are and shall remain the sole and absolute property of the City;
- must be treated by Suppliers and prospective Suppliers as confidential and Suppliers must maintain such confidentiality;
- must not be disclosed without prior written authorization from the City;
- must not be used for any purpose other than for replying to this RFT, and for fulfillment of the Contract or any related subsequent agreement; and
- immediately upon the request of the City, must be returned by the Supplier to the City and all electronic copies must be destroyed.

.2 Unless and to the extent provided otherwise in the Contract, the City and its advisers make no representation or warranty as to the accuracy or completeness of the City Materials or that the City Online Procurement System will be made available uninterrupted or be error free or accurate, and disclaim all express and implied representations, warranties and conditions in connection with the City Materials and the City Online Procurement System. Any quantities shown or data contained in the City Materials are estimates only and are for the sole purpose of indicating to Suppliers the general scale and scope of the Work. Use of or reliance by Suppliers on the City Materials and the City Online Procurement System shall be at the Supplier's sole risk and without recourse against the City.

.3 It is the Suppliers' responsibility to make their own independent investigations, due diligence, projections and conclusions, and consult their own advisors, to obtain all the information necessary to:

- verify and confirm the accuracy and completeness of the City Materials, unless and to the extent provided otherwise in the Contract;
- ensure proper, accurate and effective use of the City Online Procurement System;
- satisfy themselves as to all existing conditions affecting the Project or the Contract; and
- prepare their Bids in response to this RFT.

3.7 <u>Ownership of Bid Materials</u>

.1 The documentation comprising any Bid, along with all correspondence, data, plans, materials, drawings, specifications, reports, estimates, summaries, photographs, models and all other information and documentation in any form provided or made available to the City by, or on behalf of, any Supplier in connection with, or arising out of this RFT (collectively, the "**Bid Materials**") and all intellectual property rights therein, once received by the City:

- shall become the sole and absolute property of the City;

- shall become subject to MFIPPA, and the City may be required to disclose the Bid Materials members of the public, pursuant to MFIPPA.

.2 Each Supplier:

- represents and warrants that the information contained in its Bid Materials does not infringe any intellectual property right of any third party;

- hereby assigns and transfer to the City, and shall cause all its personnel and other third parties to assign and transfer to the City, all right, title and interest in the Bid Materials, including intellectual property rights therein:

- shall cause all its personnel and other third parties to waive, for the benefit of the City, their respective moral rights (and any similar rights to the extent that such rights exist) in and to the Bid Materials; and

- shall indemnify, defend and hold harmless the City and its agencies, boards, commissions, elected officials, officers, employees, servants, agents, volunteers, advisers and contracted personnel, if any, against all claims, actions, suits and proceedings brought against, or losses, costs, expenses, damages suffered, sustained, or incurred by them which may be directly or indirectly attributable to, or arising or alleged to arise out of the infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property right of a third party in connection with the Bid Materials.

.3 Suppliers are also advised that MFIPPA does provide protection for confidential and proprietary business information. For the purposes of the City's compliance with MFIPPA, Suppliers are advised to identify in their Bid Materials material any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.

.4 Each Supplier's name and total bid price may be made public. Bid Materials will, as necessary, be made available:

- on a confidential basis, to advisers retained by the City to advise or assist with the RFT process;

- to members of Council in accordance with the City's procedures; and

- to members of the public pursuant to MFIPPA.

.5 The City will not return the Bid or any other Bid Materials.

3.8 <u>Failure or Default of Supplier</u>

.1 Without prejudice to any other right or remedy available to the City under this RFT or at law, if the Supplier, for any reason, fails or defaults in respect of an obligation of the Supplier under the terms of the RFT, the City may:

- disqualify the Supplier from the RFT and/or from competing for any future solicitations issued by the City; and

- require the Supplier to pay the City the difference between its Bid and any other Bid which the City accepts, if the latter is for a greater amount and, in addition, to pay the City any other cost which the City may incur by reason of the Supplier's failure or default.

.2 The Supplier shall be ineligible to submit a new bid for any solicitations that the City is required to reissue as a result of the Supplier's failure or default under the Contract or where the City deems that the Supplier has abandoned the Contract.

3.9 Trade Agreements

Suppliers should be aware that procurements falling within the scope of the Canadian Free Trade Agreement or other trade agreements applicable to the City are subject to such agreements, but the rights and obligations of the parties will be governed by the specific terms of this RFT.

3.10 Bid Protest Procedure

Any dispute, complaint, or protest in respect of this RFT by a Supplier, including prior to and subsequent to the acceptance a Bid by the City shall be addressed in accordance with the Pre-Award Bid Dispute and Post-Award Bid Dispute process under Article 10 of Chapter 195, Purchasing, of the Toronto Municipal Code and the related policy in the City's Policies and Legislation, which are set out on the City of Toronto website at: https://www.toronto.ca/business-economy/doing-business-with-the-city/understand-the-procurement-process/purchasing-policies-legislation/.

3.11 Supplier Code of Conduct

Each Supplier shall comply with the Supplier Code of Conduct.

3.12 Governing Law and Enforceability

.1 The terms and conditions of the RFT process are to be governed by and construed in accordance with the City's Policies and Legislation, the laws of the province of Ontario and the federal laws of Canada applicable therein.

.2 If any provision of the RFT or its application to any party or circumstance is unenforceable, the provision shall be ineffective only to the extent of the unenforceability without: (i) invalidating the remaining provisions of the RFT; (ii) changing the fundamental nature of the obligations assumed by the parties; and (iii) affecting its application to other parties or circumstances.

3.13 RFT Definitions and Interpretation

.1 **Definitions**

Throughout this RFT, unless inconsistent with the subject matter or context, the following definitions shall apply other than in respect of Part 2 (FORM OF CONSTRUCTION AGREEMENT).

.1 "**Addenda**" or "**Addendum**" means a document containing additional information and/or changes to the RFT issued by the City through the City Online Procurement System prior to the Submission Deadline.

.2 "**Bid**" means an offer submitted by a Supplier in response to the RFT, which includes all of the documentation necessary to satisfy the submission requirements of the RFT and "**Bids**" shall have a corresponding meaning;

.3 "**Bid Bond**" has the meaning set out in Section 1.9.3 (Bid Bonds).

.4 "**Bid Materials**" has the meaning set out in Section 3.7.1 (Ownership of Bid Materials).

.5 "**Bid Submission Form**" has the meaning set out in Section 1.9.2 (Bid Submission Form).

.6 "**Bid Validity Period**" has the meaning set out in Section 1.12. (Bid Validity Period).

.7 "**Business Day**" means a day other than:

.1 a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the City of Toronto; or

.2 a day identified by the City of Toronto as a designated or statutory holiday

.8 "**City**" means the **City of Toronto**

.9 "**City Materials**" has the meaning set out in Section 3.6 (City Materials).

.10 "**City Online Procurement System**" has the meaning set out in Section 1.4.1 (City Online Procurement System).

.11 "**City's Policies and Legislation**" means Chapter 195, Purchasing, of the *Toronto Municipal Code* and the related procurement policies, procedures and guidelines set out on the City of Toronto website at: https://www.toronto.ca/business-economy/doing-business-with-the-city/understand-the-procurement-process/purchasing-policies-legislation/, as amended, supplemented, re-enacted or replaced from time to time.

.12 "**Contract**" means the contract in the form set out in Part 2 (FORM OF CONSTRUCTION AGREEMENT) to be executed by the Successful Supplier

and the City, which sets out the terms and conditions for the performance of the Work.

.13 "**Joint Venture**" has the meaning set out in Section 3.4 (Joint Venture Bids).

.14 "**MFIPPA**" means the *Municipal Freedom of Information and Protection of Privacy Act*, as amended, supplemented, re-enacted or replaced from time to time.

.15 "**Person**" means any individual, partnership, limited partnership, firm, joint venture, syndicate, company or corporation with or without share capital, trust, trustee, executor, administrator or other legal personal representative, governmental authority or entity however designated or constituted

.16 "**Procurement Contact**" has the meaning set out in Section 1.2 (Procurement Contact).

.17 "**Project**" has the meaning set out in Section 1.1 (Introduction).

.18 "**RFT**" means this RFT package in its entirety, including all documents listed in Section 1.3 (RFT Documents) and Addenda that may be issued by the City.

.19 "**Subcontractor**" means a Person undertaking the execution of a part of the Work by virtue of an agreement with the Contractor.

.20 "**Submission Deadline**" means the specified deadline for Bids to be submitted to the City as indicated in the RFT timetable in Section 1.5 (RFT Timetable).

.21 "**Successful Supplier**" means the Supplier that has been selected to enter into the Contract for the performance of the Work.

.22 "**Supplier**" means a Person, including, where applicable, a Joint Bid Team, that submits a Bid in response to this RFT and "**Suppliers**" shall have a corresponding meaning.

.23 "**Supplier Code of Conduct**" means business ethical standards contained in Article 13 Chapter 195, Purchasing, of the *Toronto Municipal Code*, as amended, supplemented, re-enacted or replaced from time to time, which is set out on the City of Toronto website at: https://www.toronto.ca/legdocs/municode/1184_195.pdf.

.24 "**Work**" means all work, services and deliverables to be provided by a Contractor in respect of the Project as described in this RFT.

.2 **Interpretation of the RFT**

.1 Except where otherwise requested, all documents relating to the Bid and all communications between Suppliers and the City will be in the English language.

.2 Except where otherwise disclosed, all references to times in this RFT will mean local time in Toronto, Ontario, Canada.

.3 The phrase “includes” “, include” or “including” means “includes, without limitation” or “including” or “include, without limitation”.

.4 In the RFT, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

.5 Unless otherwise stated herein, all amounts in the RFT are in Canadian dollars, including any amounts provided in the Pricing Form.

.6 In addition to the words defined in Section 13.13.1 (Definitions), the other words used in this RFT shall be interpreted consistent with the definitions contained in the City's Policies and Legislation.