



Negotiated Request for Proposals (nRFP)
For
Construction Services for the
Wabash Community Centre and Park Improvement Project

Request for Proposals No.: **Doc5488033250**

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SECTION 1 - RFP SPECIFIC PROCESS AND SUBMISSION INSTRUCTIONS

1.1 Introduction

- .1 This RFP is an invitation by the City of Toronto (the “City”) to prospective suppliers to submit Bids for **Construction Services for the New Wabash Community Centre and Park Improvement Project**, as further described in Part 3 (the “Deliverables”):
- .2 This RFP shall be interpreted in accordance with Section 3.12 (Governing Law) and 1.13 (RFP 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 RFP, does not imply that a Supplier is automatically prequalified to meet the requirements of the RFP 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 RFP. It will still be necessary for the Supplier to demonstrate its qualifications through the RFP process.
- .4 The selected Supplier will be requested to enter into direct contract negotiations to finalize an agreement with the City for the provision of the Deliverables. The terms and conditions found in Part 2 – Construction Agreement are to form the basis for commencing negotiations between the City and the selected supplier. It is the City’s intention to enter into an agreement with only one (1) legal entity. The term of the contract is approximately four (4) years for construction.

1.2 Procurement Contact

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

Name and Title
Name: Marusia Douglas Title: Category Management Lead, Purchasing & Materials Management Division

- .2 All communications relating to this RFP 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 manner permitted by this Section 1.2 (Procurement Contact) will be considered in the RFP 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 RFP Documents

- .1 This RFP is comprised of the following documents:
 - Part 1 – RFP Process Terms and Conditions;
 - Part 2 – Construction Agreement
 - Part 3 – Requirements for Deliverables
 - Part 4 – Submission Forms, consisting of:
 - Form A – Bid Submission Form;
 - Form B – Technical Proposal and Qualifications Form;
 - Form C – List of Sub-Contractors Form
 - Form D – Reference Form
 - Form E – Demonstrated Class A Pool Experience
 - Part 5 – Pricing Form; and any Addenda to the above Parts.
- .2 Prior to submitting a Bid, Suppliers shall examine all components of the RFP (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 RFP.
- .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 RFP 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 RFP, any document that is referenced or mentioned in this RFP 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 RFP or its processes.

1.4 Responding to the RFP and Prohibited Communications

City Online Procurement System

- .1 The RFP 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/searching-bidding-on-city-contracts/>
- .2 Suppliers that intend to respond to the RFP must ensure that they have the necessary hardware and software to access the RFP through the City Online

Procurement System. Suppliers that intend to respond to the RFP must check the City Online Procurement System from time to time for the addition, deletion or amendment of any documents related to the RFP, 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 RFP 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 RFP.
- .4 If a Supplier experiences any difficulties with the City Online Procurement System during the RFQ 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 the Help Center of the City Online Procurement System for technical and product support:

While on a SAP Ariba webpage, select:

Help (?) → Support → Get Support → Contact Support

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 RFP 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 RFP to:
 - i. any employee, official, agent, elected or appointed official or other representative of the City other than the Procurement Contact; or
 - ii. 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 RFP. 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 RFP, 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:
- i. http://www.toronto.ca/legdocs/municode/1184_140.pdf
 - ii. <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 RFP outside of those permitted by the applicable procurement policies and this RFP 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 RFP 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 RFP and Prohibited Communications), any attempt by a Supplier to bypass the RFP process may be grounds for rejection of its Bid.

1.5 RFP Timetable

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

Event	Estimated Timelines
Issue Date of RFP on the City Online Procurement System	March 27, 2026
Mandatory Site Meeting	7 Business Days after posting
Deadline for Questions	10 Business Days before closing
Deadline for Issuing Addenda	5 Business Days before closing
Submission Deadline	As displayed in the City Online Procurement System countdown clock
Rectification Period	3 Business Days after closing
Anticipated Ranking of Top Suppliers	July 2026
Contract Negotiation Period	July 2026
Anticipated Contract Award	September 2026

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

- i. revise the RFP schedule, to accelerate, eliminate or postpone any of the dates or times set out in this RFP, including the Submission Deadline;
 - ii. to add to, delete or re-order any of the milestones set out in this RFP, at any time; or
 - iii. modify the RFP 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 countdown clock shall take precedence.

1.6 Optional Site Visit/Information Meetings

- .1 All Suppliers are encouraged to attend an optional meeting to familiarize themselves with the required Deliverables. The optional site meeting will take place at **40 Wabash Ave., M6R 1N2, meeting at the plaza town square on the west side of the building local time on Monday April 13th, 2026 at 11:00AM, Toronto.**
- .2 Any questions posed in the meeting must be submitted via Ariba, and formal responses will be via Addendum.

1.7 Addenda

- .1 The RFP 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 RFP 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 RFP.
- .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 RFP (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 RFP, the City may, in its sole and absolute

discretion, extend the Submission Deadline.

- .5 Other than documents issued as part of the RFP (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 at an Information Meeting. No oral or written explanations, instructions or interpretations shall modify any of the requirements or provisions of the RFP unless in the form of an Addendum.
- .6 Any reference in this RFP to any document comprising this RFP includes any amendments to such document made in accordance with this Section 1.7 (Addenda).

1.8 Questions

- .1 Prospective Suppliers finding errors, omissions, conflicts, ambiguities or discrepancies in the RFP or having questions, comments or concerns regarding this RFP, 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 RFP timetable in Section 1.5 (RFP 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 (Addenda), responses to Questions prepared and circulated by the City are not RFP documents and do not amend the RFP, unless such responses form part of an Addendum.

1.9 Submission of Bids

.1 General

- .1 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.

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- .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 RFP. 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 RFP 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 RFP 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 RFP. 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:
 - i. not have a security password.
 - ii. not be defective, corrupted, or blank; and
 - iii. 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:
 - i. 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
 - ii. 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 RFP may cause the Bid to be rejected as non-compliant.

1.10 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 bid 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 bid function in the City Online Procurement System in accordance with this Section 1.10 (Amendment of Bids). 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, unless such Bid has been properly withdrawn in accordance with Section 1.11 (Withdrawal of Bids).

1.11 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.
- .3 Any Bids that are properly withdrawn will not be examined or evaluated for the purpose of the RFP but shall be retained for the City's record retention purposes.

1.12 Non-binding Procurement Process

.1 No Contract A and No Claims

While only Bids submitted by the Submission Deadline will be considered, this procurement process is not intended to create and will not create a formal, legally binding bidding process and will instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- i. this RFP will not give rise to any Contract A–based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- ii. neither the supplier nor the City will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a Bid submitted in response to this RFP.

.2 Non-binding Price Estimates

While the pricing information provided in Bids will be non-binding prior to the execution of a written agreement, such information will be assessed during the evaluation of the proposals and the ranking of the Suppliers. Any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of the City to enter into an agreement for the Deliverables.

.3 No Contract until Execution of Written Agreement

This RFP process is intended to identify prospective suppliers for the purposes of negotiating potential agreements. No legal relationship or obligation regarding the procurement of any good or service will be created between the supplier and the City by this RFP process until the successful negotiation and execution of a written agreement as further described in Section 2 (Evaluation, Negotiation, Acceptance and Execution).

SECTION 2 - EVALUATION, NEGOTIATION, ACCEPTANCE AND EXECUTION

2.1 Stages of Evaluation and Negotiation

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

.1 **Stage 1: Mandatory Submission Requirements**

The Bids will be reviewed on a pass/fail basis to determine whether they comply with all of the mandatory submission requirements outlined in Section 1.1 of Part 4 – Form B Technical Proposal and Qualifications and the requirements outlined in of Section 1.9 (Submission of Bids) of Part 1 of the RFP. If a Bid fails to satisfy all of the mandatory submission requirements, the City will issue the supplier a rectification notice identifying the deficiencies and providing the supplier an opportunity to rectify the deficiencies. If the supplier fails to satisfy the mandatory submission requirements within the Rectification Period, its Bid will be excluded from further consideration. The Rectification Period will begin to run from the date and time that the City issues a rectification notice to the supplier.

Stage 2: Mandatory Technical Requirements and Technical Proposal Rated Evaluations

Stage 2 will consist of the following 3 sub-stages:

- **Stage 2A - Mandatory Technical Requirements**

The City will review the proposals to determine whether the minimum mandatory technical requirements as set out in Section 1.2 of Part 4 - Form B (Technical Proposal and Qualifications) have been met. Questions or queries on the part of the City as to whether a Bid has met the minimum mandatory technical requirements will be subject to the verification and clarification process set out in Section 3.1 (General Process Terms and Conditions).

- **Stage 2B Technical Proposal Rated Evaluations**

Stage 2B Technical Proposal Score is worth 50% of the overall Total Evaluation Score used to determine final Rankings. In this stage, the City will evaluate each qualified Bid on the basis of the non-price rated criteria outlined in Section 2 of Part 4 – Form B (Technical Proposal and Qualifications) using the scoring scale outlined in Section 3.2 of Part 4 Form B.

Up to the five (5) highest scoring Suppliers who meet the minimum scoring threshold of 70% of the technical proposal evaluation as set out in Stage 2B Technical Proposal Rated Evaluation will proceed to Stage 2C - Supplier Presentation and Interview. If less than three (3) Suppliers meet the minimum threshold, then the minimum threshold for each sub-category may be decreased in increments of 2% down to minimum threshold of 66% to qualify up to three (3) highest ranked Suppliers within the lowered threshold. In the event that the City will receive less than three (3) qualified Suppliers and/or less than three (3) qualified Suppliers with the reduced threshold, then the City may proceed with the qualified Supplier(s) only. All scores will be rounded to two (2) decimal places.

- **Stage 2C Supplier Presentation and Interview**

Up to five (5) highest scoring qualified Suppliers will proceed to Stage 2C Supplier Presentation and Interview. The purpose of Stage 2C is to allow the Supplier to demonstrate their understanding of the scope of work by highlighting the major elements of their Bid. The format of this presentation and interview includes a presentation by the Supplier followed by the interview questions. The City may ask questions or seek clarifications of Supplier's technical proposal and/or the key representatives to get clarity and to ensure Suppliers complete understanding of the scope of work deliverables. The City may issue clarification letters to one or more qualified suppliers after the supplier presentation and interview if applicable to ensure deliverables are clear.

Upon completion of Stage 2B, the City's evaluation team may review the Stage 2B Technical Proposal Rated Evaluations and revise scoring where and if applicable as a result of the clarifications and understanding during the Supplier Presentations. In the case a Supplier's score has been adjusted below the threshold stated in Stage 2B, no additional Suppliers shall be added to this Stage 2B. Suppliers whose score has dropped below the threshold stated in Stage 2B shall not proceed to Stage 3. Stage 2C is not the opportunity to add new information, make changes nor adjustments into their original proposal submissions. but rather an opportunity for the City to obtain clarification and to assess each Supplier's understanding of the scope of work. Upon completion of Stage 2C, only the qualified Suppliers will proceed to Stage 3 Pricing Evaluations.

.2 **Stage 3: Pricing and Rankings**

Stage 3 Pricing Evaluation Score is worth 50% of the overall Total Evaluation Score used to determine initial and final Rankings Stage 3 will consist of a scoring of the submitted pricing of each qualified Bid in accordance with the price evaluation method set out in the Pricing Form (Part 5). The lowest priced compliant Bid will receive the highest score for pricing and all other Bids will be prorated against the lowest bid. The Pricing Evaluation will be undertaken after the evaluation of mandatory submission requirements and the technical requirements has been completed. The City will open and review the Bids to determine any materially unbalanced or abnormally low Bids. All scores will be rounded to two (2) decimal places.

At the end of Stage 3, rankings will be determined using the following Formula: :

(Technical Proposal Score) * 50%

+

(Pricing Evaluation final score) * 50% = Total Score

Suppliers shall be ranked in descending order based on Total Score, with the highest Total Score assigned Rank 1, the second-highest assigned Rank 2, and so on. In the event of a tie in Total Scores, the Supplier with the higher Technical Proposal Evaluation Score shall

be ranked higher.

1 Unbalanced or Abnormally Low Bids

- .1 A Bid is materially unbalanced if:
 - i. 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
 - ii. 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
 - iii. 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, the estimated quantities, the schedule for Contract performance, the allocation of risks and responsibilities and any other requirements of RFP.
- .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.

.3 Conditions of Award

As a condition of award, prior to inviting for contract negotiations, the highest-ranked supplier with the highest score shall provide a signed Supplier Attestation confirming the Supplier's status in accordance with the definitions of suppliers set out in Part 1 Section 3.14 of the RFP. The Supplier Attestation shall be signed by an Authorized Signing Officer of the Supplier. The Supplier's failure to provide a signed Supplier Attestation shall constitute sufficient grounds for the City to rescind the award or terminate any resulting contract awarded to the Supplier.

The signed Supplier Attestation must be submitted within two (2) business days of request by the City of Toronto. The attestation submission may be extended at the discretion of the City for additional 3 business days with supplier justification such as signing authority is not available for legitimate reason or the response is not clear and require further investigation, clarification by the City.

If the Attestation is not submitted within the required timeframe, the bid submission will

receive no further consideration, and the City may proceed to the next top ranked Supplier.

.4 Stage 4: Contract Negotiations

The City intends to conclude negotiations and finalize the agreement with the top-ranked supplier during the Contract Negotiation Period, commencing from the date the City invites the top-ranked Supplier to enter negotiations. A Supplier invited to enter into direct contract negotiations should therefore be prepared to satisfy the pre-conditions of award listed in (Part 3), provide requested information in a timely fashion and conduct its negotiations expeditiously.

Any negotiations will be subject to the process rules contained in Section 1.12 (Procurement Non-Binding) and will not constitute a legally binding offer to enter into a contract on the part of the City or the Supplier and there will be no legally binding relationship created with any supplier prior to the execution of a written agreement. The terms and conditions found in the Form of Agreement (Part 2) are to form the basis for commencing negotiations between the City and the selected Supplier. Negotiations may include requests by the City for supplementary information from the Supplier to verify, clarify or supplement the information provided in its proposal or to confirm the conclusions reached in the evaluation, and may include requests by the City for improved pricing or performance terms from the Supplier.

.5 Notification of Negotiation Status

Other Suppliers that may become eligible for contract negotiations may be notified at the commencement of the negotiation process with the top-ranked Supplier.

.6 Failure to Enter into Agreement

If the pre-conditions of award listed in (Part 3) are not satisfied or if the parties cannot conclude negotiations and finalize the agreement for the Deliverables within the Contract Negotiation Period, the City may discontinue negotiations with the top-ranked Supplier and may invite the next-best-ranked Supplier to enter into negotiations. This process will continue until an agreement is finalized, until there are no more Suppliers remaining that are eligible for negotiations or until the City elects to cancel the RFP process.

2.2 Rights of the City

In addition to, but without limiting any other rights or options of the City under this RFP, the City may, in its sole and absolute discretion carry out the RFP 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 RFP, at any time:

Extend Submission Deadlines

- .1** The City may extend any deadline in the RFP 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.

Major/Minor Irregularities

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

- .2 Bids that are improperly prepared, not in compliance with all of the requirements or instructions of the RFP, 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, subject to the City's Policies and Legislation (Major and Minor Irregularities).

Right to Reject Bids

- .1 The City shall not be obliged to accept or reject any Bid (in whole or in part), including if:
- i. the Bid contents appear to be incorrect, inaccurate or inappropriate;
 - ii. the Supplier has engaged in conduct prohibited by the RFP; or
 - iii. 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.
- .2 The lowest quoted price may not necessarily be accepted by the City.

Right to Seek Clarification of Bids

- .1 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.
- .2 The City may, at any time during the RFP process, require (within such time period as set by the City) one, some or all of the Suppliers to:
- i. submit supplementary information or documentation clarifying any matters contained in their Bid;
 - ii. meet with the City to clarify aspects of their Bid;
 - iii. 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 RFP or whether the Supplier meets the necessary experience and performance qualifications set out in the RFP, 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.

- .3 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.
- .4 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 RFP. The City may visit the existing place or places of business of some or all Suppliers for purposes of clarification or verification.

Right to Cancel or Award in Part

- .1 The City may suspend, modify and/or cancel this RFP (with or without the substitution of another RFP) or the proposed Contract.
- .2 The City may award one or more contracts for portions or all of the Deliverables to as many Suppliers as it deems appropriate, including awarding a contract for Deliverables less than the scope or quantity contemplated in the Successful Supplier's Bid or the RFP.
- .3 After the Submission Deadline, the City may increase or decrease the quantity of any unit of Deliverables in accordance with the Contract.
- .4 The City may exercise any other right or option provided for in, or in connection with, this RFP, including the rights and options set out in the City's Policies and Legislation.
- .5 The City may do nothing in relation to the Bids or this RFP.

2.3 Contract Award and Execution

- .1 All contract awards are subject to the execution of an agreement in the form set out in Part 2 including any supplementary terms that are finalized during the Contract Negotiation Period.
- .2 Once a Bid has been accepted by the City, the Procurement Contact will notify the highest-ranked Supplier with the highest score that it has been awarded the Contract, subject to the terms and conditions set out in Part 2 (Form of Agreement). Upon notification that the Form of Agreement is available for execution, the selected Supplier shall sign, date and return the completed Form of Agreement within 10 Working Days of its receipt, along with any required Supplier Attestation, performance security or insurance certificates. The Supplier Attestation (set out in Section 4.1.6) is an additional document that must be provided by the selected Supplier in addition to any other documentation required by the terms and conditions of the Form of Agreement.
- .3 If requested by the City, the selected Supplier will execute and deliver the Form of Agreement and any required performance security and insurance certificates in a digital form that is legally verifiable and enforceable.
- .4 After award, the failure of the selected Supplier to execute the Form of Agreement as finalized, or submit the necessary performance security or insurance certificates, shall constitute sufficient grounds to rescind the award and may constitute grounds to suspend the Supplier from further procurements for such period of time as may be determined under the City's Supplier Code of Conduct in the City of Toronto Municipal Code Chapter 195. If a Supplier is suspended on such grounds, the City may then may invite the next-best-ranked Supplier to enter into negotiations to finalize an agreement or the City may elect to suspend, modify and/or cancel this solicitation (with or without the substitution of another solicitation).

2.4 Notification to Other Suppliers

Once the City has successfully awarded and executed 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 RFP 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 RFP process.

SECTION 3 - GENERAL RFP 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 RFP as well as the by-laws, policies and procedures established by the City (including the City's Policies and Legislation set out in Form A - Part 4 – Bid Submission Form) and any additional terms and conditions related to the provision of the City Online Procurement System. It is the responsibility of the Supplier to review and comply with all such policies.
- .2 Suppliers should structure their bids in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a Bid should reference the applicable section numbers of this RFP.
- .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.
- .4 When evaluating proposals, the City may request further information from a Supplier or third parties in order to verify, clarify or supplement the information in the Supplier's Bid. This may include but is not limited to clarification with respect to whether a Bid meets the mandatory technical requirements set out in Part 3 (Requirements for Deliverables). The City may revisit and re-evaluate the Supplier's Bid response or ranking on the basis of any such information.

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 RFP 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 RFP 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 RFP;
 - participation of any such Person in this RFP 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 RFP process, including the acceptance, non-acceptance or delay in acceptance by the City of any Bid. 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 to comply with the rules set out in this RFP.
- .2 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 this Section 3.3 (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 RFP 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 RFP 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 Bid Dispute of the RFP 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 RFP 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 RFP (collectively, the "**City Materials**") and all intellectual property rights therein:

- i. are and shall remain the sole and absolute property of the City;
 - ii. must be treated by Suppliers and prospective Suppliers as confidential and Suppliers must maintain such confidentiality;
 - iii. must not be disclosed without prior written authorization from the City;
 - iv. must not be used for any purpose other than for replying to this RFP, and for fulfillment of the Contract or any related subsequent agreement; and
 - v. 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 Contract. 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:
 - i. verify and confirm the accuracy and completeness of the City Materials, unless and to the extent provided otherwise in the Contract;
 - ii. ensure proper, accurate and effective use of the City Online Procurement System;
 - iii. satisfy themselves as to all existing conditions affecting the Deliverables or the Contract; and
 - iv. prepare their Bids in response to this RFP.

3.7 Ownership of Bid Materials

- .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 RFP (collectively, the "**Bid Materials**") and all intellectual property rights therein, once received by the City:
 - i. shall become the sole and absolute property of the City; and
 - ii. 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:
 - .1 represents and warrants that the information contained in its Bid Materials does not infringe any intellectual property right of any third party;
 - .2 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:
 - .3 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
 - .4 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:
 - i. on a confidential basis, to advisers retained by the City to advise or assist with the RFP process;
 - ii. to members of Council in accordance with the City's procedures; and
 - iii. to members of the public pursuant to MFIPPA.
- .5 The City will not return the Bid or any other Bid Materials.

3.8 Failure or Default of Supplier

- .1 Without prejudice to any other right or remedy available to the City under this RFP 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 RFP, the City may disqualify the Supplier from the RFP and/or from competing for any future procurement processes issued by the City.
- .2 The Supplier shall be ineligible to submit a new bid for any procurement process 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 RFP.

3.10 No Guarantee of Volume of Work or Exclusivity of Contract

The City makes no guarantee of the value or volumes of work or orders to be assigned to the Successful Supplier. The Contract with the Successful Supplier will not be an exclusive contract for the provision of the described Deliverables. The City may contract with others for the same as or similar Deliverables or may obtain such Deliverables or services internally.

3.11 Bid Dispute Procedure

Any dispute, complaint, or protest in respect of this RFP 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/>.

3.12 Supplier Code of Conduct

Each Supplier shall comply with the Supplier Code of Conduct as set out in the City's Policies and Legislation.

3.13 Governing Law and Enforceability

- .1 The terms and conditions of the RFP 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 RFP 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 RFP; (ii) changing the fundamental nature of the obligations assumed by the parties; and (iii) affecting its application to other parties or circumstances.

3.14 RFP Definitions and Interpretation

.1 Definitions

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

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

- .2 **“Bid”** means an offer or proposal submitted by a Supplier in response to the RFP, which includes all of the documentation necessary to satisfy the submission requirements of the RFP and **“Bids”** shall have a corresponding meaning;
- .3 **“Bid Materials”** has the meaning set out in Section 3.7 (Ownership of Bid Materials).
- .4 **“Bid Submission Form”** has the meaning set out in Section 1.9.2 (Bid Submission Form).
- .5 **“Canadian Business Subsidiary”** means a corporation operating in Canada, that acts as a supplier, manufacturer or distributor of goods and services and is controlled by a parent corporation outside of Canada, and where:
 - A. the business subsidiary has permanent offices or production facilities, and
 - B. a minimum of 70% of the deliverables will be provided by employees based in Canada.
- .6 **“Canadian Supplier”** means a supplier, manufacturer or distributor of any business structure that conducts its activities on a permanent basis in Canada. The business either:
 - A. has its headquarters or principal place of business in any province or territory of Canada; or
 - B. has at least 70% of its employees in Canada at the time of the bid submission of the applicable procurement process; or
 - C. is a Canadian Business Subsidiary.
- .7 **“City”** means the **City of Toronto**
- .8 **“City Materials”** has the meaning set out in Section 3.6 (City Materials).
- .9 **“City Online Procurement System”** has the meaning set out in Section 1.4 (City Online Procurement System).
- .10 **“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.
- .11 **“Contract”** means the terms and conditions set out in Part 2 (FORM OF AGREEMENT) to be executed by the Successful Supplier and the City or incorporated into a purchase order, which sets out the terms and conditions for the Deliverables.
- .12 **“County of Origin”** means the country where the goods were grown, or the last country in which the goods were produced, as applicable.
- .13 **“Deliverables”** means all goods and/or services to be provided by a Supplier as described in this RFP.
- .14 **“Joint Venture”** has the meaning set out in Section 3.4 (Joint Venture Bids).

- .15 **“MFIPPA”** means the Municipal Freedom of Information and Protection of Privacy Act, as amended, supplemented, re-enacted or replaced from time to time.
- .16 **“Non-American Business Subsidiary”** means a business subsidiary controlled by a parent corporation operating on a permanent basis in the United States of America (“USA”), that acts as a supplier, manufacturer or distributor of goods, where:
- A. the business subsidiary has permanent offices or production facilities outside of the USA; and
- B. a minimum of 70% of the deliverables will be provided by employees based outside of the USA.
- .17 **“Non-American Supplier”** means a supplier, manufacturer or distributor of any business **structure** that does not meet the definition of “USA Based Supplier”.
- .18 **“Non-binding Procurement Process”** has the meaning set out in Section 1.12 (Non-Binding Procurement Process)
- .19 **“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
- .20 **“Procurement Contact”** has the meaning set out in Section 1.2 (Procurement Contact).
- .21 **“RFP”** means this nRFP (Negotiated Request for Proposal) package in its entirety, including all documents listed in Section 1.3 (RFP Documents) and Addenda that may be issued by the City.
- .22 **“Subcontractor”** means a Person undertaking the execution of a part of the Contract by virtue of an agreement with the Contractor.
- .23 **“Submission Deadline”** means the specified deadline for Bids to be submitted to the City as indicated in the RFP timetable in Section 1.5 (RFP Timetable).
- .24 **“Successful Supplier”** means the Supplier that has been selected to enter into the Contract for the performance of the Contract.
- .25 **“Supplier”** means a Person, including, where applicable, a Joint Bid Team, that submits a Bid in response to this RFP and **“Suppliers”** shall have a corresponding meaning.
- .26 **“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.
- .27 **“Trade Partner Supplier”** means a supplier, manufacturer or distributor of any business structure that conducts its activities on a permanent basis within a country

that is a party to an international trade agreement applicable to municipalities in Canada. The Trade Partner Supplier either:

- A. has its headquarters or main office within a country that is a party to an international trade agreement applicable to municipalities in Canada, or
- B. has at least 70% of its employees based in a country that is a party to an international trade agreement applicable to municipalities in Canada at the time of bid submission deadline of the applicable procurement process.

.28 **“USA Based Supplier”** means a supplier, manufacturer or distributor of any business structure that conducts its activities on a permanent basis in the United States of America (“USA”). The business either:

- A. has its headquarters or principal place of business in any state or territory of the USA; or
- B. has at least 70% of its employees in the USA at the time of the bid submission of applicable procurement process.
- C. USA Based Supplier does not include a Non-American Business Subsidiary.

.29 **“Working Day” or “Business Day”** means a day other than:

- a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the City of Toronto; or
- a day identified by the City of Toronto as a designated or statutory holiday.

.2 Interpretation of the RFP

- .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 RFP 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 RFP, 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 RFP are in Canadian dollars, including any amounts provided in the Pricing Form.
- .6 In addition to the words defined in Section 3.14 (Definitions), the other words used in this RFP shall be interpreted consistent with the definitions contained in the City's Policies and Legislation.