

Request for Supplier Qualifications – Doc5421410915
Part 3 – Process Terms and Conditions

1. General Information and Instructions

1.1 Respondents to Follow Instructions

Respondent should structure its Response in accordance with the instructions in this RFSQ. Where information is requested in this RFSQ, any response made in a Response should reference the applicable section numbers of this RFSQ where that request was made.

1.2 Responses in English

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

1.3 Responses To Be Submitted Only in Prescribed Manner

Responses must be submitted through the City Online Procurement System. Responses will not be accepted via any other mechanism including, but not limited to, post, courier, fax, E-mail, or orally unless specifically requested by the City.

Respondents must submit their Responses in the format as presented in the online system.

If two or more legal entities wish to submit a Response as a consortium, one member of the consortium must be identified as the Respondent with whom the City may enter into an Agreement, and the other member(s) must be identified as subcontractors to that Respondent.

1.4 Responses Must be Submitted Only on Time in the City's Online Procurement System

Responses must be submitted online as set out above on or before the Submission Deadline. The City's Online Procurement System will not accept any Responses that are attempted to be submitted after the Submission Deadline.

1.5 Withdrawing Responses

At any time throughout the RFSQ process, a Respondent may withdraw a submitted Response. To effect a withdrawal, a notice of withdrawal must be sent to the City Contact and must be signed by an authorized representative. The City is under no obligation to return withdrawn Responses.

Respondents may amend their Response prior to the Submission Deadline by going back into the City's Online Procurement System and editing their Response. Responses will not be viewed by the City until after the Submission Deadline which allows Respondents to amend their Response as many times as required prior to the Submission Deadline.

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1.6 The City's Information in RFSQ Only an Estimate

The City and its advisers make no representation, warranty or guarantee as to the accuracy of the information contained in this RFSQ or issued by way of addenda. Any quantities shown or data contained in this RFSQ or provided by way of addenda are estimates only and are for the sole purpose of indicating to Respondents the general size of the work. It is the Respondent's responsibility to avail itself of all the necessary information to prepare a Response to this RFSQ.

1.7 Respondents Shall Bear Their Own Costs

Every Respondent shall bear all costs associated with or incurred by the Respondent in the preparation and presentation of its Response including, if applicable, costs incurred for interviews or demonstrations.

2. Communication after Issuance of RFSQ

2.1. Respondents to Review RFSQ

Respondents shall promptly examine all of the documents comprising this RFSQ and

- (a) shall report any errors, omissions or ambiguities; and
- (b) may direct questions or seek additional information in writing through the event messages in the City Online Procurement System to the City on or before the deadline for questions set out in Part 1, Section 3 . All questions submitted by Respondents to the City Contact shall be deemed to be received once the message has entered into the event messages inbox in the City Online Procurement System. No such communications are to be directed to anyone other than the City Contact.

The City is under no obligation to provide additional information and the City shall not be responsible for any information provided by or obtained from any source other than the City Contact. It is the responsibility of the Respondent to seek clarification from the City Contact on any matter it considers to be unclear. The City shall not be responsible for any misunderstanding on the part of the Respondent concerning this RFSQ or its process.

2.2. All New Information to Respondents by Way of Addenda

If the City, for any reason, determines that it is necessary to provide additional information relating to this RFSQ, such information will be communicated to all Respondents by Addenda. Each Addendum shall form an integral part of this RFSQ. Such Addenda may contain important information, including significant changes to this RFSQ. Respondents are responsible for obtaining all Addenda issued by the City.

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2.3. Extension of Submission Deadline

Without limiting any other provision of this RFSQ, the City may, in its sole and absolute discretion, extend the Submission Deadline if an Addendum requires substantial amendments to the RFSQ.

2.4. City Online Procurement System

Respondents that intend to respond to the RFSQ must ensure that they have the necessary hardware and software to access the RFSQ through the City Online Procurement System. Respondents at all times should keep themselves informed of and take into account the most current version of the RFSQ and other City materials available on the City Online Procurement System. The City will not assume any risk, responsibility or liability whatsoever to any Respondent for ensuring that the City Online Procurement System is in good working order or that the Respondents 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. The City makes no representation, warranty or condition that the City Online Procurement System will be uninterrupted, timely, secure, or error-free. Each Respondent is solely responsible for accessing the RFSQ through the City Online Procurement System in sufficient time prior to the Submission Deadline to enable the Respondent to submit a Response.

2.5. Verify, Clarify and Supplement

When evaluating Responses, the City may request further information from the Respondent or third parties in order to verify, clarify or supplement the information provided in the Respondent's Response. The City may revisit and re-evaluate the Respondent's Response or ranking on the basis of any such information.

2.6. No Incorporation by Reference

The entire content of the Respondent's Response should be submitted in a fixed form and the content of websites or other external documents referred to in the Respondent's Response will not be considered to form part of its Response.

2.7. Response to Be Retained by the City of Toronto

The City will not return the Response or any accompanying documentation submitted by a Respondent.

3. Selection, Notification and Debriefing**3.1. Selection of Top-Ranked Respondent(s)**

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The top-ranked Respondent(s), as established under the evaluation that are selected by the City for inclusion in the Roster List will be so notified by the City in writing.

3.2. Notification to Other Respondents

Once the selected Respondents are notified of their selection onto the Roster List, the other Respondents will be notified by the City in writing of the outcome of the RFSQ process.

3.3. Debriefing

Respondents may request a debriefing after receipt of a notification of the outcome of the selection process. All requests must be in writing to the City Contact 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 Respondent in presenting a better Response in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the RFSQ process.

3.4. Dispute Process

Any dispute, complaint, or protest in respect of this RFSQ by a Respondent shall be addressed in accordance with the dispute process under Article 10 of Chapter 195, Procurement, of the Toronto Municipal Code and the related policy in the City's Policies and Legislation.

4. Supplier Code of Conduct**4.1. Business Ethical Standards**

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

4.2. Honesty and Good Faith

Respondents must respond to the City's RFSQ in an honest, fair and comprehensive manner that accurately reflects their capacity to satisfy the requirements stipulated in this RFSQ process. Respondents shall submit a Response only if they know they can satisfactorily perform all obligations of the contract in good faith.

4.3. Confidentiality and Disclosure**4.3.1. Confidential Information of the City of Toronto**

All information provided by or obtained by the City in any form in connection with this RFSQ, either before or after the issuance of this RFSQ: (a) is the sole property of the City and must be

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treated as confidential; (b) is not to be used for any purpose other than replying to this RFSQ; (c) must not be disclosed without prior written authorization from the City; and (d) shall be returned by the Respondents to the City immediately upon the request of the City. Respondents must maintain confidentiality of any confidential City information disclosed to the Respondent as part of the RFSQ process.

4.3.2. Confidential Information of the Respondent

A Respondent should identify any information in its Response or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the City. The confidentiality of such information will be maintained by the City, except as otherwise required by law or by order of a court or tribunal. Respondents must acknowledge in their Response that their Response information will be subject to the confidentiality and disclosure requirements of the *Municipal Freedom of Information and Protection of Privacy Act, 1990*. Furthermore, Respondents are advised that their Response will, as necessary, be disclosed on a confidential basis, to the City's advisers retained for the purpose of evaluating or participating in the evaluation of their Responses.

4.4. Conflicts of Interest or Unfair Advantage

For the purposes of this Section, "Conflict of Interest" shall have the meaning ascribed to it in Chapter 195 of the Toronto *Municipal Code*, as defined in the Submission Form (Appendix A).

Respondents must declare and fully disclose any actual or potential conflict of interest or unfair advantage related to the preparation of their Response or where the Respondent foresees an actual or potential conflict of interest in the performance of the contract. Such potential conflicts of interest or unfair advantages include, but are not limited to:

- (1) Engaging current or former City employees or public office holders to take any part in the preparation of the Response or the performance of the contract if awarded, any time within two (2) years of such persons having left the employ or public office of the City;
- (2) Engaging any family members, friends or private business associates of any public office holder which may have, or appear to have, any influence on the procurement process or performance of the contract, if awarded;
- (3) Prior involvement by the Respondent or Affiliated Persons in developing the technical specifications or other evaluation criteria for the RFSQ;
- (4) Prior access to confidential City information by the Respondent, or Affiliated Persons, that is materially related to the RFSQ and that was not readily accessible to other prospective Respondents; or
- (5) The Respondent or its Affiliated Persons are indebted to or engaged in ongoing or proposed litigation with the City in relation to a previous contract.

4.5. Collusion or Unethical Bidding Practices

No Respondent may discuss or communicate, directly or indirectly, with any other Respondent or their Affiliated Persons about the preparation of the Respondent's Response including, but

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not limited to, any connection, comparison of figures or arrangements with, or knowledge of any other Respondent making a Response for the same work. Respondents shall disclose any affiliations or other relationships with other Respondents that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.

4.6. Illegality

A Respondent shall disclose any previous convictions of itself or its Affiliated Persons for collusion, bid-rigging, price-fixing, bribery, fraud or other similar behaviours or practices prohibited under the *Criminal Code*, the *Competition Act* or other applicable law, for which they have not received a pardon. A Respondent shall be deemed ineligible for an award for a minimum period of five (5) years from the date of the conviction, unless pre-approved by the Chief Procurement Officer.

4.7. Interference Prohibited

No Respondent may threaten, intimidate, harass, or otherwise interfere with any City employee or public office holder in relation to their procurement duties. No Respondent may likewise threaten, intimidate, harass, or otherwise interfere with an attempt by any other prospective Respondent to submit a Response for pre-qualification or to perform any contract awarded by the City.

4.8. Gifts or Favours Prohibited

No Respondent shall offer gifts, favours or inducements of any kind to City employees or public office holders, or otherwise attempt to influence or interfere with their duties in relation to this RFSQ or management of a contract.

4.9. Misrepresentations Prohibited

Respondents are prohibited from misrepresenting their relevant experience and qualifications or including other inaccurate, misleading, or incomplete information in relation to this RFSQ. The Respondent must acknowledge that the City's process of evaluation may include information provided by the Respondent's references as well as records of past performance on previous contracts with the City or other public bodies.

4.10. Prohibited Communications

Respondents (including potential Respondents) 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 Response or this RFSQ to:

- any employee, official, agent, elected or appointed official or other representative of the City other than the City Contact; or

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- anyone not specifically involved in their Response (including, without limitation, any other Response),

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

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

Notwithstanding anything to the contrary set out in this RFSQ, each Respondent 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/>

Communications in relation to this RFSQ outside of those permitted by the applicable procurement policies and this RFSQ 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 Respondent found in breach of the provisions therein respecting prohibited communications may be subject to disqualification from this RFSQ or suspended from future procurements in the sole and absolute discretion of the City.

Without limiting any other provision of this Section 4.10, any attempt by a Respondent to bypass the RFSQ process may be grounds for rejection of its Response.

4.11. Respondent Performance

Respondents shall fully perform their contracts with the City and follow any reasonable direction from the City to cure any default. Respondents shall maintain a satisfactory performance rating on their previous contracts with the City and other public bodies to be qualified to be awarded similar contracts.

4.12. Disqualification of Respondents for Non-Compliance

Respondents shall be required to certify compliance with the Supplier Code of Conduct as set out in the Submission Form (Appendix A), with their Response and verify compliance prior to

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the outcome of this RFSQ process. Any contravention of the Supplier Code of Conduct by a Respondent, including any failure to disclose potential conflicts of interest or unfair advantages, may be grounds for the City Contact to disqualify a Respondent from pre-qualification.

The City Contact, in consultation with the City Solicitor, may also disqualify any Respondent who may otherwise have an unfair advantage or conflict of interest that cannot be resolved in relation to this RFSQ.

A contravention of the Supplier Code of Conduct may also be grounds for the division head to terminate any contract awarded to that Respondent and require the return of any advance payments.

4.13. Suspension of Respondents from Future Solicitations

Any Respondent found in breach of the Supplier Code of Conduct may be suspended from future procurements in the sole and absolute discretion of the City.

5. Procurement Process Non-Binding**5.1. No Contract A and no claims**

The procurement process is not intended to create and shall not create a formal legally binding bidding process and shall instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation: (a) the RFSQ shall 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 (b) neither the Respondent nor the City shall have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the outcome of the RFSQ process, the award of a contract, failure to award a contract or failure to honour a Response to this RFSQ.

5.2. No Contract until Execution of Written Agreement

This RFSQ process is intended to identify qualified Respondents for the provision of Deliverables on an as-needed basis. The terms and conditions found in Part 4 (Form of Agreement) are to form the basis for finalizing the Agreement between the City and the selected Respondents.

5.3. Cancellation

The City may cancel or amend the RFSQ process without liability at any time.

6. Governing Law and Interpretation



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6.1. Governing Law

The terms and conditions of the RFSQ process are to be governed by and construed in accordance with the by-laws, policies and procedures established by the City (including the City's Policies and Legislation), the laws of the province of Ontario and the federal laws of Canada applicable therein.