



Request for Supplier Qualifications – Doc5572034849
Part 3b – 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 online system supplied by SAP Ariba. 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.

1.4 Responses Must be Submitted Only on Time in Online System

Responses must be submitted online as set out above on or before the Submission Deadline. The online 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 The City is under no obligation to return withdrawn Responses.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 online 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.

1.6 The City's Information in RFSQ Only an Estimate

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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 online system to the City on or before the Respondent's Deadline for Questions. 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 online 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.

2.3. Post-Deadline Addenda and Extension of Submission Deadline

If any Addendum is issued after the Deadline for Issuing Addenda, the City may at its discretion extend the Submission Deadline for a reasonable amount of time.

2.4. Amending Responses Following Rectification Period

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In the event that the City determines that it is necessary to provide Respondents with additional information relating to this RFSQ following the Rectification Period, such information will be communicated by an Addendum to all Respondents who submitted Responses satisfying the mandatory submission content requirements. All such Addenda will be prescriptive, and Respondents will be expected to amend only those portions of their Responses as specifically instructed and to submit their amended Responses in the manner and within the timeframe specified. Any amendments that are not in accordance with the instructions accompanying the Addenda will be set aside and will not be evaluated.

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)**

The top-ranked Respondent(s), as established under the evaluation that are selected by the City to enter onto a Prequalified Vendor 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 Prequalified Vendor list, the other Respondents will be notified by the City in writing of the outcome of the RFSQ process.

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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. Bid Protest Procedure

3.5. Pre-award bid disputes.

Respondents should seek a resolution of any pre-award dispute by communicating directly with the City Contact as soon as possible from the time when the basis for the dispute became known to them. The City Contact may delay the outcome of the selection process, or any interim stage of this RFSQ process, pending the acknowledgement and resolution of any pre-award dispute.

3.6. Post-award bid disputes.

Any dispute to the outcome of this RFSQ process must be received in writing by the City Contact no later than **ten (10) days** after the date of the notification of the outcome of the selection process, or where a debriefing has been requested, no later than five (5) days after such debriefing is received. Any dispute that is not timely received or in writing will not receive further consideration.

Any written dispute with a procurement value over \$100,000 that cannot be resolved by the City Contact through consultations with the Respondent, shall be referred to the Treasurer or their designate(s) for an impartial review, based on the following information:

- A. A specific description of each act or omission alleged to have materially breached the procurement process;
- B. A specific identification of the provision in the solicitation or procurement procedure that is alleged to have been breached;
- C. A precise statement of the relevant facts;
- D. An identification of the issues to be resolved;
- E. The Respondent's arguments, including any relevant supporting documentation; and
- F. The Respondent's requested remedial action.

The Treasurer or their designate(s), in consultation with the City Solicitor, may:

- A. Dismiss the dispute;
- B. Accept the dispute and direct the City Contact to take appropriate remedial action, including, but not limited to, rescinding the award and any executed contract, and canceling the solicitation.

4. Supplier Code of Conduct

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4.1. 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. Respondents shall alert the City Contact to any factual errors, omissions and ambiguities that they discover in this RFSQ as early as possible in the process to avoid this RFSQ being cancelled.

4.2. Confidentiality and Disclosure

4.2.1. 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 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.

4.2.2. 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.

4.3. 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 (Part 6).

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;

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- (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.

4.4. 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 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 to the City Contact any affiliations or other relationships with other Respondents that might be seen to compromise the principle of fair competition, including any proposed subcontracting relationships.

4.5. 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 pre-qualification for a minimum period of five (5) years from the date of the conviction, unless pre-approved by the Treasurer.

4.6. 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.

4.7. 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.

4.8. 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.

4.9. Prohibited Communications

No Respondent or affiliated person may discuss or communicate either verbally, or in writing, with any employee, public office holder, or the media in relation to this RFSQ or the outcome of this RFSQ process, between the time of the issuance of the RFSQ to the outcome of this RFSQ process, without first obtaining the permission of the City Contact, and unless such communication is in compliance with Chapter 140, Lobbying, of the Toronto Municipal Code. All Respondent communications shall be with the City Contact.

4.10. Failure to Honour Response

Respondents shall honour their Response, except where they are permitted to withdraw their Response in accordance with the process disclosed in this RFSQ. Respondents shall not refuse to enter into a contract or refuse to fully perform the contract once their Response has been accepted by the City.

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, with their Response and verify compliance prior to 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.

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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

- A. Without limiting or restricting any other right or privilege of the City, Council may suspend a Respondent's eligibility to submit a Response for a period between one (1) and five (5) years due to a contravention of the Supplier Code of Conduct.
- B. The City Contact, in consultation with the City Solicitor, may also temporarily suspend a Respondent's eligibility to submit a Response for up to six (6) months due to a contravention of the Supplier Code of Conduct.
- C. The City Contact shall submit an annual report to Government Management Committee, where any Respondent has been suspended under the Supplier Code of Conduct.

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

No legal relationship or obligation regarding the procurement of any good or service shall be created between the Respondent and the City by the RFSQ process until the selection of the Respondent to provide the Deliverables pursuant to Part 4 – Master Roster Consulting Agreement.

5.3. Cancellation

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

6. Governing Law and Interpretation**6.1. Governing Law**

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The terms and conditions in this Part 3 Terms and Conditions of RFSQ Process: (a) are included for greater certainty and intended to be interpreted broadly and separately (with no particular provision intended to limit the scope of any other provision); (b) are non-exhaustive (and shall not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations); and (c) are to be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.

7. Offers to Agencies and Corporations

After acceptance of a Bid, the Successful Supplier acknowledges and agrees that the City may inform its agencies and corporations of the Successful Supplier's Contract with the City. If any of such agencies and corporations request the Successful Supplier to provide the same work, deliverables or services, the Successful Supplier shall use commercially reasonable efforts to negotiate a separate and distinct contract with the applicable agency or corporation based on the same or comparable terms (including pricing) as are set out in the City's Contract with the Successful Supplier. The Successful Supplier further acknowledges and agrees that the City shall not be liable for any separate contracts negotiated with any of the City's agencies and Corporations by the Successful Supplier.