

Request for Proposals

for

General Contractors

To Build & Finance:

THE YOUTH JUSTICE FACILITY

Infrastructure Ontario,

**Ministry of Public Infrastructure Renewal &
Ministry of Children and Youth Services**

RFP No. OIPC 06-08-I010

**This Request For Proposals Closes
at 2:00:00 p.m. on November 14, 2006**

Revised Version Issued: Monday, October 16, 2006



This Request for Proposals (“RFP”) document consists of twelve (12) volumes as listed below. For a description of the contents in each volume, please see Section 1.4 of this RFP

LIST OF VOLUMES

- Volume I: Request For Proposals
- Volume II: Draft Project Agreement
- Volumes III-XII: Specifications for the Project

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This section has been omitted.

Laundry & Kitchen – General Project Details

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This section has been omitted

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This section has been omitted.

END OF SPECIFICATIONS

For information purposes only

1 INTRODUCTION

1.1 General

This Request for Proposals (“RFP”) is issued by the Ontario Infrastructure Projects Corporation (“OIPC”, also known as “Infrastructure Ontario”) in conjunction with the Ministry of Public Infrastructure Renewal (“PIR”) and the Ministry of Children and Youth Services (“MCYS”). Infrastructure Ontario, PIR and MCYS are collectively referred to as the “Sponsors” for the purposes of this RFP.

This RFP process will select a pre-qualified general contractor (“RFP Proponent”) to build and finance The Youth Justice Facility (“Project”). The primary objective of this process is to construct a publicly-owned facility while incorporating private sector innovation and expertise. Based on the proposals submitted in response to this RFP by RFP Proponents (“RFP Submissions”), high-scoring RFP Proponents will be selected and invited to participate in further processes as described in Section 3.1 of this RFP.

While the Sponsors will manage the procurement process in respect of the Project, the Selected Bidder (as defined in Section 3.1 of the RFP) will, subject to all necessary approvals, enter into the Final Project Agreement (as defined in Section 1.4 of the RFP) with PIR.

1.2 The Five-Year Infrastructure Plan – ReNew Ontario

The Project is a ReNew Ontario initiative and has been approved to proceed as an alternative financing and procurement (“AFP”) project.

Throughout Ontario, key public infrastructure is aging and population growth in certain regions is imposing even more pressure. The public infrastructure needs of the Government of Ontario (“Government”) are some of the greatest in Canada. That is why the Government implemented *ReNew Ontario 2005-2010*, a five-year, \$30 billion strategic investment plan to correct a formidable public infrastructure deficit in the province and prepare for future growth.

Over the next five years, the Government and its partners will invest more than \$30 billion in public infrastructure in Ontario. This investment represents the first step in a long-term plan to renew public infrastructure in Ontario and will be accompanied by improvements in the way these investments are planned and managed:

- Planned over a longer period to support major priorities in health care, education and economic growth.
- Co-ordinated with partners in the broader public sector.
- New sources of investment will be utilized, such as private sector investment, pension funds and the savings of Ontario residents.
- New ways of harnessing the expertise of the private sector will be employed.

Infrastructure Ontario, a Crown corporation of the Ontario government, is an essential component of the plan to ensure that new infrastructure projects are completed on time and on budget.

For some of the Province's biggest projects, Infrastructure Ontario uses private financing to strategically rebuild vital infrastructure while maintaining public control. For these larger complex projects, the construction work is financed and carried out by the private sector, which is responsible for ensuring on-time and on-budget project completion. All infrastructure projects will be guided by the five principles set out in the Government's *Building a Better Tomorrow* framework. These are:

- Public interest is paramount
- Value for money must be demonstrable
- Appropriate public control and ownership must be preserved
- Accountabilities must be maintained
- All processes must be fair, transparent and efficient

These AFP approaches facilitate the acquisition and redevelopment of complex infrastructure projects by transferring to the private sector the appropriate risks of design, build, finance, maintenance and / or operation.

The strategy not only brings additional investment into public services, it is a new way of working that brings additional expertise, ingenuity and rigour to the process of managing and renewing public infrastructure.

Infrastructure Ontario recognizes that AFP models are continually evolving. Infrastructure Ontario also recognizes that some models are more suitable than others for the delivery of specific services or infrastructure and therefore Infrastructure Ontario encourages innovations and unique made-in-Ontario AFP approaches.

Notwithstanding the need for model flexibility there are common benefits that accrue from any AFP model:

- Transfers risks to the parties that can best manage them
- Promotes fast tracking of construction or project completion
- Establishes price certainty for both public and private sector parties

1.3 Eligibility

Only those general contractors that were selected pursuant to the Request for Qualifications ("RFQ") to proceed to the Project's RFP stage ("Pre-Qualified Proponents") are eligible to participate in this RFP as RFP Proponents. The Pre-Qualified Proponents are listed in Appendix 1 to the RFP.

Only those mechanical, electrical and security integration subcontractors that were selected pursuant to the RFQ for the Project to proceed to the RFP stage (“Pre-Qualified Subcontractors”) are eligible to participate in this RFP under an RFP Proponent’s RFP Submission. The Pre-Qualified Subcontractors are listed in Appendix 1 to the RFP.

Pre-Qualified Proponents may choose any of the Pre-Qualified Subcontractors for use as part of their RFP Submission in response to this RFP.

1.4 RFP Structure

The RFP consists of twelve (12) volumes as follows:

Volume I – Request For Proposals

Volume I provides background details on the Sponsors and the Project. It sets out the RFP process, the information required from Proponents for the evaluation of RFP Submissions, the form in which proposals should be submitted and the criteria which will be used by the Sponsors to evaluate RFP Submissions.

The appendices to Volume I are an integral part of Volume I.

Volume II – Draft Project Agreements and Guaranteed Price Contract

Volume II sets out Version 1 and Version 2 of a draft project agreement (each a “Draft Project Agreement”). The version of the Draft Project Agreement that applies to an RFP Proponent depends on the build-finance structure the RFP Proponent chooses to use. Further discussion of the build-finance structure is found in Section 4.1 of this RFP. An RFP Proponent must indicate in its RFP Submission which of Version 1 or Version 2 of the final project agreement (each a “Final Project Agreement”) it will use.

The Draft Project Agreement includes as Schedule 1 a Guaranteed Price Contract (as defined in Section 4.3 of the RFP) as well as other ancillary agreements as additional schedules. Any reference to the Project Agreement shall be taken to include a reference to all schedules to the Project Agreement including the Guaranteed Price Contract.

The Draft Project Agreements as presented in Volume II are considered draft documents. The RFP process includes a consultative process whereby RFP Proponents will be given opportunities to provide feedback to the applicable Draft Project Agreement. A revised project agreement (“Revised Project Agreement”) may be issued and a Final Project Agreement will be issued as part of this RFP process (any version of the Draft, Revised and Final Project Agreements may be referred to collectively or individually, as the context requires, as “Project Agreement”). Any reference to the Project Agreement shall be deemed to include reference to all of the schedules to the Project Agreement (including the Guaranteed Price Contract). Further discussion on the Project Agreement is found in Section 4.2 of the RFP.

The Project Agreement and any other portion of the RFP that is to form a Schedule to the Project Agreement, will survive the RFP. Conflicts between or among any of these documents will be resolved in accordance with Section 15.1 of the RFP.

The schedules to Volume II are an integral part of Volume II.

Volumes III- XII – Specifications

Volumes III – XII set out the specifications for the scope of the Project (collectively, the “Specifications”).

The Government is in the course of finalizing its arrangements with respect to the internal administration of the Draft Project Agreements (as defined in section 1.4 of the RFP), the Guaranteed Price Contract (as defined in section 4.3 of the RFP), and any related ancillary agreements (sometimes hereinafter collectively referred to as the “Project Documentation”). While the Project Documentation has been drafted as if PIR will enter into same, to allow necessary flexibility, the Government reserves the right to enter into the Project Documentation either directly as PIR, or through a Crown agent.

1.5 Procurement Schedule

The Project will be implemented in accordance with the procurement schedule set out below.

Stage of Project Implementation ProcessAZ	Target Date
RFP Issued	August 24, 2006
RFP Proponents Meeting [REDACTED]	[REDACTED]
First Round of Project Agreement Comments Due	September 18, 2006
Commercially Confidential Meetings	[REDACTED]
Revised Project Agreement Issued	[REDACTED]
RFP Question Period Ends	October 30, 2006
Second Round of Project Agreement Comments Due	[REDACTED]
Final Project Agreement Issued	[REDACTED]
RFP Closing Deadline	2:00:00 p.m. on November 14, 2006
Supplementary RFP Submission Form and Additional Copies of RFP Submission Due	2:00:00 p.m. on November 16, 2006
Preferred Proponent Notification	December 2006
Commercial Close	December 2006
Financial Close	December 2006

The dates listed in the table above are subject to change at the sole and absolute discretion of the Sponsors. Where applicable, RFP Proponents will be given written notice of any change which may take the form of an addendum.

Any reference to time is to local time in Toronto, Ontario and will be measured by the clock at Infrastructure Ontario at the Submission Address set out in Section 13 of the RFP.

2 PROJECT SPONSORS

2.1 PIR

PIR works with partners inside and outside the Government to modernize public infrastructure, plan for growth, and care for the environment in ways to enhance the quality of life and contribute to economic success. PIR also manages the Government's capital assets and is the owner of the lands on which the Project will be situated.

2.2 Infrastructure Ontario

Infrastructure Ontario is a Crown corporation of the Government and is responsible for providing project management and strategic analysis for the procurement, financing, evaluation and delivery of public infrastructure investments made by the Government.

2.3 MCYS

MCYS is involved over the long-term in working to provide a community-based, child and youth centered system that supports families and focuses on key areas including early learning and care, protection and assistance for children and youth at risk and supports children with special needs. MCYS is responsible for the functional and operational aspects of this Project.

3 PROCUREMENT PROCESS OVERVIEW

3.1 Procurement Process Overview

The procurement stages for the Project are as follows:

- **Stage 1 – RFQ:** This stage commenced when the RFQ was issued and included the evaluation and scoring of RFQ Submissions, during which Pre-Qualified Proponents were invited to respond to this RFP as RFP Proponents. The RFQ stage also pre-qualified mechanical, electrical and security integration subcontractors by requiring the subcontractors to submit evidence of qualification through the RFQ Proponents' RFQ Submissions. The RFQ stage ended when the Pre-Qualified Proponents and Pre-Qualified Subcontractors received notification from the Sponsors of their eligibility to participate in the RFP stage.
- **Stage 2 – RFP:** This stage commenced when this RFP was issued and includes the evaluation and scoring of RFP Submissions from RFP Proponents.

The Sponsors will, at their sole and absolute discretion, choose one of the following two options for selecting the Preferred Proponent (as defined below):

- (a) **Option #1:** The Sponsors select the highest scoring RFP Proponent as the "Preferred Proponent" and notify the second highest scoring RFP Proponent that it is the "Reserve Proponent"; or

- (b) **Option #2:** The Sponsors enter into separate and distinct negotiations, using Commercially Confidential Meetings (as defined in Section 10 of the RFP) (“Negotiations Process”) with the highest scoring RFP Proponent or the two highest scoring RFP Proponents (“Negotiation Proponents”).

The Negotiations Process may be used by the Sponsors to confirm the financing costs of the Negotiation Proponents or to negotiate any other aspect of the RFP Submission (e.g. schedule, alternative price, unit price).

Following this Negotiations Process, Negotiation Proponents may be asked to revise their RFP Submissions (“Revised Proposals”). Revised Proposals will be evaluated in order to determine which Revised Proposal offers the best value to the Sponsors. The Preferred Proponent will be the Proponent that offers the best value. The other Negotiation Proponent will be designated as the Reserve Proponent.

The Sponsors reserve the right to select a Preferred Proponent on the basis of the original RFP Submission.

Further details of the Negotiations Process will be communicated in writing to the Negotiation Proponents.

The Fairness Commissioner (as defined in Section 14.2 of the RFP) will oversee the Negotiations Process.

- **Stage 3 – Commercial Close:** This stage commences when a Preferred Proponent has been notified. The Preferred Proponent will be required to execute the Final Project Agreement without substantial amendments (subject to Section 5.5 of the RFP) (“Commercial Close”), and become the “Selected Bidder” by the last day of the Commercial Close time period specified in Section 1.5 of the RFP (“Commercial Close Date”).

As set out in Section 15.15 of the RFP, there are certain conditions precedent to PIR’s execution and delivery of the Project Agreement.

If the PIR Conditions are met and the Preferred Proponent fails to execute the Final Project Agreement without substantial amendments (subject to Section 5.5 of the RFP) on or before the Commercial Close Date, the Sponsors may exercise their rights, including, but not limited to, the rights as set out in Section 15.16 of the RFP.

The execution of the Final Project Agreement by the Preferred Proponent is a commitment to complete the Project at the Guaranteed Price subject only to adjustment of the Interest Reference Rate as set out in Section 2.6 of the Project Agreement and to non-satisfaction of the “Lender Conditions” as set out in Section 2.4(b) of the Project Agreement whether or not Financial Close is achieved by the Financial Close Target Date (as defined below).

- **Stage 4 – Financial Close:** This stage commences when the Final Project Agreement is executed. The Selected Bidder, PIR, the Lender and any other necessary parties will execute the Implementing Agreements (as defined in the Project Agreement), as applicable, under the Final Project Agreement including any other related or ancillary agreements required, including (but

not limited to) required financial documents (“Financial Close”) by the last day of the Financial Close time period specified in Section 1.5 of the RFP (“Financial Close Target Date”).

Subject to Section 2.4(b) of the Project Agreement, if, for any reason, a Selected Bidder and the Lender, as applicable, fail to execute the Implementing Agreements on or before Financial Close Target Date, the Sponsors may exercise their rights including, but not limited to, the rights as set out in Section 15.16 of the RFP.

- **Stage 5 – Construction:** This stage commences upon Financial Close and ends when construction is completed.
- **Stage 6 – Completion and Payment:** This stage commences on the Substantial Performance Date (as defined in the Guaranteed Price Contract). As set out in the Guaranteed Price Contract, following achievement of Substantial Performance of the Work (as defined in the Guaranteed Price Contract), the Guaranteed Price (as defined in the Guaranteed Price Contract) will be paid subject to any required or permitted holdbacks as provided for under the Guaranteed Price Contract.

3.2 Security

In order to secure the financial commitment of the RFP Proponents, the Sponsors require an original bid bond of a minimum of five percent (5%) of the Guaranteed Price from an approved Surety in the form attached as Appendix A7-23 to this RFP (“Security”) submitted by the RFP Closing Deadline. Upon achieving Financial Close, the Security submitted by all RFP Proponents (including the Selected Bidder) with their RFP Submissions will be released.

Delays by the Preferred Proponent in executing the Final Project Agreement or by the Selected Bidder in achieving Financial Close may cause the Sponsors to draw and retain the Security submitted by the Preferred Proponent as liquidated damages as discussed in Section 15.16 of the RFP.

3.3 The Approval Process

Commercial Close is subject to the Sponsors obtaining all necessary authorizations and approvals from any authority or entity whatsoever (including, without limitation, the Sponsors’ internal committees, boards, or any other decision-making entities and any level of governmental or administrative body, tribunal, committee, office or any other authority). As set out in Section 15.15 of the RFP, one of PIR’s Conditions is that the PIR has received all necessary authorizations and approvals to proceed with the Project and to enter into the Project Agreement.

3.4 RFP Proponents Meeting

A mandatory RFP Proponents meeting (“RFP Proponents Meeting”) will be held to provide information about the Project and the opportunity to visit the Project site. The time, date and location of the RFP Proponents Meeting is set out in Section 1.5 of the RFP. RFP Proponents will be notified of any further details of the RFP Proponents Meeting in writing.

4 PROJECT STRUCTURE OVERVIEW

4.1 Build-Finance Structure Overview

Two basic build-finance structures are expected:

“Build-Finance Structure #1”: The Selected Bidder will be the “Contractor” and will be the direct borrower of the Lender under the financing and will complete the Project under the Guaranteed Price Contract entered into with PIR. Under this structure, PIR and the Selected Bidder will enter into Version 1 of the Project Agreement, the Construction Contract Amending Agreement (as scheduled to Version 1 of the Project Agreement) and, with the Lender, into the Lender’s Direct Agreement (as scheduled to Version 1 of the Project Agreement). This structure is illustrated in Appendix 3 of the RFP.

“Build-Finance Structure #2”: The Selected Bidder will be “Project Co” and will enter into Version 2 of the Project Agreement. Project Co will be the direct borrower of the Lender under the financing and, as the original Owner party to the Guaranteed Price Contract, will pay the Base Progress Payments (as defined in the Guaranteed Price Contract) to the Contractor under the Guaranteed Price Contract through to the Reimbursement Payment Date. PIR will have the capacity of Owner under the Guaranteed Price Contract through the Limited Assignment of Construction Contract (as scheduled to Version 2 of the Project Agreement) and PIR, Project Co, the Selected Bidder and the Lender will enter into the Lender’s Direct Agreement (as scheduled to Version 2 of the Project Agreement). This structure is illustrated in Appendix 3 of the RFP.

Each RFP Proponent is free to select either Build-Finance Structure #1 or #2.

4.2 Project Agreement

(a) Introduction

In the scenario of Build-Finance Structure #1, the parties to the Project Agreement will be PIR and the Selected Bidder. The Project Agreement will require the Selected Bidder to enter into the Guaranteed Price Contract with PIR and for the Selected Bidder, in the capacity of the Contractor, to complete the Project in accordance with the Guaranteed Price Contract and to finance the Base Progress Payments through to the Reimbursement Payment Date. The Selected Bidder and PIR will enter into the Construction Contract Amending Agreement which will relieve PIR of any obligation to make Base Progress Payments to the Contractor through to the Reimbursement Performance Date. Upon achievement of the Substantial Performance Date, PIR will pay the Guaranteed Price (subject to any required holdbacks and adjustments as provided in the Project Agreement). This payment is to be applied first toward full and final payment of the Project financing.

In the scenario of Build-Finance Structure #2, the parties to the Project Agreement will be PIR, Project Co and the Selected Bidder. The Project Agreement provides for Project Co to enter into the Guaranteed Price Contract (in the capacity of Owner) with the Selected Bidder (in the capacity of the Contractor). Project Co’s interest, in the capacity of Owner, in the Guaranteed Price Contract will then be assigned to PIR except for the obligation to make Base Progress Payments to the Contractor through to the Reimbursement Payment Date which payment obligation Project Co will retain. Project Co will enter into the financing with the Lender to fund its obligations to make Base Progress

Payments to the Contractor. The Project will be completed by the Contractor under the Guaranteed Price Contract Upon achievement of the Substantial Performance Date, PIR will pay the Guaranteed Price (subject to any required holdbacks and adjustments as provided in the Project Agreement). This payment is to be applied first toward full and final payment of the Project financing.

The two versions of the Draft Project Agreement found in Volume II of this RFP are each tailored to one of the two different Build-Finance Structures. Version 1 of the Draft Project Agreement reflects the Build-Finance Structure #1. Version 2 of the Draft Project Agreement reflects the Build-Finance Structure #2. RFP Proponents must base their RFP Submission on only one of the versions of the Final Project Agreement.

(b) Commentary Process

The Sponsors will invite comments from RFP Proponents on both versions of the Draft Project Agreement, including its schedules (which include the Guaranteed Price Contract), which commentary process is anticipated to occur in two rounds. RFP Proponents may comment on both versions of the Draft Project Agreement. The first round will consist of written comments by RFP Proponents on the Draft Project Agreement, including any of its schedules, followed by a Commercially Confidential Meeting (discussed in Section 10 of the RFP) with each RFP Proponent. It is critical that RFP Proponents involve their lenders throughout the commentary process because the Sponsors will not consider qualifications to comments to the effect that the Project Agreement or the comments themselves are subject to further review by the lenders.

The first round of comments is based on the Draft Project Agreement. After considering the first round of written comments and the remarks of RFP Proponents at the Commercially Confidential Meetings, the Sponsors may issue a Revised Project Agreement to RFP Proponents incorporating all the comments submitted in the first round of comments that are acceptable to the Sponsors in their sole and absolute discretion.

If a Revised Project Agreement is issued, the second round of comments will be based on the Revised Project Agreement, including its schedules (which include the Guaranteed Price Contract). If a Revised Project Agreement is not issued, the second round of comments will be based on the Draft Project Agreement, including its schedules (which include the Guaranteed Price Contract) and/or any response issued by the Sponsors to the RFP Proponents. After considering the second round of written comments, the Sponsors will issue a Final Project Agreement, including its schedules (which include the Guaranteed Price Contract).

All RFP Submissions must be based on only one of the versions of the Final Project Agreement, including all of its schedules. The Selected Bidder must be prepared to execute the Final Project Agreement without substantial amendment.

The first round and second round of Project Agreement comments are due at the date and time specified in Section 1.5 of the RFP. Written comments are to be submitted to the email address set out in Section 11 of the RFP. Project Agreement comments submitted by means other than as set out in Section 11 of the RFP may not be considered.

4.3 Guaranteed Price Contract

The Project will be constructed by the Selected Bidder under the terms of a guaranteed price construction agreement in the form of the Canadian Construction Documents Committee Cost Plus Contract (with guaranteed maximum price option) (CCDC3-1998) (“Guaranteed Price Contract”) in either Build Finance Structure #1 or the Build Finance Structure #2. The Guaranteed Price Contract provides for the obligations of Project Co or the Selected Bidder to construct the Project in accordance with the plans and specifications prepared by the Architect (as defined below) engaged by the Sponsors at a Guaranteed Price (as defined in the Guaranteed Price Contract), subject to permitted change orders. An informal draft of the Guaranteed Price Contract is attached as Schedule 1 of the Draft Project Agreement. By addendum, a formal form of the Guaranteed Price Contract may be issued on a CCDC 3 – 1998 Cost Plus Contract (with guaranteed maximum price option) form with all amendments made by way of supplementary conditions which will be the form of construction contract for the Project.

5 FINANCIAL ISSUES

5.1 Responsibility for Financing

The Selected Bidder will be responsible for financing all progress payments (except certain owner-retained payment obligations as expressly provided with the Guaranteed Price Contract) incurred in the construction of the Project until the Substantial Performance Date. After achievement of the Substantial Performance Date, PIR will pay the Guaranteed Price (subject to any required adjustments and holdbacks as provided in the Project Agreements) on the Reimbursement Payment Date. This payment is to be applied first toward full and final payment of the Project financing.

RFP Proponents should incorporate this anticipated payment into the Financial Model and other documentation to be submitted as contemplated in this RFP (including Appendix 8 to this RFP) and, in particular, as the same may impact upon the Cost of the Financing (as defined in the Guaranteed Price Contract).

5.2 Lender’s Direct Agreement

In both Build-Finance Structure scenarios, Project Co (in Build-Finance Structure # 2) and the Selected Bidder (in Build-Finance Structure # 1) would be expected to enter into a lender’s direct agreement with PIR and the Lender (the “Lender’s Direct Agreement”, attached as a Schedule to the Draft Project Agreement). The Lender’s Direct Agreement allows for the Project Agreement and the Guaranteed Price Contract to be assigned to the Lender as security and sets out the rights and obligations of PIR, Project Co (in Build-Finance Structure # 2) and the Selected Bidder (in Build-Finance Structure #1) in relation to the Lender under the Project Agreement and the Guaranteed Price Contract. A copy of the Lender’s Direct Agreement and all other Implementing Agreements will be executed and delivered at Financial Close.

5.3 Tax Issues

Proponents shall be solely responsible for obtaining and relying on tax advice from their own advisors and experts, including obtaining such of their own advance interpretations and rulings in

relation to the Project (including in relation to the proposed structure and its tax consequences) as they consider appropriate or necessary.

5.4 Proposed Construction Schedule

At this stage in the procurement process, the Sponsors anticipate that key dates in the construction schedule may occur as set out in the table below. RFP Proponents should arrive at their own conclusions of realistic schedules and dates.

Event:	Anticipated Date:
Commencement of Construction Schedule	The commencement date of the Construction Schedule (as defined in the Guaranteed Price Contract) is the day following the date of Financial Close.
Financial Close	Date on which the Implementing Agreements are executed would occur on the date set out in Section 1.5 of the RFP.
Substantial Performance Date	This date, as defined in the Guaranteed Price Contract, would occur no later than twenty-two (22) months after Financial Close inclusive of the Schedule Cushion described in the Guaranteed Price Contract.
Total Completion	Date for the completion of minor deficiencies would occur within one hundred and twenty (120) days of the Substantial Performance Date.

5.5 Reasonably Required Amendments to the Project Agreement

Any amendments to the Project Agreement or the Implementing Agreements (as defined in the Project Agreement) that are reasonably required to accommodate the RFP Proponent's financing arrangements may be permitted by the Sponsors under the following conditions:

- (a) such amendments do not affect the intended purpose of the Project Agreement or the Implementing Agreements;
- (b) such amendments are not otherwise detrimental to PIR; and
- (c) such amendments are accepted by the Sponsors in their sole and absolute discretion.

6 PROJECT SCOPE

A general overview of the Project is found in Appendix 4 of the RFP and the work is further described in the Guaranteed Price Contract found as a schedule to the Draft Project Agreement and the Specifications found in Volume III to XII.

7 INSURANCE DURING RFP PROCESS

7.1 Insurance During RFP Process

During the RFP process and until the achievement of Financial Close, the RFP Proponent should ensure that it has obtained, and at all times keeps and maintains in force, in accordance with the following requirements, whenever the RFP Proponent, any of its proposed subcontractors, or any of their respective directors, officers, employees, consultants or agents are present at the Project site or at any facilities or premises of the Sponsors (including for the purposes of site visits):

- **Comprehensive General Liability** insurance, having an inclusive limit of not less than \$2,000,000 for each occurrence or accident and covering all sums which the RFP Proponent may become legally obligated to pay for damages as a result of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to, destruction of, or loss of use of property caused by an occurrence or accident arising out of any operations carried out in connection with this RFP.
- **Vehicle Public Liability and Property Damage** insurance, in the amount of not less than \$2,000,000 per occurrence, for vehicles used by RFP Proponents (or their respective directors, officers, employees, consultants and agents) while on or at the Project site or on or at any facilities or premises owned by any of the Sponsors.

RFP Proponents shall be responsible to ensure that any of their proposed subcontractors maintain the above or comparable insurance. The Sponsors reserve the right, at any time, to require that the RFP Proponents provide assurance and/or evidence that the above or comparable insurance is in place. If an RFP Proponent proposes to perform any site investigations at the Project site and the risks related to which may not be fully insured under the above policies, the Sponsors reserve the right to require the RFP Proponent, at its own cost, to obtain insurance additional to that specified above to the Sponsors' satisfaction.

8 RFP SUBMISSION REQUIREMENTS AND EVALUATION

Appendix 5 of this RFP contains detailed RFP Submission requirements and evaluation criteria. As further detailed in Appendix 5 of the RFP, the RFP Submission Form (Appendix 7) and the Supplementary RFP Submission Form (Appendix 8) are Submission Requirements (as defined in Appendix 5 of the RFP).

Among other items in the RFP Submission Form, as set out in Appendix 7, RFP Proponents will be required to submit a Guaranteed Price for the Project which will be based on the Final Project Agreement and the Guaranteed Price Contract. RFP Proponents must also submit the Total Cost of the Work (as defined in the Guaranteed Price Contract) and the Cost of the Financing (as defined in the Guaranteed Price Contract), which together make up the Guaranteed Price.

As set out in Appendix 8, as part of the Supplementary RFP Submission Form, RFP Proponents will be required to propose alternative pricing, separate pricing and unit pricing. RFP Proponents will also have the opportunity (but are not required) to propose alternate pricing that may result in improved value for money for the Sponsors.

9 RFP SUBMISSION INSTRUCTIONS

Appendix 5 of this RFP contains detailed RFP Submission instructions.

10 COMMERCIALLY CONFIDENTIAL MEETING PROCESS

Commercially Confidential Meetings will occur as confidential, bilateral meetings between the Sponsors and each RFP Proponent (“Commercially Confidential Meetings”) as is required or necessary in accordance with the RFP or as agreed to by the Sponsors and the RFP Proponent.

No statement, consent, waiver, acceptance, approval or anything else said or done in any of these Commercially Confidential Meeting by the Sponsors or their Advisors (as defined in Section 14.1) shall amend any provision of the RFP, Project Agreement or any other agreement, or be binding on the Sponsors, or be relied upon in any way by RFP Proponents, except when and only to the extent confirmed in writing by the Sponsors through the Contact Person.

The Fairness Commissioner will be present during some or all of these meetings. The Sponsors reserve the right to have any of its Advisors participate in such meetings and conference calls as the Sponsors, in their sole discretion, may require to facilitate discussion or to advise the Sponsors on the Project. The Sponsors reserve and have the right, in their sole discretion, to issue written guidance notes, directions or an addendum to the RFP to all RFP Proponents.

11 INQUIRIES AND COMMUNICATION DURING THE RFP PROCESS

11.1 Inquiries and Questions

For this Project the Sponsors have engaged the architect (“Architect”) identified in Appendix 2 of the RFP.

Except for communications during meetings, all inquiries, questions and other communications during the RFP process must be submitted in writing in MS Word format using the Request for Information Form as set out in Appendix 6 of the RFP and either emailed to [REDACTED] or uploaded to a web-based data room as more fully described below.

After the RFP Proponents Meeting, those RFP Proponents that attended the RFP Proponents Meeting will be granted access to a web-based data room (Autodesk-Buzzsaw) where it will be possible to upload all inquires, questions and other communications directly to a specified folder. All inquiries, questions and other communications uploaded to the web-based data room must be submitted in MS Word format using the Request for Information Form as set out in Appendix 6.

Written inquiries and questions submitted by means other than as discussed in this Section 11.1 may not be considered.

The Sponsors may establish other systems and / or protocols for receiving questions from RFP Proponents. If so, the Sponsors will provide written details and instructions to the RFP Proponents.

Written responses by the Sponsors will be issued to all RFP Proponents, except for responses to questions of a minor or administrative nature that the Sponsors consider, in their sole discretion, to relate only to the RFP Proponent who submitted the question and which may be addressed only to that RFP Proponent by way of a letter of clarification.

RFP Proponents are also permitted to submit Commercial in Confidence written questions using the Request for Information Form. Where a question is deemed to be Commercial in Confidence, the response will be forwarded only to the RFP Proponent who submitted the question. In the event that the Sponsors deemed the questions be of a general nature, the RFP Proponent would be given the opportunity either to withdraw the question or allow for the question and response to be circulated to all RFP Proponents.

The Sponsors reserve the right to provide information to all RFP Proponents, even if the question is retracted, if the question and response could have a significant influence on the procurement or outcome.

RFP Proponents are encouraged to limit their written questions to those that are of a logistical or time sensitive nature and address the remaining questions through the Commercially Confidential Meeting process.

No communications or responses from the Sponsors may be relied upon by RFP Proponents unless and only to the extent confirmed in writing by an addendum to the RFP or by a written response issued by the Architect or Contact Person. Any reliance by an RFP Proponent on any information obtained by an RFP Proponent which is not contained in an addendum to the RFP or in a written response issued by the Architect or Contact Person shall be at the RFP Proponent's sole risk and without recourse against the Sponsors, its Advisors or their respective directors, officers, employees, or agents.

11.2 Access to Site

For the purposes of this section, the term "site" refers to the Project site and existing site improvements. RFP Proponents are not permitted to access the Project site without prior approval by the Sponsors. RFP Proponents wishing to arrange a site visit should submit their request to the Architect as set out in Section 11.1 and indicate the date, time, proposed attendees and purpose for the visit. The request should be submitted as far in advance of the proposed visit as possible.

The Sponsors will use reasonable efforts to accommodate and coordinate all requests and, through the Architect, will confirm arrangements for the visit.

The Sponsors reserve the right to limit the number of attendees of the RFP Proponent and to have a person present during the visit to monitor the RFP Proponent's activities during all visits.

11.3 Communications with City, Other Governmental Authorities and Utilities

RFP Proponents may communicate directly with the local municipal government (“City”), other governmental authorities, or utilities in respect to their requirements related to the Project. The Sponsors at their sole discretion may request representatives from the City and other governmental authorities to be present during any one or more of any meetings with RFP Proponents.

In no event will the Sponsors be responsible for any representations, statements, assurances, commitments or agreements which RFP Proponents receive or believe they may have received from the City, other governmental authorities, or utilities. RFP Proponents rely on such representations, assurances, commitments and agreements at their sole risk without recourse against the Sponsors. If RFP Proponents wish to rely on such representations, assurances, commitments and agreements they are solely responsible for ensuring they are incorporated into binding written agreements between the RFP Proponent and the City, other governmental authorities, or utilities.

11.4 Media Releases and Public Disclosures

RFP Proponents shall not issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the Project, the Project Agreement, or any matters related thereto, without the prior written consent of the Sponsors.

RFP Proponents shall, and shall ensure that their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with the Sponsors' media release and publicity protocols and/or guidelines, as such protocols and/or guidelines are updated by Sponsors from time to time.

12 AMENDMENTS TO RFP SUBMISSIONS PRIOR TO RFP CLOSING DEADLINE

At any time prior to the RFP Closing Deadline for RFP Submissions set out in Section 1.5 of the RFP, an RFP Proponent may amend its RFP Submission. An RFP Proponent wishing to amend its RFP Submission may be requested to submit the amended RFP Submission in the manner and within the deadlines set out in this RFP as if such amended RFP Submission were a new RFP Submission. If so requested, the RFP Proponent must withdraw, in writing, its original RFP Submission. Should the original RFP Submission not be withdrawn, the revised RFP Submission may not be reviewed. This Section 12 applies whether the amendment is initiated by an RFP Proponent or submitted by an RFP Proponent in response to additional information provided by the Sponsors.

13 RFP CLOSING DEADLINE, CONTACT PERSON AND SUBMISSION ADDRESS

RFP Submissions must be received on or before the RFP Closing Deadline set out in Section 1.5 of the RFP.

Time will be measured by the Infrastructure Ontario clock located at the Submission Address below. Late RFP Submissions will not be considered and will be returned unopened, except at the absolute discretion of the Sponsors in the case of known logistical problems, such as extreme weather conditions, courier company labour disruption or extraordinary justifiable events.

RFP Submissions must be delivered to the attention of the Contact Person at the Submission Address below:

Contact Person:



Submission Address: Ontario Infrastructure Projects
Corporation/Infrastructure Ontario
9th Floor
777 Bay Street
Toronto, ON M5G 2C8

Faxed or e-mailed RFP Submissions will not be accepted in response to this RFP.

It is the sole responsibility of RFP Proponents to ensure that RFP Submissions and any other submissions required under this RFP are received by the Contact Person on or before the deadlines stated in Section 1.5. The Sponsors are not liable or responsible for inhibited or interrupted courier, mail or other service, regardless of the postmark, weigh bill or other details.

The following form is part of the RFP Submission and must be submitted in the manner specified in Section 9 of this RFP and is due to the Contact Person at the Submission Address set out in this Section 13 on or before the date and time set out in Section 1.5 of the RFP:

- Supplementary RFP Submission Form (Appendix 8)

14 REVIEW AND EVALUATION OF RFP SUBMISSIONS

14.1 Evaluation Committee and Advisors

RFP Submissions will be evaluated by a committee established for that purpose by the Sponsors (“Evaluation Committee”). Generally, the Evaluation Committee will be composed of senior staff from Infrastructure Ontario and senior staff from MCYS. The exact size, structure and composition of the Evaluation Committee will be at the Sponsors’ sole discretion.

The Evaluation Committee may be assisted by any individual, firm, corporation or other organization (including the Government) from whom the Sponsors may seek advice in connection with the Project (“Advisors”) and any other personnel from the Sponsors’ organizations.

In its evaluation and scoring of RFP Submissions, the Evaluation Committee may consider any and all reports, comments and recommendations from and by the Advisors and other personnel from other Sponsors’ organizations in relation to any and all parts of the RFP Submissions. Without limiting the ability of the Evaluation Committee to establish its own procedures for the review, evaluation and scoring of RFP Submissions, the Evaluation Committee may use the Advisors in any way that the Evaluation Committee in its sole discretion considers will be of assistance to the Evaluation Committee. Final scoring, however, will be performed only by the Evaluation Committee.

14.2 Fairness Commissioner

The Sponsors have appointed the Fairness Commissioner as identified in Appendix 2 of this RFP to oversee the procurement process.

14.3 Completeness Review

As per Appendix 5 of this RFP, the RFP Submissions will be subjected to a completeness review to ensure substantial completeness. Subject to Section 14.4 and 14.8 of this RFP, failure to provide a substantially complete RFP Submission may result in the RFP Submission not being evaluated.

14.4 Clarifications and Additional Information

If an RFP Submission appears unclear, deficient or to have an omission, the Evaluation Committee, at its sole discretion, has the option to and may request clarifications and additional information from the RFP Proponent from time to time prior to the completion of the scoring of RFP Submissions by the Evaluation Committee. In addition, the Evaluation Committee at its sole discretion may also from time to time request that an RFP Proponent submit additional information relating to any aspect of its RFP Submission which the Evaluation Committee would like to have to assist it to understand and evaluate the RFP Submission. Without limiting the generality of the foregoing, such requests may be made for information that has been partially or wholly omitted from an RFP Submission, and whether such omission would otherwise render the RFP Submission void.

If the Evaluation Committee requests clarifications or additional information, such requests will be made in writing and submitted to the applicable RFP Proponent by the Contact Person on behalf of and for the Evaluation Committee. The Evaluation Committee may consider and take into account in the evaluation and scoring of RFP Submissions any and all clarifications and additional information provided by RFP Proponents in response to such written requests, in the same manner, for the same purposes and to the same extent as if those clarifications and additional information were originally part of the RFP Submission and submitted prior to the RFP Closing Deadline.

If, during any meetings, RFP Proponents are orally requested to provide any clarifications or to provide additional information and those clarifications or additional information cannot be provided immediately, such clarifications and additional information are not to be provided after the meeting unless expressly requested in writing by the Evaluation Committee in accordance with the foregoing paragraph of this Section 14.4.

Any clarifications or information provided after the RFP Closing Deadline that are not given orally during meetings or not given in response to an express written request in accordance with the foregoing may not be considered by the Evaluation Committee or the Advisors.

To assist with the review and understanding of any particular aspect of RFP Submissions, the Evaluation Committee may at its sole discretion at any time and from time to time meet with RFP Proponents individually or request written clarifications. The agenda and procedure for such clarification meetings will be prepared by the Evaluation Committee. Such meetings will be scheduled at mutually agreeable times with RFP Proponents.

The Evaluation Committee reserves the right, during any one or more meetings between an RFP Proponent and any or all members of the Evaluation Committee, to have present any of its Advisors or any personnel of the Sponsors.

During such meetings, RFP Proponents will discuss and clarify their RFP Submissions and respond to questions. RFP Proponents, however, will not be allowed to submit new materials to supplement or add to their RFP Submissions except when expressly requested by the Evaluation Committee, through the Contact Person, to submit that information.

14.5 Right to Verify

The Evaluation Committee at its sole discretion may, itself or through the Advisors:

- Independently verify any information contained in any RFP Submission (including conducting credit, reference and other checks).
- Independently verify any statements or information presented during any meetings.
- Obtain references from individuals and organizations other than those listed by RFP Proponents in their RFP Submissions.

14.6 Use of RFQ Submissions by Evaluation Committee

The Evaluation Committee in its evaluation and consideration of RFP Submissions may at its sole discretion take into account and rely upon any and all of the following:

- Information submitted as part of the RFQ Submissions will be used and relied upon by the Evaluation Committee and/or the Sponsors. In such case, RFP Proponents should ensure that if any RFQ Submission information is incorrect or has been superseded that it is corrected and new information is provided as part of the RFP Submission.
- The results of reference checking of RFP Proponents that was performed during the review and evaluation of RFQ Submissions in the RFQ stage.

14.7 Scoring

In evaluating RFP Submissions, the Evaluation Committee will assign a score to each RFP Submission as set out in greater detail in Appendix 5 of this RFP. The Evaluation Committee's decisions shall be final and not subject to dispute or review by RFP Proponents.

14.8 Waiver of Non-Conformities and Qualifications

Notwithstanding any other provision of the RFP to the contrary, if any RFP Submission is received which fails to conform or includes qualifications to the requirements of the RFP, which, in the opinion of the Sponsors, is materially incomplete, obscure or irregular, which contains exceptions or variations not acceptable to the Sponsors, or which omit any material information required to be submitted by the RFP, then the Sponsors, at their sole discretion, reserve the right to waive such non-conformance with or qualifications to the requirements of the RFP on such terms and conditions

as the Sponsors may consider appropriate, even if any such non-conformance, qualification or failure to comply with the requirements of this RFP would otherwise render the RFP Submission null and void, and submit the RFP Submission to the Evaluation Committee for review and evaluation and, ultimately, for consideration by the Sponsors in the same manner as for RFP Submissions that conform to the requirements of the RFP, provided that, in the Sponsors' judgement, such waiver will not give any RFP Proponent a material unfair advantage.

14.9 Compliance with the RFP

If, in the sole discretion of the Sponsors, an RFP Submission does not comply with the requirements set out in the RFP, subject to Section 14.8, the Sponsors shall, without liability, cost or penalty, eliminate the RFP Submission and the RFP Submission shall not be given any further consideration.

For the purposes of this RFP, "comply" and "compliance" mean that the RFP Submission conforms to the requirements of the RFP without material deviation.

A "material deviation" is one that, in the Sponsors' opinion:

- (a) Affects the RFP Proponent's or the Sponsors' obligations or rights in any material way with respect to,
 - (i) the general legal rights and obligations of the Sponsors or the Selected Bidder under the Implementing Agreements;
 - (ii) the scope of the Selected Bidders' obligations under the Implementing Agreements;
 - (iii) the quality of performance required by the Selected Bidder under the Project Agreement; or
- (b) Results in a material component of a requirement set out in the RFP not being complied with.

14.10 Debriefing

After Financial Close, representatives of the Sponsors and the Evaluation Committee, together with the Fairness Commissioner, will be prepared to meet with the unsuccessful RFP Proponents to provide them with a debriefing.

15 GENERAL MATTERS

15.1 Conflicts in Documents

If there is any provision in any part of the Project Agreement, any of its schedules, including the Guaranteed Price Contract, or any part of the RFP which a RFP Proponent considers to be in conflict with and which may hinder the Project, prior to submitting its RFP Submission the RFP Proponent shall notify the Contact Person in writing in accordance with Section 11, giving the details of such apparent conflict and seeking clarification. If notice of apparent conflict is not given by a RFP

Proponent in accordance with the foregoing, the provision which will provide the higher overall value to the Sponsors, in the opinion of the Sponsors, shall govern and take precedence.

Subject to the foregoing, in the event of conflict or inconsistencies between or among any of the documents listed below, the documents shall govern in the following order of precedence, with the first listed taking precedence over each of the documents listed after it:

- Most current release of the Project Agreement and its schedules (including the Guaranteed Price Contract)
- RFP (including any addenda)

If there is a conflict between one of the above documents as issued to RFP Proponents in paper form and the same document as issued to RFP Proponents in digital, electronic or other computer readable form, the paper form shall govern and take precedence.

15.2 Conflict of Interest

Each RFP Proponent must declare in their RFP Submission or as soon as it arises, and continue to be under an obligation to declare, all conflicts of interest, or any situation that might reasonably be perceived as a conflict of interest, that exists now or may exist in the future. In this Section 15.2, "Conflict of Interest" includes any situation or circumstance where in relation to the Project, the RFP Proponent's other commitments, relationships or financial interests:

- could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of independent judgment by any personnel of the Sponsors or their Advisors; or
- could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Project Agreement.

In connection with its RFP Submission, each RFP Proponent shall:

- avoid any Conflict of Interest in relation to the Project;
- disclose to the Sponsors without delay any actual or potential Conflict of Interest that arises during the RFP process;
- at the time of disclosure of the perceived, potential or actual conflict of interest, provide the Sponsors with the RFP Proponent's proposed means to mitigate and minimize such conflict and submit such additional information to the Sponsors as the Sponsors may require to consider the conflict; and
- comply with any requirements prescribed by the Sponsors to resolve any Conflict of Interest.

In addition to all contractual or other rights or rights available at law or in equity or legislation, the Sponsors may immediately exclude an RFP Proponent from further consideration where:

- the RFP Proponent fails to disclose an actual or potential Conflict of Interest;
- the RFP Proponent fails to comply with any requirements prescribed by the Sponsors to resolve a Conflict of Interest; or
- the RFP Proponent's Conflict of Interest cannot be resolved.

Where this Section 15.2 applies, the Sponsors reserve the sole discretion to exclude any RFP Proponent or any subcontractor or consultant to any RFP Proponent on the grounds of Conflict of Interest. The Sponsors may also, in their sole discretion, waive the ineligibility of any one or more of the aforementioned entities on such terms and conditions as the Sponsors, in their sole discretion, may require, including that the RFP Proponent or entity put into place adequate safeguards to mitigate the impact of any Conflict of Interest and to ensure that any and all Confidential Information it may have continues to be kept confidential and not disclosed or used except as expressly allowed by the Sponsors. Without limiting the generality of the foregoing, the Sponsors may at their sole discretion require the RFP Proponent to substitute a new person or entity for the person or entity giving rise to the Conflict of Interest.

RFP Proponents are encouraged to bring all such perceived or potential Conflict of Interest to the attention of the Sponsors prior to the submission of RFP Submissions so that the Sponsors may be able to advise them of whether a waiver will be granted and, if so, the terms and conditions (if any) that may be imposed by the Sponsors as a condition of granting a waiver.

15.3 Confidentiality

“Confidential Information” means all information which the RFP Proponent directly or indirectly receives or acquires from or through any of the Sponsors, either in writing, orally or through observation at the site or at any facilities of the Sponsors, relating to the financing, construction or any other aspect of the Project, including but not limited to: the Project Agreement, trade secrets, designs and design concepts, design data, calculations, procedures and manuals, specifications, drawings, plans and sketches, reports, surveys and any information required by the Sponsors to be Confidential Information. Confidential Information also includes all information prepared by the RFP Proponent and submitted in its RFP Submission.

The Sponsors may require RFP Proponents to execute a confidentiality agreement in advance of accessing any dataroom or Project background or reference information made available by the Sponsors. In addition and in any event, and without limiting any other confidentiality obligations imposed on an RFP Proponent, the RFP Proponent shall at all times hold all Confidential Information in confidence and shall not use or disclose (except as and only to the extent necessary for the preparation of its RFP Submission including providing the Project Agreement to any potential lender and any of its advisors and consultants and providing extracts from the Guaranteed Price Contract and the Contract Documents (as defined in the Guaranteed Price Contract) to any potential subcontractors and suppliers and, if awarded to the RFP Proponent, for the performance of the Project Agreement), any Confidential Information to anyone without the Sponsors' prior written approval. Whenever requested by the Sponsors, the RFP Proponent shall execute and deliver to the Sponsors, and shall cause its personnel, subcontractors, advisors and any other person required by

the Sponsors to execute and deliver to the Sponsors a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to the Sponsors at their sole discretion.

The RFP Submission and all information submitted by an RFP Proponent to the Sponsors, the Evaluation Committee and its Advisors, shall become the property of the Sponsors upon their submission.

The confidentiality obligations of the RFP Proponent shall not apply to any information which falls within any one or more of the following exceptions:

- Information which is lawfully in the public domain at the time of first disclosure to the RFP Proponent, or which, after disclosure to the RFP Proponent, becomes part of the public domain other than by a breach of the foregoing confidentiality obligations by the RFP Proponent or by any act or fault of the RFP Proponent.
- Information which was in the RFP Proponent's possession prior to its disclosure to the RFP Proponent by the Sponsors, and provided that it was not acquired by the RFP Proponent under an obligation of confidence.
- Information which was lawfully obtained by the RFP Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

The Sponsors will use reasonable efforts to maintain the confidentiality of RFP Submissions but only so far as the consultation, evaluation, scoring and approval processes for proceeding to the next stage of the implementation process will allow, having regard to the involvement of third parties in such processes.

Each RFP Proponent must declare and continue to be under an obligation to declare that it does not have knowledge of or the ability to avail itself of Confidential Information of the Sponsors relevant to the Project where the Sponsors have not specifically authorized such use.

15.4 Restrictions on Communication between RFP Proponents

An RFP Proponent shall not discuss or communicate, directly or indirectly, with any other RFP Proponent any information whatsoever regarding the preparation of their RFP Submissions in a fashion that would contravene the applicable law. RFP Proponents shall prepare and submit RFP Submissions independently and without any connection, knowledge, comparison of information, or arrangement, direct or indirect, with any other RFP Proponent.

15.5 No Lobbying

RFP Proponents will not in relation to the RFP or Project engage in any form of political or other lobbying whatsoever to influence the content or outcome of the RFP or any subsequent stage of the procurement process. Further, other than as expressly directed or allowed by this RFP, no RFP Proponent or any of its representative shall attempt to communicate or communicate in relation to the RFP or Project, directly or indirectly, with any representative of the Sponsors, the Ministry of Finance, the Ontario Financing Authority, the Ministry of Government Services, any Minister,

Deputy Minister or elected member of the Government, any member of the Evaluation Committee, the Advisors, any other RFP Proponent, or any director, officer, employee, agent, consultant or representative of any of the foregoing, before or after the RFP Closing Deadline, including for the purposes of:

- Commenting on or attempting to influence views on the merits of the RFP Proponent's RFP Submissions in preference to RFP Submissions of other RFP Proponents.
- Influencing, or attempting to influence, through outside pressures, the scoring and ranking by the Evaluation Committee of the RFP Submissions, or the identification of the Preferred Proponents.
- Promoting the RFP Proponent or its interests in the Project in preference to that of other RFP Proponents.
- Criticizing aspects or attempting to influence the contents of the RFP, the Draft, Revised or Final Project Agreement (including the schedules to the Project Agreement) or the Specifications in a manner, which may give the RFP Proponent a competitive or other advantage over other RFP Proponents.
- Criticizing the RFP Submissions of other RFP Proponents.

In the event of any lobbying or communication in contravention of the foregoing, the Sponsors at their sole discretion may at any time, but will not be required to, reject any and all RFP Submissions submitted by that RFP Proponent without further consideration and, at the Sponsors sole discretion, either terminate that RFP Proponent's right to continue participating in the RFP or any subsequent stage of the procurement process, or impose such conditions on that RFP Proponent's continued participation as the Sponsors at their sole discretion may consider in the public interest or otherwise appropriate.

15.6 Public Announcements and Publicity

Neither RFP Proponents nor their directors, officers, employees, agents, subcontractors, consultants or any other representative shall make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their qualifications, interest in or participation in the Project or this procurement process without the Sponsors' prior written consent, which consent may be arbitrarily withheld or delayed.

RFP Proponents should be aware of and be prepared to accept the Government's commitment to openness and transparency in relation to the RFP and this Project. The Sponsors are bound by this public policy commitment and RFP Proponents shall cooperate and extend all reasonable accommodation to assist the Sponsors to meet this public policy commitment.

To ensure that all publicity originating from or directed to RFP Proponents is fair and accurate and will not inadvertently or otherwise influence the outcome of the RFP process, all publicity in relation to this RFP and the Project, including communications with the press, the media and the public, by or from RFP Proponents (or their directors, officers, employees, agents, subcontractors, consultants

or any other representative) shall be coordinated with and are subject to the prior written approval of the Sponsors.

No press releases shall be issued by any RFP Proponent in relation to the Project without first submitting same to the Sponsors for review and approval. RFP Proponents shall promptly notify the Sponsors of requests for information or interviews from the press and media. The subject and content of all responses to such information requests and to interviews shall be reviewed and coordinated in advance with the Sponsors in the same manner as press releases to provide a fair and accurate release of information in a coordinated fashion. RFP Proponents shall use reasonable efforts to ensure that others associated with the RFP Proponent comply with these requirements.

15.7 *Freedom of Information and Protection of Privacy Act*

RFP Proponents are advised that the Sponsors intend to disclose this RFP and all or any parts of any RFP Submission pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario) (“FIPPA”).

RFP Proponents may mark any part of their RFP Submission as confidential except the name of the RFP Proponent. A watermark or rubber stamp imprint is suitable for this purpose. Subject to the provisions of the FIPPA, the Sponsors will use reasonable commercial efforts to safeguard the confidentiality of any information so marked, but shall not be liable to any RFP Proponent or other person where such information is disclosed. By submitting an RFP Submission, the RFP Proponent acknowledges and agrees that, subject only to removal of information that falls within an exemption under FIPPA, the RFP, any RFP Submission, and the Project Agreement are public documents that may be disclosed by the Sponsors.

RFP Proponents who are concerned about the nature or extent of the disclosure requirements under FIPPA should consult their legal advisors.

15.8 *Copyright and Use of Information in RFP Submissions*

RFP Proponents shall not use or incorporate into their RFP Submissions any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless RFP Proponents have, or will procure through licensing without cost to the Sponsors, the right to use and employ such concepts, products and processes in and for the Project.

All requirements, designs, documents, plans and information supplied by the Sponsors to the RFP Proponents in connection with this RFP are and shall remain the property of the Sponsors and must be treated as confidential and not used for any purpose other than preparing an RFP Submission and fulfilling the Guaranteed Price Contract. RFP Proponents agree that Sponsors own or control all intellectual property rights (including but not limited to copyright, patent and trademark rights) in the requirements, designs, documents, plans and information supplied by the Sponsors to the RFP Proponents in connection with this RFP, and that all rights in and to such designs, documents, plans and information are reserved to Sponsors. Upon request of the Sponsors, all such designs, documents, plans and information (and any copies thereof created by or on behalf of the RFP Proponent) must be returned to the Sponsors.

Unless the Sponsors otherwise agrees in writing, the Sponsors shall be entitled to retain and use, without compensation to any RFP Proponent or anyone else, all RFP Submissions and any additional information submitted by or through RFP Proponents in connection with their RFP Submissions, including any concept, element, idea or other information disclosed in or evident from the foregoing or which may be revealed during any meetings with RFP Proponents. It is a fundamental condition of the RFP Proponent's participation in the RFP process that each of the Sponsors shall have and shall be deemed to be granted a royalty free licence without restriction each to use for the Project (including without limitation to use for any one or more of agreements with any Preferred Proponent or Selected Bidder, agreements with third parties if Preferred Proponent or Selected Bidder negotiations are unsuccessful, and/or any contract in relation to the subject matter of the Project), and that each of the Sponsors shall separately have the right to grant royalty free sub licenses to the Government for other projects, all of the foregoing and including the following:

- All information contained in an RFP Submission or which is disclosed by or through an RFP Proponent to the Sponsors during the evaluation of RFP Submissions or during the process of executing a Project Agreement.
- Any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through an RFP Proponent and revealed to or discovered by the Sponsors, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any RFP Submissions or the Project Agreement (including the Specifications).

RFP Proponents shall ensure that all intellectual property rights associated with any and all of the foregoing (including copyright and moral rights but excluding patent rights) provide for and give the Sponsors the aforesaid rights. It is expressly understood and agreed that any actual or purported restriction in the future on the Sponsors' ability to use any of the above ideas, concepts, products, alternatives, processes, recommendations, suggestions, other information or anything else obtained by or through RFP Proponents shall be absolutely null and void and unenforceable as against the Sponsors, the Government, and their respective Advisors, and that the provisions of this Section 15.8 of this RFP shall take precedence and govern.

15.9 No Reliance on Information

Unless as otherwise stated, the Sponsors do not represent or warrant the accuracy or completeness of any information set out in the RFP (or its appendices or schedules) or of any other background or reference information or documents prepared by the Government or by third parties and which may be made available to RFP Proponents by or through the Sponsors. RFP Proponents shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by RFP Proponents on any and all of such information shall be at the RFP Proponent's sole risk and without recourse against the Sponsors or the Government.

Without limiting the generality of the foregoing:

- Any and all use of or reliance upon any information by RFP Proponents shall be and is subject to all express disclaimers of liability provided with the information, as well as all disclaimers of liability in the Project Agreement.
- The Sponsors and the Government do not warrant and are not responsible in any way for the scope, completeness, appropriateness or accuracy of the Specifications, or any information, representations, statements, assumptions, opinions, interpretations in the Specifications, including in relation to any one or more of: descriptions of the site, geological or subsurface conditions; dewatering; opinions or interpretations based on existing or assumed information; previous studies or optimization; conceptual designs or layouts, statements or estimates of quantities of any part of the work; assumptions or descriptions as to construction means or methods; availability and quality of construction materials; soil disposal; requirements of the City, requirements of other governmental authorities, or for any assumptions or interpretations made by RFP Proponents based on any information contained in any of the Specifications, any interpretations, conclusions, opinions or assumptions reached or made by RFP Proponents based on anything in the Specifications.
- Where investigations and information relating to site conditions or subsurface conditions, has been performed or obtained by the Sponsors, and the reports produced or made available to RFP Proponents through the Sponsors, RFP Proponents are responsible for any site condition or subsurface condition set out in or inferable from any such reports. RFP Proponents are cautioned that any bore hole logs or test pit logs provided with any geotechnical information record only the observations which were made at the specific locations described and at the specific times recorded, and may not be representative of conditions encountered either at locations immediately adjacent thereto or, with respect to groundwater and other conditions, at any other times. Data shown for bore hole logs and test pit logs may not necessarily be representative of anticipated conditions. RFP Proponents shall perform such additional geotechnical and other investigations as they consider necessary and shall obtain and rely on their own geotechnical consultants for all interpretation and opinions, including based on any bore hole logs and test pit logs made available through the Sponsors and others.

By submitting an RFP Submission, each RFP Proponent acknowledges, represents and warrants that its RFP Submission is based on and relies solely upon the RFP Proponent's own examination, knowledge, information, judgment and investigations and not upon any statement, representation or information made, furnished or given by or on behalf of any of the Sponsors or the Government, or their directors, officers, employees, consultants or agent, except where expressly made in the body of the RFP (excluding the appendices to the RFP) and warranted in the body of the RFP to be accurate by the Sponsors for purposes of reliance by the RFP Proponent.

15.10 RFP Proponent's Subcontractors

RFP Proponents shall ensure that all their subcontractors, suppliers, manufacturers and sub-consultants, and everyone associated with or related to the foregoing, are subject to and comply with the provisions of this RFP, particularly the provisions of Sections 15.2, 15.3, 15.4, 15.5, 15.6 and 15.8 of the RFP.

15.11 The Sponsors' Right to Amend or Cancel RFP

The Sponsors reserve the right at their sole discretion at any time and for whatever reason, and without liability to the RFP Proponents or anyone else, by addenda to modify, amend or otherwise change, to extend any schedule or time periods (including the RFP Closing Deadline and the schedule for implementation of the Project) specified within, and to suspend, postpone or cancel, the RFP. All such addenda shall be issued by the Sponsors in writing and shall be expressly identified as an addendum to this RFP.

The Sponsors reserve the right to cancel this RFP and issue a new request for proposals for any or all parts of the Project at their discretion. In such case, the Sponsors may proceed with the Project in such manner as the Sponsors at their sole discretion consider appropriate to obtain the best overall value for the Sponsors.

15.12 The Sponsors' Right to Reject Any and All RFP Submissions

The Sponsors reserve the right at their sole discretion to reject any RFP Submission that does not materially satisfy the conditions described in Appendix 5 of the RFP.

Without limiting but in addition to the foregoing, the Sponsors reserve the right at their sole discretion to refuse to consider, to remove from the evaluation process entirely, and to reject outright any RFP Submission which in the opinion of the Evaluation Committee is materially incomplete, obscure or irregular, which contains exceptions or variations not acceptable to the Evaluation Committee and the Sponsors, or which omits any material information required to be submitted by the RFP.

15.13 Proponents' Expenses

RFP Proponents are solely responsible and without recourse to the Sponsors for their own expenses in preparing and submitting an RFP Submission, and for participating in the RFP process, including but not limited to attending any meetings with the Sponsors, Evaluation Committee or Advisors, and providing any clarifications and additional information that may be requested by the Evaluation Committee or the Sponsors.

15.14 No Liability

In consideration of the RFP Proponent receiving the RFP and being invited to submit an RFP Submission for review and evaluation by the Sponsors:

- (a) the Sponsors and the Government shall not, under any circumstances, be responsible to any RFP Proponent for any costs incurred or damages suffered by an RFP Proponent in relation to the RFP (including in relation to the preparation, review or evaluation of an RFP Submission); and
- (b) the RFP Proponent shall indemnify and hold harmless the Sponsors, the Government, the Advisors, and their respective agents, officers, directors and employees and other releasees from and against any and all claims brought by third parties against them arising out of or related to the RFP, the participation of the RFP Proponent in the

implementation process, or the preparation, submission, negotiation, acceptance or rejection of any RFP Submission.

Without limiting the generality of the foregoing, it is expressly understood and agreed that the Sponsors shall not be under any obligation whatsoever to award the Project Agreement to the RFP Proponent or anyone else and may cancel the RFP at any time for whatever reasons the Sponsors in their sole discretion consider to be in the best interests of the Sponsors.

15.15 PIR Conditions to Project Agreement

The execution and delivery of the Project Agreement by PIR is conditional on, among other things, the following (the "PIR Conditions"):

- (a) PIR is satisfied as to the Key Personnel (as defined in Appendix 7 to the RFP) that will be assigned to the Project;
- (b) PIR is satisfied as to the Preferred Proponent's ability to obtain financing and to achieve Financial Close; and
- (c) PIR has received all necessary authorizations and approvals to proceed with the Project and to enter into the Project Agreement.

15.16 Delay or Failure in Commercial Close and Financial Close

If the Preferred Proponent fails to execute the Final Project Agreement without substantial amendments (subject to Section 5.6 of the RFP) on or before the Commercial Close Date, the Sponsors may, at their sole and absolute discretion, without liability and without prejudice to any other rights they may have at law or in equity, immediately terminate all further dealings with the Preferred Proponent, retain the Security as liquidated damages and not as a penalty and elect to select the Reserve Proponent as the Selected Bidder to execute the Final Project Agreement.

If Financial Close is not achieved in the circumstances described in Section 2.4(a) and 2.5(b) of the Project Agreement, then PIR may, at its sole and absolute discretion, without liability and without prejudice to any other rights it may have at law or in equity, exercise its rights and remedies set out in the same sections and elect to select the Reserve Proponent as the Selected Bidder to execute the Final Project Agreement.

15.17 RFP Submission Irrevocability

All RFP Submissions shall remain valid and irrevocable until one hundred and twenty (120) days following the RFP Closing Deadline.

15.18 Power of the Legislative Assembly

RFP Proponents are advised that no provision of this RFP (including a provision stating the intention of the Sponsors) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.

15.19 Jurisdiction

This RFP, and each of the documents contemplated by or delivered under or in connection with this RFP, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario RFP and Ontario documents, respectively, without regard to conflict of laws principles.

For information purposes only