



# Ontario Shores

## Centre for Mental Health Sciences

**TERMS AND CONDITIONS**

February 2018

## Table of Contents

<b>Article 1 Introduction .....</b>	<b>4</b>
1.1 Definitions .....	4
1.2 Rules of Interpretation.....	6
1.3 Type of Agreement .....	6
<b>Article 2 RFX Terms and Procedures.....</b>	<b>7</b>
<b>Part A Procedure.....</b>	<b>7</b>
2.1 Ontario Shores Contact .....	7
2.2 Information.....	8
2.3 Clarification and Questions .....	8
2.4 Receipt Confirmation .....	9
2.5 Proposal Submission .....	9
2.6 Withdrawal of Proposal.....	10
2.7 Amendment of Proposal .....	10
2.8 Completeness of Proposal.....	10
2.9 Proponent's Proposals.....	10
2.10 Proposal Irrevocability.....	10
2.11 Acceptance of RFX.....	11
2.12 Amendments to the RFX .....	11
2.13 Clarification of Proponent's Proposal .....	11
2.14 Verification of Information .....	11
2.15 Proposal Acceptance .....	12
2.16 Substantial Compliance .....	12
2.17 No Publicity or Promotion .....	12
2.18 Debriefing .....	12
2.19 Bid Protest Procedure.....	12
<b>Part B Additional Terms.....</b>	<b>13</b>
2.20 Confidentiality .....	13
2.21 Freedom of Information and Protection of Privacy Act.....	15
2.22 Competition Act .....	15
2.23 Trade Agreements .....	15
2.24 Canadian Police Information Centre (CPIC) Clearance .....	16
2.25 Permits, Licences, and Approvals.....	16
2.26 Intellectual Property .....	16
2.27 Rights of Ontario Shores – General.....	16
2.28 Rights of Ontario Shores – Preferred Proponent .....	18
2.29 Proponent's Costs.....	19
2.30 Business Travel and Expense Reimbursement .....	19
2.31 No Liability .....	19
2.32 Assignment .....	20
2.33 Entire RFX.....	20
2.34 Priority of Documents.....	20
2.35 Governing Law.....	20
<b>Article 3 General Requirements and Pricing.....</b>	<b>20</b>
3.1 Technical Issues .....	20
3.2 Compliance with Accessibility Standards.....	21
3.3 Acceptance of the Letter/Form of Agreement as Applicably Attached .....	21

**Table of Contents**

**Article 4 Evaluation Process..... 22**  
4.1 General..... 22  
4.2 Tie Break Process..... 23  
4.3 Preferred Proponent ..... 23  
4.4 Discussions with Preferred Proponent..... 23

## Article 1 Introduction

### 1.1 Definitions

In the RFX, unless the context otherwise requires, the following terms have the meanings indicated below:

- (a) **“Agreement”** has the meaning ascribed in Type of Agreement.
- (b) **“Applicable Law”** and **“Applicable Laws”** means any common law requirement and all applicable and enforceable statutes, regulations, directives, policies, administrative interpretations, orders, by-laws, rules, guidelines, approvals, and other legal requirements of any government and/or regulatory authority in effect from time to time.
- (c) **“Business Day”** or **“Business Days”** means Monday to Friday between the hours of 8:30 a.m. to 4:30 p.m., EST except when such a day is a public holiday, as defined in the *Employment Standards Act* (Ontario), or as otherwise agreed to by the parties in writing.
- (d) **“Conflict of Interest”** means any situation or circumstance where, in relation to the performance of its obligations under the Agreement, the Proponent’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair, or be incompatible with the effective performance of its obligations under the Agreement.
- (e) **“Days”** means calendar days.
- (f) **“Eligible Proposal”**, has the meaning ascribed in Evaluation Process, means a Proposal that meets or exceeds a prescribed requirement, allowing it to proceed to the next phase.
- (g) **“Evaluation Team”** means the individuals who have been selected by Ontario Shores to evaluate the Proposals.
- (h) **“Ontario Shores”** means Ontario Shores Centre for Mental Health Sciences
- (i) **“Ontario Shores Contact”** means the individual identified as the Ontario Shores Contact.
- (j) **“Personal Health Information”** means identifying information about an individual in oral or recorded form, that:
  - i. relates to his or her physical or mental health
  - ii. relates to providing health care, including identifying a provider of health care

- iii. is a plan of service within the meaning of the Long Term Care Act
  - iv. relates to the donation of a body part or bodily substance
  - v. relates to payments or eligibility for health care in respect of the individual
  - vi. is a health number
  - vii. identifies a SDM of that individual
  - viii. in a record where the record contains any of the above
- (k) **“Personal Information”** means recorded information about an identifiable individual or that may identify an individual, but does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. As such term is defined in the Freedom of Information and Protection of Privacy Act (FIPPA).
- (l) **“Preferred Proponent”** means the Proponent(s) that Ontario Shores has identified as the highest-ranked Proponent(s) in accordance with the evaluation process.
- (m) **“Proponent”** or **“Proponents”** means an entity that submits a Proposal in response to the RFX and, as the context may suggest, refers to a potential Proponent.
- (n) **“Proposal”** or **“Proposals”** means all of the documentation and information submitted by a Proponent in response to the RFX.
- (o) **“RFX”** is a catch-all term that captures all references to Request for Information (RFI), Request for Proposal (RFP), Request for Quote (RFQ), Request for Supplier Qualifications (RFSQ), Request for Expression of Interest (RFEI), etc.
- (p) **“Request for Proposals”** or **“RFP”** means this Request for Proposals issued by Ontario Shores for the purchase of the Services, and all addenda thereto.
- (q) **“Request for Quotation”** or **“RFQ”** means this Request for Quotations issued by the Ontario Shores’ for the purchase of Goods or Services, and all addenda thereto.
- (r) **“RFX Submission Deadline”** means the Proposal submission date and time as set out in the RFX Tentative Schedule and as may be amended from time to time in accordance with the terms of the RFX.
- (s) **“Services”** means the services intended to be procured pursuant to the RFX.
- (t) **“Unfair Advantage”** means any conduct, direct or indirect, by a Proponent that may result in gaining an unfair advantage over other Proponents, including but not limited to (i) possessing, or having access to, information in the preparation of its Proposal that is confidential to Ontario Shores and which is not available to other Proponents, (ii) communicating with any person with a view to influencing, or being conferred preferred treatment in, the RFX process, or (iii) engaging in

conduct that compromises or could be seen to compromise the integrity of the RFX process and result in any unfairness.

## 1.2 Rules of Interpretation

The RFX shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender.
- (b) Words in the RFX shall bear their natural meaning.
- (c) References containing terms such as “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (d) In construing the RFX, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (e) Unless otherwise indicated, time periods will be strictly applied.
- (f) The following terminology applies in the RFX:
  - (i) Whenever the terms “must” or “shall” are used in relation to Ontario Shores or the Proponents, such terms shall be construed and interpreted as synonymous and shall be construed to read “Ontario Shores shall” or the “Proponent shall”, as the case may be.
  - (ii) The term “should” relates to a requirement which Ontario Shores would like the Proponent to address in its Proposal.
  - (iii) The term “will” describes a procedure that is intended to be followed.

## 1.3 Type of Agreement

The Preferred Proponent shall be required to enter into an agreement (“**Agreement**”) substantially in the form of the draft agreement attached in the Form of Agreement Schedule for each respective RFX.

It is intended that only a single Preferred Proponent will be selected (however, Ontario Shores reserves the right to select more than one Preferred Proponent).

## Article 2 RFX Terms and Procedures

### Part A Procedure

#### 2.1 Ontario Shores Contact

##### 2.1.1 Contact Information

All communications with Ontario Shores regarding any aspect of the RFX (up until any contract award notification) must be directed to Ontario Shores Contact:

Debbie Taylor  
Purchasing Coordinator  
Ontario Shores Centre for Mental Health Sciences  
Purchasing Department, Bldg 5, Level 1, Room 5-1078  
700 Gordon Street, Whitby, ON, L1N 5S9

Email: [taylorde@ontarioshores.ca](mailto:taylorde@ontarioshores.ca)

Phone Number: 905-430-4055 x6908  
Fax Number: 905-430-4034

Proponents that fail to comply with the requirement to direct all communications to Ontario Shores Contact may be disqualified from the RFX process. Without limiting the generality of this provision, Proponents shall not communicate with or attempt to communicate with the following:

- (a) any employee or agent of Ontario Shores (other than Ontario Shores Contact);
- (b) any member of the Evaluation Team; and
- (c) any expert or advisor assisting the Evaluation Team.

##### 2.1.2 Notice

Proponents are advised that from the date of issue of the RFX through any award notification:

- (a) only Ontario Shores Contact is authorized by Ontario Shores to amend or waive the requirements of the RFX pursuant to the terms of the RFX;
- (b) as noted above, Proponents must not contact any officer, director, employee, agent of Ontario Shores except for Ontario Shores Contact, unless instructed to do in writing by Ontario Shores Contact;
- (c) under no circumstances shall a Proponent rely upon any information or instruction from any officer, director, employee, agent of Ontario Shores unless

the information or instruction is provided in writing by Ontario Shores Contact;  
and

- (d) no officer, director, employee, agent of Ontario Shores shall be responsible for any information or instructions provided to the Proponent, with the exception of information or instructions provided in writing by Ontario Shores Contact.

## **2.2 Information**

### **2.2.1 Proponent to Review**

Every Proponent should carefully review the RFX to ensure that it has no reason to believe there are any uncertainties, inconsistencies, errors, omissions, or ambiguities in any part of the RFX. Every Proponent is responsible for conducting its own investigations and due diligence necessary for the preparation of its Proposal.

### **2.2.2 Proponent to Notify**

In the event a Proponent has any reason to believe that any of the circumstances listed in The Proponent to Review Section exist, the Proponent must notify Ontario Shores Contact in writing prior to submitting a Proposal. The Ontario Shores Contact will then clarify the matter for the benefit of all Proponents.

Proponents shall not:

- (a) after submission of a Proposal, claim that there was any misunderstanding or that any of the circumstances set out in the Proponent to Review Section were present with respect to the RFX; or
- (b) claim that Ontario Shores is responsible for any of the circumstances listed in the Proponent to Review Section.

## **2.3 Clarification and Questions**

### **2.3.1 Submission**

The following apply regarding any request for clarification of any aspect of the RFX:

- (a) Proponents must submit requests for clarification by email to the Ontario Shores Contact.
- (b) In submitting a request for clarification, a Proponent must include a contact name, with telephone number and email address.
- (c) Where a question relates to a specific section of the RFX, reference should be made to the specific section number and page of the RFX.
- (d) Requests for clarification must be submitted by the deadline as set out in the RFX Tentative Scheduled Timetable.

### **2.3.2 Questions and Answers**

Ontario Shores shall make reasonable efforts to provide Proponents with written responses to questions that are submitted in accordance with the Submission Section, subject to the provisions of this Section. Questions and answers will be distributed in numbered Addenda to Proponents by posting such Addenda on an Electronic Bidding Tool. In answering a Proponent's questions, Ontario Shores will set out the question(s), but without identifying the Proponent that submitted the question(s). Also, Ontario Shores may, in its sole discretion:

- (a) edit the question(s) for clarity;
- (b) exclude questions that are either unclear or inappropriate; and
- (c) answer similar questions from various Proponents only once.

Where an answer results in any change to the RFx, such answer will be formally documented through the issue of a separate Addendum reflecting that change.

### **2.3.3 Issued Addenda**

Before submitting a Proposal, a Proponent shall be responsible to verify that it has received all of the Addenda that have been issued, which shall be posted on an Electronic Bidding Tool by the deadline as set out in the RFx Tentative Scheduled Timetable, unless it is an Addendum that extends the RFx Submission Deadline.

Any amendment or supplement to the RFx made in any other manner will not be binding on Ontario Shores.

## **2.4 Receipt Confirmation**

Proponents are requested to complete and return either by facsimile or by email the Intent to Bid/Receipt Confirmation Schedule, in accordance with the specific instructions contained therein.

## **2.5 Proposal Submission**

### **2.5.1 General**

To be considered in the RFx process, a Proponent's Proposal/Quote must be received by the RFx Submission Deadline, as set out in the RFx Tentative Scheduled Timetable, in the requested format addressed to the appropriate Ontario Shores Contact and should bear the Proponent's name, return address, and RFx #.

Proposals received after the RFx Submission Deadline shall not be considered and shall be returned to the Proponent unopened. Regardless of the method of delivery of the Proposal chosen by Proponent (such as courier, delivery service, Canada Post),

each Proponent is responsible for the actual delivery of its Proposal to the address and location listed above.

Proposals are to be submitted in English only, and any Proposal received by Ontario Shores that is not entirely in English may be disqualified.

### **2.5.2 Receipt**

Every Proposal received will be date/time stamped at the location referred to in General and a receipt will be provided upon request.

A Proponent should allow sufficient time in the preparation of its Proposal to ensure its Proposal is received by the RFX Submission Deadline.

### **2.6 Withdrawal of Proposal**

A Proponent may withdraw its Proposal only by providing written notice to the Ontario Shores Contact before the RFX Submission Deadline. A Proposal may not be withdrawn after the RFX Submission Deadline. Ontario Shores has no obligation to return withdrawn Proposals.

### **2.7 Amendment of Proposal**

A Proponent may amend its Proposal after submission, but only if the Proposal is amended and resubmitted before the RFX Submission Deadline. The Proponent must provide notice to Ontario Shores Contact in writing and replace its Proposal with a revised Proposal, in accordance with the requirements of the RFX. Ontario Shores has no obligation to return amended Proposals.

### **2.8 Completeness of Proposal**

By submitting a Proposal, the Proponent confirms that all of the components required to use and/or manage the Services have been identified in its Proposal or will be provided to Ontario Shores at no additional charge. Any requirement that may be identified by the Proponent after the RFX Submission Deadline or subsequent to signing the Agreement shall be provided at the Proponent's expense.

### **2.9 Proponent's Proposals**

All Proposals submitted by the Submission Deadline shall become the property of Ontario Shores and will not be returned to the Proponents.

### **2.10 Proposal Irrevocability**

Subject to a Proponent's right to withdraw a Proposal in accordance with the procedure described in Withdrawal of Proposal, a Proposal shall be irrevocable by the Proponent for 120 days from the RFX Submission Deadline.

Proposals will not be opened publicly.

### **2.11 Acceptance of RFX**

By submitting a Proposal, a Proponent agrees to accept and to be bound by all of the terms and conditions contained in the RFX, and by all of the representations, terms, and conditions contained in its Proposal.

### **2.12 Amendments to the RFX**

Subject to the RFX Tentative Schedule and Issued Addenda, Ontario Shores shall have the right to amend or supplement the RFX in writing prior to the RFX Submission Deadline. No other statement, whether written or oral, shall amend the RFX. The Proponent is responsible to ensure it has received all Addenda.

### **2.13 Clarification of Proponent's Proposal**

Ontario Shores shall have the right at any time after the RFX Submission Deadline to seek clarification from any Proponent in respect of that Proponent's Proposal, without contacting any other Proponent. Ontario Shores shall not be obliged to seek clarification of any aspect of any Proposal.

Any clarification sought shall not be an opportunity for the Proponent to either correct errors or to change the Proponent's Proposal in any substantive manner. Subject to the qualification in this provision, any written information received by Ontario Shores from a Proponent in response to a request for clarification from Ontario Shores may be considered to form an integral part of the Proponent's Proposal, in Ontario Shores sole discretion.

### **2.14 Verification of Information**

Ontario Shores shall have the right, in its sole discretion, to:

- (a) verify any Proponent's statement or claim made in the Proponent's Proposal or made subsequently in an interview, site visit, oral presentation, demonstration, or discussion by whatever means Ontario Shores may deem appropriate, including contacting persons in addition to those offered as references
- (b) reject any Proponent's statement, claim or Proposal, if such statement, claim or Proposal is patently unwarranted or is questionable; or
- (c) access the Proponent's premises where any part of the work is to be carried out to confirm Proposal information, quality of processes, and to obtain assurances of viability, provided that, prior to providing such access, the Proponent and Ontario Shores shall agree on reasonable access terms, including pre-notification, extent of access, security, confidentiality and the allocation and amount of any costs incurred in connection with such access.

The Proponent shall co-operate in the verification of information and is deemed to consent to Ontario Shores verifying such information.

## **2.15 Proposal Acceptance**

The lowest price Proposal or any Proposal shall not necessarily be accepted. While price is an evaluation criterion, other evaluation criteria, as set out in the Evaluation Process, will form a part of the evaluation process.

## **2.16 Substantial Compliance**

Ontario Shores shall be required to reject Proposals which are not substantially compliant with the RFX.

## **2.17 No Publicity or Promotion**

No Proponent, including the Preferred Proponent, shall make any public announcement or distribute any literature regarding the RFX or otherwise promote itself in connection with the RFX or any arrangement entered into under the RFX without the prior written approval of Ontario Shores.

In the event that a Proponent, including the Preferred Proponent, makes a public statement either in the media or otherwise in breach of this requirement, in addition to any other legal remedy it may have in law, in equity or within the context of the RFX, Ontario Shores shall be entitled to take all reasonable steps as may be deemed necessary by Ontario Shores, including disclosing any information about a Proponent's Proposal, to provide accurate information and/or to rectify any false impression which may have been created.

## **2.18 Debriefing**

Not later than 60 Days following the date of posting of a contract award notification in respect of the RFX, a Proponent may contact Ontario Shores Contact to request a debriefing from Ontario Shores.

Any request that is not received within the foregoing timeframe will not be considered and the Proponent will be notified of same in writing.

Proponents should note that, regardless of the time of submission of a request by a Proponent, debriefings will not be provided until a contract award notification has been posted.

## **2.19 Bid Protest Procedure**

In the event that a Proponent wishes to review the decision of Ontario Shores in respect of any material aspect of the RFX process, and subject to having attended a debriefing, the Proponent shall submit a written protest ("**Protest**") to Ontario Shores within 10 Days from such a debriefing.

Any Protest that is not received within the foregoing timeframe will not be considered and the Proponent will be notified of same in writing.

A Protest shall include the following:

- (a) a specific identification of the RFX provision and/or procurement procedure that is alleged to have been breached;
- (b) a specific description of each act alleged to have breached the RFX provision and/or procurement procedure;
- (c) a precise statement of other relevant facts;
- (d) an identification of the issues to be resolved;
- (e) the Proponent's arguments and supporting documentation; and
- (f) the Proponent's requested remedy.

For the purpose of a protest under the RFX, the protest procedure to be followed by Ontario Shores is as follows below:

[Bid Dispute Policy](#)

**Part B Additional Terms**

**2.20 Confidentiality**

**2.20.1 Confidential Information of Ontario Shores and the Purchaser**

In respect of all correspondence, documentation, and information of any kind provided by or on behalf of Ontario Shores or Purchaser to a Proponent in connection with or arising out of the RFX or the acceptance of any Proposal:

- (a) The Proponent shall treat such information as confidential and, except as provided otherwise in the RFX, or as may be required by Applicable Laws, the Proponent shall neither disclose nor divulge such information (except to its employees or advisors who require access to the information for the purposes of the RFX and who are subject to binding confidentiality obligations substantially similar to those set out in the RFX) without the express written permission and consent of the Purchaser; provided that such obligation shall not include any information that is or becomes generally available to the public other than as a result of disclosure by the Proponent.
- (b) Such information remains the property of Ontario Shores and shall be removed from Ontario Shores premises only with the prior written consent of Ontario Shores.

- (c) Such information must not be used for any purpose other than for replying to the RFX and for the fulfillment of any related subsequent agreement, if applicable.
- (d) The Proponent agrees to return that information to Ontario Shores upon request.
- (e) Where disclosure is required by law (as referenced in item (a) above), the Proponent agrees to notify Ontario Shores, prior to disclosure of the confidential information.

### **2.20.2 Confidential Information of the Proponent**

Except as provided otherwise in the RFX, or as may be required or permitted by Applicable Laws, Ontario Shores shall treat the Proponents' Proposals (including, but not limited to pricing and product information) and any information gathered in any related process as confidential, and shall neither disclose nor divulge such information (except to its employees or advisors who require access to the information for the purposes of the RFX and who are subject to binding confidentiality obligations substantially similar to those set out in the RFX) without the express written permission and consent of the Supplier; provided that such obligation shall not include any information that is or becomes generally available to the public other than as a result of disclosure by Ontario Shores.

During any part of the RFX process, Ontario Shores or any of its representatives or agents, shall be under no obligation to execute a confidentiality agreement.

In the event that a Proponent refuses to participate in any required stage of the RFX (such as an oral presentation) because Ontario Shores has refused to execute any such confidentiality agreement, the Proponent shall receive no points for that particular stage of the evaluation process.

### **2.20.3 Proponent's Submission**

All correspondence, documentation, and information provided in response to or because of the RFX may be reproduced for the purposes of evaluating the Proponent's Proposal.

### **2.20.4 Personal Information**

Personal Information shall be treated as follows:

- (a) ***Submission of Information*** – The Proponent should not submit as part of its Proposal any information related to the qualifications or experience of individuals who will be assigned to provide services unless specifically requested. Should Ontario Shores request such information, Ontario Shores will treat this information in accordance with the Agreement and will maintain the information for a period of 7 years from the time of collection.

- (b) **Use** – Any Personal Information that is requested from each Proponent by Ontario Shores shall only be used to (i) to select the qualified individuals to undertake the project/services; (ii) to confirm that the work performed is consistent with these qualifications; (iii) for any audit of this procurement process; and (iv) in the case of the successful Proponent, for contract management purposes.
- (c) **Consent** – It is the responsibility of each Proponent to obtain the consent of such individuals prior to providing the information to Ontario Shores. If any Personal Information is disclosed to Ontario Shores by a Proponent, Ontario Shores will consider that the appropriate consents have been obtained for the disclosure to and use by Ontario Shores of the requested information for the purposes described herein.

### **2.20.5 Non-Disclosure Agreement**

Ontario Shores reserves the right to require any Proponent to enter into a non-disclosure agreement satisfactory to Ontario Shores regarding the confidential information of Ontario Shores or another person related to the RFx.

### **2.21 Freedom of Information and Protection of Privacy Act**

The *Freedom of Information and Protection of Privacy Act* (Ontario), applies to records in the custody or control of Ontario Shores, and includes any information provided by Proponents in connection with the RFx. Such information may be subject to requests for access under that Act, and can only be withheld from disclosure in specific circumstances.

**A Proponent should identify any information in its Proposal that, if disclosed to any other person, would harm that Proponent's competitive position, in accordance with Section 17(1) of FIPPA.** The confidentiality of such information will be maintained by the Purchaser, except as otherwise required by law or by order of a court, tribunal, or the Ontario Privacy Commissioner. Generally, only specific portions of a Proposal should be identified.

[Freedom of Information and Protection of Privacy Act](#)

### **2.22 Competition Act**

Under Canadian law, a Proponent's Proposal must be prepared without conspiracy, collusion, or fraud. For more information on this topic, visit the Competition Bureau website at <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home>, and in particular, part VI of the *Competition Act*, R.S.C. 1985, c. C-34.

### **2.23 Trade Agreements**

Proponents should note that procurements falling within the scope of Chapter 5 of the Canadian Free Trade Agreement (CFTA) are subject to that trade agreement, although

the rights and obligations of the parties shall be governed by the specific terms of the RFX. For more information, please refer to the: <https://www.cfta-alec.ca/>

## **2.24 Canadian Police Information Centre (CPIC) Clearance**

The Successful Proponent(s), if any, at its/their sole cost, shall have security clearance from the Canadian Police Information Centre (CPIC) for working with a vulnerable sector completed on those parties who may have direct contact with patients, personal health information or personal information, (as deemed applicable by Ontario Shores, to the standard of Ontario Government's Contractor Security Screening Process); and further, to insure that any such party or person that is screened to whom security clearance is not granted is replaced. The Successful Proponent(s), if any, shall provide an original copy of their CPIC checks to the Purchasing Department, to be reviewed by the Manager contracting the service, before services are initiated. The CPIC or CPIC for working with a vulnerable sector must be recent within six months of the start date of the service. This requirement will be included in the Agreement.

## **2.25 Permits, Licences, and Approvals**

### **2.25.1 General**

Proponents shall obtain all permits, licences, and approvals required in connection with the supply of the Services. The costs of obtaining such permits, licences, and approvals shall be the responsibility of, and shall be paid for by, the Proponent.

Where a Proponent is required by Applicable Laws to hold or obtain any such permit, licence, and approval to carry on an activity contemplated in its Proposal or in the Agreement, neither acceptance of the Proposal nor execution of the Agreement by Ontario Shores shall be considered an approval by Ontario Shores for the Proponent to carry on such activity without the requisite permit, licence, or approval.

## **2.26 Intellectual Property**

The Proponent shall not use any intellectual property of Ontario Shores, including but not limited to, logos, registered trade-marks, or trade names of Ontario Shores, without the prior written approval of Ontario Shores.

## **2.27 Rights of Ontario Shores – General**

In addition to any other express rights or any other rights which may be implied in the circumstances, Ontario Shores reserves the right to:

- (a) make public the names of any or all Proponents;
- (b) request written clarification or the submission of supplementary written information from any Proponent and to incorporate such clarification or supplementary written information into the Proponent's Proposal, at Ontario Shores discretion, provided that any clarification or submission of supplementary

written information shall not be an opportunity for the Proponent to correct errors in its Proposal or to change or enhance the Proponent's Proposal in any material manner;

- (c) waive formalities and accept Proposals that substantially comply with the requirements of the RFX, in Ontario Shores sole discretion;
- (d) verify with any Proponent or with a third party any information set out in a Proposal, as described in Verification of Information;
- (e) check references other than those provided by Proponents;
- (f) disqualify any Proponent whose Proposal contains misrepresentations or any other inaccurate or misleading information, or any Proponent whose reasonable failure to cooperate with Ontario Shores impedes the evaluation process, or whose Proposal is determined to be non-compliant with the requirements of the RFX;
- (g) disqualify any Proponent where that Proponent, or one or more principles or key personnel of that Proponent, have (i) previously breached a contract with Ontario Shores, (ii) otherwise failed to perform to the reasonable satisfaction of Ontario Shores, (iii) been charged or convicted of an offence in respect of a contract with Ontario Shores, or (v) a Conflict of Interest or Unfair Advantage, or where reasonable evidence of any Unfair Advantage or Conflict of Interest is brought to the attention of Ontario Shores;
- (h) disqualify any Proponent that has breached any Applicable Laws or that has engaged in conduct prohibited by the RFX, including where there is any evidence that the Proponent or any of its employees or agents colluded with any other Proponent, its employees or agents in the preparation of its Proposal;
- (i) make changes, including substantial changes, to the RFX provided that those changes are issued by way of addenda in the manner set out in the RFX;
- (j) accept or reject a Proposal if only one Proposal is submitted;
- (k) reject a subcontractor proposed by a Proponent within a consortium;
- (l) select a Proponent other than the Proponent whose Proposal reflects the lowest cost to Ontario Shores;
- (m) cancel the RFX process at any stage and issue a new RFX for the same or similar requirements, including where:
  - (i) Ontario Shores determines that it would be in the best interest of Ontario Shores not to award an Agreement;

- (ii) the Proposal prices exceed the bid prices received by Ontario Shores in connection with a previous acquisition or procurement of services that are similar to the Services;
- (iii) the Proposal prices exceed the costs that Ontario Shores would incur by doing the work, or most of the work, with its own resources;
- (iv) the Proposal prices exceed the funds available for the Services; or
- (v) the funding for the acquisition of the Services has been revoked, modified, or has not been approved;

and where Ontario Shores cancels the RFX, Ontario Shores may do so without providing reasons, and Ontario Shores may thereafter issue a new request for proposals, request for qualifications, sole source, or take no further action in respect of the matters contemplated by the RFX;

- (n) discuss with any Proponent different or additional terms to those contained in the RFX or in any Proponent's Proposal; and
- (o) reject any or all Proposals in its absolute discretion, including where a Proponent has launched legal proceedings against Ontario Shores or is otherwise engaged in a dispute with Ontario Shores.

By submitting a Proposal, the Proponent authorizes the collection by Ontario Shores of the information identified in the RFX, which Ontario Shores may request from any third party.

## **2.28 Rights of Ontario Shores – Preferred Proponent**

In the event that the Preferred Proponent fails or refuses to execute the Agreement within 15 Business Days from being notified that it is the Preferred Proponent, Ontario Shores may, in its sole discretion:

- (a) extend the period for concluding the Agreement, provided that if substantial progress towards executing the Agreement is not achieved within a reasonable period of time from such extension, Ontario Shores may, in its sole discretion, terminate the discussions;
- (b) exclude the Preferred Proponent's Proposal from further consideration and begin discussions with the next highest-ranked Proponent without becoming obligated to offer to negotiate with all Proponents; and
- (c) exercise any other applicable right set out in the RFX, including but not limited to, cancelling the RFX and issuing a new RFX for the same or similar Services.

Ontario Shores may also cancel the RFX in the event the Preferred Proponent fails to obtain any of the permits, licences, and approvals required pursuant to the RFX.

## **2.29 Proponent's Costs**

Every Proponent shall bear all costs and expenses incurred by the Proponent relating to any aspect of its participation in the RFX process, including all costs and expenses relating to the Proponent's participation in:

- (a) the preparation, presentation, and submission of its Proposal;
- (b) the Proponent's attendance at any meeting in relation to the RFX process, including any oral presentation and/or demonstration;
- (c) the conduct of any due diligence on its part, including any information gathering activity;
- (d) the preparation of the Proponent's own questions prior to the RFX Submission Deadline; and
- (e) any discussion and/or negotiation, if any, in respect of the Agreement.

## **2.30 Business Travel and Expense Reimbursement**

Travel and accommodation expenses shall not be included in the rates quoted and shall be billed separately and charged in accordance with Ontario Shores policy, as may be amended from time to time. Original itemized receipts are required for reimbursement. Meals, Ontario Shoresity, and other incidentals shall not be included in eligible expenses;

### [Business Travel and Expense Reimbursement Policy](#)

## **2.31 No Liability**

The Proponent agrees that:

- (a) Any action or proceeding relating to the RFX process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court.
- (b) It irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to the RFX process on any jurisdictional basis.
- (c) It shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by the RFX.

The Proponent further agrees that if Ontario Shores commits a material breach of the RFX, Ontario Shores liability to the Proponent, and the aggregate amount of damages recoverable against Ontario Shores for any matter relating to or arising from that

material breach, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct, or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of Ontario Shores, shall be no greater than the Proposal preparation costs that the Proponent seeking damages from Ontario Shores can demonstrate.

### **2.32 Assignment**

The Proponent shall not assign any of its rights or obligations hereunder during the RFX process without the prior written consent of Ontario Shores. Any act in derogation of the foregoing shall be null and void.

### **2.33 Entire RFX**

Each respective RFX and all Schedules form an integral part of the RFX.

### **2.34 Priority of Documents**

In the event of any inconsistencies between the terms, conditions, and provisions of the main part of the RFX and the Schedules, the RFX shall prevail over the Schedules during the RFX process.

### **2.35 Governing Law**

The RFX, the Proponent's Proposal, and any resulting Agreement shall be governed by the laws of Ontario and the federal laws of Canada applicable therein.

## **Article 3 General Requirements and Pricing**

The Requirements set out in the RFX will be scored and failure by a Proponent to meet any requirement will affect the Proponent's evaluation and final score under Evaluation Process. Every Proponent should provide its responses to the General Requirements in the Requirement Schedule or as otherwise directed.

### **3.1 Technical Issues**

In preparing its Proposal, the Proponent should adhere to the following:

- (a) all pages should be numbered;
- (b) avoid using symbols in the file name such as &, #, etc.;
- (c) each electronic document should not exceed 5 MB in size; information may be split up into separate documents, if necessary;
- (d) avoid using scanned copies of documents, where possible (scanned copies tend to be of greater size than original electronic versions);

- (e) no embedded hyperlinks to online literature about the Services are permitted – as needed, a PDF document containing such information may be incorporated within the Proposal. PDF literature documents should be named as follows: “Proponent Name – Services Category – Model;
- (f) completely address, on a point-by-point basis, each requirement identified in this Article 3 (General Requirements);
- (g) adhere to the Proposal format requirements described above; and
- (h) respond to the requirements in the applicable schedule, or as may be directed in this RFP – the Schedules provided, as appropriate, should be used for completing the Proposal.

### **3.2 Compliance with Accessibility Standards**

The (Services/Goods/Equipment) provided under the RFX shall comply with applicable accessibility standards under the Accessibility for Ontarians with Disabilities Act, 2005 and its regulations. If requested by the Purchaser, acting reasonable, the supplier shall provide evidence of the policies, procedures and training practices that it has implemented to comply with the foregoing.

The Supplier shall comply, and shall ensure that its personnel read and comply with all purchaser policies in respect of the Accessibility of Ontarians with Disabilities act, 2005 and its regulations, as may be applicable to the services.

#### **For Services Compliance with Accessibility Standards**

As part of its response to the RFX, the Proponent must describe how the proposed Services will be in compliance with applicable accessibility standards under the *Accessibility for Ontarians with Disabilities Act, 2005* and its regulations, including any policies and personnel training that have been or will be implemented by the Proponent in respect thereof.

### **3.3 Acceptance of the Letter/Form of Agreement as Applicably Attached**

The Proponent should identify in its proposal (i) any clauses in the Agreement to which it objects, with an explanation as to the nature of the objection, and (ii) alternate clauses that would be acceptable.

A Proponent who submits conditions, options, variations, or contingent statements to the terms set out in the Agreement, either as part of its Proposal or after receiving notice of selection, not acceptable by Ontario Shores, may be disqualified.

The Proponent should not submit its own Agreement or Terms and Conditions.

A Proponent that would accept the Agreement as attached shall respond by stating “Not Applicable.”

## Article 4 Evaluation Process

### 4.1 General

The evaluation of the Proposals will be conducted by the evaluation team (the “**Evaluation Team**”) in several stages, as described below. Ontario Shores will determine the membership of the Evaluation Team, in its sole discretion, which may include external consultants and advisors. The stages and the points allocated to each stage of the evaluation process will be outlined in each respective RFx. For example:

Stage	Description	Points
I	Mandatory Requirements	(Pass/Fail)
II	General Requirements	<b>20</b>
III	Oral Presentation and/or Demonstration	<b>10</b>
IV	Pricing	<b>70</b>
V	Reference Verification	(Pass/Fail)
	Total	<b>100</b>

#### 4.1.1 Unfair Advantage and Conflict of Interest Statement

Unfair Advantage and Conflict of Interest Statement Schedule, completed by the Proponent in accordance with the instructions contained in that schedule.

#### 4.1.2 Declaration and Certification

Declaration and Certification Schedule, completed by the Proponent in accordance the instructions contained in that schedule.

#### 4.1.3 References

Reference Schedule, completed by the Proponent in accordance with the instructions contained in that schedule.

#### 4.1.4 Proponent Consortium Information

Where a consortium is responding to the RFx, the following shall apply:

- (a) the Proponent shall identify itself as the sole Proponent; and
- (b) the Proponent shall confirm that the Proponent shall assume full responsibility and liability for the work and actions of all consortium members with respect to the obligations to be assumed pursuant to the RFx, provided that Ontario Shores shall be entitled to reject a proposed subcontractor.

Where a consortium is not responding to the RFx, the Proponent shall respond by stating “Not Applicable”.

## **4.2 Tie Break Process**

In the event of tie in scoring among competing Proposals, the highest weighted criteria will be used to compare scores. Subject to the other rights and remedies which may be available to Ontario Shores, in the event that Ontario Shores would like to break a tie in order to enter into the Agreement, among the Proponents with the tied scores, the Proponent with the highest score in the highest weighted criteria will be declared the Successful Proponent. If a tie remains, Ontario Shores may choose to use the second highest weighted criteria to compare scores among the tied Proponents who also have a tied score in the highest weighted criteria, in determining the Successful Proponent.

## **4.3 Preferred Proponent**

After the references have been successfully verified, Ontario Shores will notify the Preferred Proponent of its position as the Preferred Proponent, and invite it to enter into discussions to finalize the terms of the Agreement, attached in the Form of Agreement Schedule. Subject to the requirements of Discussions with Preferred Proponent, Ontario Shores expects that the Agreement will be executed substantially in the form in which it appears in the RFx.

## **4.4 Discussions with Preferred Proponent**

After identifying the Preferred Proponent, if any, Ontario Shores may attempt to finalize the terms and conditions of the Agreement with the Preferred Proponent, or it may, in its sole discretion,

- (a) prior to making the award, where an immediate need exists, Ontario Shores may issue a purchase order, on terms satisfactory to Ontario Shores, as an interim measure; and
- (b) negotiate changes, amendments, or modifications to the Preferred Proponent's Proposal.

Ontario Shores shall at all times be entitled to exercise its rights under Rights of Ontario Shores – Preferred Proponent.

For certainty, Ontario Shores makes no commitment to the Preferred Proponent that the Agreement will be executed. The Preferred Proponent acknowledges that the commencement of any discussions does not obligate Ontario Shores to execute the Agreement.